

# NAIROBI CITY COUNTY



## SUPPLY AND DELIVERY OF PAINTS FOR THE YEARS 2016-2018

**TENDER NO: NCC/RPW&T/T/FW/496/2016-2018**

M/S.....

*NAIROBI CITY COUNTY-SUPPLY CHAIN MANAGEMNT*

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## **I. TENDER NOTICE**

REF: TENDER NO. TENDER NO: NCC/R,P,W&T/T/FW/496/2016-2017- : SUPPLY AND DELIVERY OF PAINTS UNDER FRAMEWORK AGREEMENT

The Nairobi City County now invites sealed tenders from eligible and qualified candidates for the Supply and Delivery of Road Construction Materials under a Framework Contract for a period of one (1) Year. The materials will be ordered on “as and when-required basis”

Interested eligible candidates may obtain further information from and inspect the tender and download the tender document for free from the NCC website; [www.nairobi.go.ke](http://www.nairobi.go.ke). Communication in regard to the tender must be in writing through email address: [info@nairobi.go.ke](mailto:info@nairobi.go.ke). All clarifications and or amendments will be published in NCC website and tenderers are required to check for any addendums or amendments in the course of bidding period prior to the closing date.

Candidates must prove that they qualify to participate in public procurement in accordance to the regulations 13 of the legal Notice by providing the following documents or evidence:

- i. Certificate of business registration/Incorporation, copy of certificate to be attached
- ii. A valid Tax compliance certificate for the current year
- iii. A valid Single Business Permit for NCC or any other County within Kenya
- iv. An auditor’s certified abstract of the candidates accounts for the last three (3) years i.e 2014,2015 and 2016 OR evidence of financing agreement OR Credit facility for enterprises owned by Youth,Women,or Persons with disabilities.
- v. Certified copy of the current CR12 Certificate for limited companies.
- vi. Certified copy of YAGPO current certificate for special group.
- vii. Fully signed and stamped tender securing declaration form for special group

Completed tender documents in plain sealed envelopes bearing no indication of the name of the firm tendering with the tender number and name clearly marked on top should be deposited in the Tender Box located next to the office of the Head of Supply Chain, City Hall Annex, First Floor, if by post to be addressed to: -

County Secretary,  
Nairobi City County,  
P. O. Box 30075 – 00100  
Nairobi.

so as to reach him not later than 12noon on Friday, 31st March 2017 at which time the tender documents will be publicly opened in the presence of tenderers or their representatives who choose to attend in the Supply Chain Board Room, City Hall Annex, First Floor.

## 2 INVITATION FOR TENDERS

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sir/Madam,

REF: TENDER NO: NCC/SCM/T/453/2016-2018: SUPPLY AND DELIVERY OF PAINTS UNDER FRAMEWORK AGREEMENT

The Nairobi City County now invites sealed tenders from eligible and qualified candidates for the Supply and Delivery of Road Construction Materials under a Framework Contract for a period of one (1) Year. The materials will be ordered on “as and when-required basis”

Interested eligible candidates may obtain further information from and inspect the tender and download the tender document for free from the NCC website; [www.nairobi.go.ke](http://www.nairobi.go.ke). Communication in regard to the tender must be in writing through email address: [info@nairobi.go.ke](mailto:info@nairobi.go.ke). All clarifications and or amendments will be published in NCC website and tenderers are required to check for any addendums or amendments in the course of bidding period prior to the closing date.

- viii. Certificate of business registration/Incorporation, copy of certificate to be attached
- ix. A valid Tax compliance certificate for the current year
- x. A valid Single Business Permit for NCC or any other County within Kenya
- xi. An auditor’s certified abstract of the candidates accounts for the last three (3) years i.e 2014,2015 and 2016 OR evidence of financing agreement OR Credit facility for enterprises owned by Youth,Women,or Persons with disabilities.
- xii. Certified copy of the current CR12 Certificate for limited companies. xiii. Certified copy of YAGPO current certificate for special group. xiv. Fully signed and stamped tender securing declaration form for special group

Completed tender documents in plain sealed envelopes bearing no indication of the name of the firm tendering with the tender number and name clearly marked on top should be deposited in the Tender Box located next to the office of the Head of Supply Chain, City Hall Annex, First Floor, if by post to be addressed to: -

County Secretary,  
Nairobi City County,  
P. O. Box 30075 – 00100  
Nairobi.

so as to reach him not later than 12noon on 12noon on Friday, 31st March 2017 at which time the tender documents will be publicly opened in the presence of tenderers or their representatives who choose to attend in the Supply Chain Board Room, City Hall Annex, First Floor.

## **2. GENERAL INFORMATION**

### 2.1 Eligible Tenderers

2.1.1 This Invitation for tenders is open to all tenderers eligible and described in the tender documents. Successful tenderers shall complete the supply of goods by the intended completion date specified in the tender documents. 2.1.2 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 Nairobi City County 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 tenders.

2.1.3 Tenderers shall not be under a declaration for 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 tenderer.

### 2.3 Cost of Tendering

2.3.1 The tenderer shall bear all costs associated with the preparation and submission of its tender, and the Nairobi City County, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

### 2.4 The Tender Document

#### Contents

2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with Clause 2.6 of these Instructions to tenderers

- (i) Invitation for Tenders
- (ii) General Information
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Technical Specifications

(vi) Tender Form and Price schedules

(vii) Tender Security Form

(viii) Contract Form

(ix) Performance Security Form

(x) Manufacturer's Authorization Form

2.4.2 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.

#### 2.4.3 Tenderer's Memorandum

All tenders submitted shall include copies of the following documents: -

xv. Certificate of business registration/Incorporation, copy of certificate to be attached

xvi. A valid Tax compliance certificate for the current year

xvii. A valid Single Business Permit for NCC or any other County within Kenya

xviii. An auditor's certified abstract of the candidates accounts for the last three (3) years i.e 2014,2015 and 2016 OR evidence of financing agreement OR Credit facility for enterprises owned by Youth,Women,or Persons with disabilities.

xix. Certified copy of the current CR12 Certificate for limited companies.

xx. Certified copy of YAGPO current certificate for special group.

xxi. Fully signed and stamped tender securing declaration form for special group

#### 2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender Document may notify the Nairobi City County in writing or by cable (hereinafter, the term cable is deemed to include telex and facsimile) at the entity's address indicated in the Invitation of tenders. The Nairobi City County will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the Nairobi City County. Written copies of the Nairobi City County's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

#### 2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, the Nairobi City County, 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 amendment.

2.6.2 All prospective candidates who have received the tender Documents will be notified of the amendment in writing or by cable, and will be binding on them.

2.6.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Nairobi City County, at its discretion, may extend the deadline for the submission of Tenders.

## Preparation of Tenders

### 2.7 Language of Tender

2.7.1 The Tender prepared by the tenderer, as well as all correspondence and documents relating to the Tender exchanged by the tenderer and the Nairobi City County, shall be written in English language, provided that 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.

### 2.8 Documents Comprising the Tender

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

- (a) A tender 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 2.12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.
- (c) Documentary evidence established in accordance with paragraph 2.13 that the goods and ancillary services to be supplied by the tenderer conform to the tender documents; and

### 2.9 Tender Form

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

### 2.10 Tender Prices

2.10.1 The Tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract.

2.10.2 Prices indicated on the Price Schedule shall be entered separately in the following manner:

(i) The price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable.

(ii) Charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination

2.10.3 Prices quoted by the Tenderer shall be fixed during the term of contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.

### 2.11 Tender Currencies

2.11.1 Prices shall be quoted in the following currencies:

- (a) For goods that the Tenderer will supply from Kenya, the prices shall be quoted in Kenya shillings; and
- (b) For goods that the Tenderer will supply from outside, the prices shall be quoted in US dollars or in another freely convertible currency

2.12 Tenderers Eligibility and Qualifications

2.12.1 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.

2.12.2 The documentary evidence of the Tenderers eligibility to tender shall establish to the Nairobi City County's satisfaction that the Tenderer, at the time of submission of its tender, is from an eligible source country as defined.

2.12.3 The documentary evidence of the Tenderers qualifications to perform the contract if its Tender is accepted shall establish to the Nairobi City County's satisfaction:

- (a) that, in the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise procure, the Tenderer has been duly authorized by the good's Manufacturer or producer to supply the goods;
- (b) that the Tenderer had the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts- stocking obligations in the Conditions of Contract/or Technical Specifications.

2.13 Goods' Eligibility and Conformity to Tender Document

2.13.1 Pursuant paragraph 2 of this section, the Tenderer shall furnish, as part of its tender,

2.13.2 documents establishing the eligibility and conformity to the tender documents of all goods, which the Tenderer proposes to supply under the contract.

2.13.3 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.

2.13.4 The documentary evidence of conformity of the goods to the Tender 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 characteristics of the goods
- (b) A list giving full particulars, including available sources and current prices of special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Nairobi City County; and



(c) A clause-by-clause commentary on the Nairobi City County's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.5 For purposes of the commentary to be furnished pursuant to paragraph

2.13.3 (c) above, the Tenderer 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 Tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its Tender, 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 Tender Security-fill tender declaration form

2.16 Format and Signing of Tender

2.16.1 The Nairobi City County 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.

2.16.2 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. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature shall be initialed by the person or person signing the tender.

2.16.3 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.

## SUBMISSION OF TENDERS

2.17 Sealing and Marking of Tenders

2.17.1 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.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Nairobi City County at the following address:

County Secretary,  
Nairobi City County  
P. O. Box 30075 – 00100  
NAIROBI

(b) Bear REF: TENDER NO. NCC/R,P,W&T/T/FW/496/2016-2018- : SUPPLY AND DELIVERY OF PAINTS UNDER FRAMEWORK AGREEMENT

The invitation for Tenders (IFT), and the words: “DO NOT OPEN BEFORE,” 12noon on Thursday Friday, 31st March, 2017.

2.17.3 The inner envelopes shall also indicate the name and address document before submission.

2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by the Nairobi City County at the address specified under paragraph 2.17.2 not later than 12noon on Friday, 31st March, 2017.

2.18.2 The Nairobi City County may, at its discretion, extend this deadline for the submission of Tenders by amending the Tender documents in accordance with paragraph 2.6.3 in which case all rights and obligations of the Nairobi City County and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.19 Modification and Withdrawal of Tender

2.19.1 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 Tenders, is received by the Nairobi City County prior to the deadline prescribed for submission of Tenders.

2.19.2 The Tenderer’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, but followed by a signed confirmation copy, postmarked no later than the deadline for submission of Tenders.

2.19.3 No Tender may be modified after the deadline for submission of Tenders.

2.19.4 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 2.14.7.

OPENING AND EVALUATION OF TENDERS

2.20 Opening of Tenders

2.20.1 The Nairobi City County will open all Tenders in the presence of Tenderers’ representatives who choose to attend on Friday 31<sup>st</sup> March 2017 in the Supply Chain Management Board Room, City Hall Annex, 1st Floor Rm 105. The tenderers’ representatives who are present shall sign a register evidencing their attendance.

2.20.2 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 Nairobi City County, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The Nairobi City County will prepare minutes of the tender opening.

2.21 Clarification of Tenders

2.21.1 To assist in the examination, evaluation and comparison of Tenders the Nairobi City County 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 of the tender shall be sought, offered, or permitted.

2.21.2 Any effort by the Tenderer to influence the Nairobi City County in the Nairobi City County's tender evaluation, tender comparison or contract award decisions may result in the rejection of the Tenderer's tender.

## 2.22 Preliminary examination

2.22.1 The Nairobi City County will examine the Tenders 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 tenders 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 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.

2.22.3 The Nairobi City County may waive any minor informality or non-conformity 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.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23, the Nairobi City County 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 Nairobi City County's determination of a Tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by the Nairobi City County and may not subsequently be made responsive by the Tenderer by correction of the nonconformity.

## 2.23 Evaluation and Comparison of Tenders

2.23.1 The Nairobi City County will evaluate and compare the Tenders, which have been determined to be substantially responsive, pursuant to paragraph 2.22.

2.23.2 The Nairobi City County's evaluation of a tender will exclude and not take into account.

a) in the case of goods manufactured in Kenya or goods of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Tenderer; and  
b) any allowance of price adjustment during the period of execution of the contract, if provided in the tender.

2.23.3 The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

2.23.4 The Nairobi City County's evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 2.23.5 and in the technical specifications: a) delivery schedule offered in the tender b) deviations in payment schedule from that specified in the special conditions of contract; c) the cost of components, mandatory spare parts, and service; d) the availability in Kenya of spare parts and after-sales services for the equipment offered in the tender;

2.23.5 Pursuant to paragraph 2.23.4 the following evaluation methods will be applied:

(a) Delivery Schedule.

(i) The Nairobi City County requires that the goods under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements. Tenders offering deliveries longer than the Nairobi City County's required delivery time will be treated as non-responsive and rejected.

(b) Deviation in payment schedule.

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenderers will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Nairobi City County may consider the alternative payment schedule offered by the selected Tenderer.

2.24 Contacting the Nairobi City County

2.24.1 Subject to paragraph 2.21.2, no Tenderer shall contact the Nairobi City County on any matter relating to its Tender, from the time of the Tender opening to the time the contract is awarded.

2.24.2 Any effort by a Tenderer to influence the Nairobi City County in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

## **AWARD OF CONTRACT**

### **2.25 Post-Qualification**

2.25.1 In the absence of pre-qualification, the Nairobi City County 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.

2.25.2 The determination will take into account the Tenderers financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderers qualifications submitted by the Tenderer, pursuant to paragraph 2.12.3, as well as such other information as the Nairobi City County deems necessary and appropriate.

2.25.3 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 Nairobi City County will proceed to the next lowest evaluation tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

2.26 Award Criteria

2.26.1 Subject to paragraph 2.10, 2.23 and 2.28 the Nairobi City County will award the contract to the successful Tenderer (s) whose tender has been determined to be substantially responsive and has been determine to be the lowest evaluated tender, provided further that the Tenderer is determined to be qualified to perform the contract satisfactorily.

#### 2.27 Nairobi City County's Right to Vary Quantities

2.27.1 The Nairobi City County 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.

#### 2.28 Nairobi City County's Right to accept or Reject Any or All Tenders

2.28.1 The Nairobi City County 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 Nairobi City County's action.

#### 2.29 Notification of Award

2.29.1 Prior to the expiration of the period of tender validity, the Nairobi City County will notify the successful Tenderer in writing that its tender has been accepted and simultaneously notify the unsuccessful tenderer's of the fact.

2.29.2 The notification of award will constitute the formation of the contract.

2.29.3 Upon the successful Tenderers furnishing of the performance security pursuant to paragraph 2.31, the Nairobi City County will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14.

#### 2.30 Signing of Contract

2.30.1 At the same time as the Nairobi City County notifies the successful Tenderer that its tender has been accepted, the Nairobi City County will send the Tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

2.30.2 Within thirty (30) days of receipt of the Contract Form, the successful Tenderer shall sign and date the contract and return it to the Nairobi City County.

#### 2.31 Performance Security

2.31.1 Within fourteen (14) days of the receipt of notification of award from the Nairobi City County, the successful Tenderer shall furnish the acceptance letter in accordance with the Conditions of Contract, in the Performance security Form provided in the tender documents or in another form acceptable to the Nairobi City County.

2.31.2 Failure of the successful Tenderer to comply with the requirement of paragraph 2.30 or paragraph 2.31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Nairobi City County may make the award to the next lowest evaluated or call new Tenders.

#### 2.32 Corrupt Fraudulent Practices

2.32.1 The Nairobi City County requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Nairobi City County: -

(a) defines, for the purpose of this provision, the terms set forth below as follows: -

(i) “Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of the 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 Nairobi City County, and includes collusive practice among Tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Nairobi City County of the benefits of free and open competition;

(b) 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;

(c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or executing a contract.

2.32.2 Furthermore, Tenderers shall be aware of the provision stated in the General conditions of Contract.

### **3 GENERAL CONDITONS 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 Nairobi City County 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 Goods” means all of the equipment, machinery, and/or other materials, which the Tenderer is required to supply to the Nairobi City County under this contract.

(d) “The Nairobi City County” means the organization purchasing the Goods under this Contract.

(e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### **3.2 Application**

These General Conditions shall apply in all Contracts made by the Nairobi City County for the procurement of goods.

### **3.3 Country of Origin**

For purposes of this clause, “Origin” means the place where the Goods were mined, grown, or produced.

The origin of Goods and services is distinct from the nationality of the Tenderer.

### **3.4 Standards**

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

### **3.5 Use of Contract Documents and Information**

3.5.1 The Candidate shall not, without the Nairobi City County's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Nairobi City County in connection therewith, to any person other than a person employed by the Tenderer in the performance of the Contract.

3.5.2 The Tenderer shall not, without the Nairobi City County's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above.

3.5.3 Any document, other than the Contract itself enumerated in paragraph 3.5.1 above, shall remain the property of the Nairobi City County and shall be returned (all copies) to the Nairobi City County on completion of the Tenderer's performance under the Contract if so required by the Nairobi City County.

### **3.6 Patent Rights**

The Tenderer shall indemnify the Nairobi City County 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 Nairobi City County's country.

### **3.7 Performance Security**

### **3.8 Inspection and Tests**

3.8.1 The Nairobi City County or its representative shall have the right to inspect and/or test the goods to confirm their conformity to the Contract specifications. The Nairobi City County shall notify the Tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.

3.8.2 The inspections and tests may be conducted on the premises of the Tenderer or its sub-supplier (s), at point of delivery, and/or at the goods, final destination. If conducted on the premises of the Tenderer or its sub-supplier(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Nairobi City County.

3.8.3 Should any inspected or tested Goods fail to conform to the specifications, the Nairobi City County may reject the goods, and the Tenderer shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Nairobi City County.

The Nairobi City County'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 goods having previously been inspected, tested, and passed by the Nairobi City County or its representative prior to the goods' delivery.

3.8.4 Nothing in paragraph 3.8 shall in any way release the Tenderer from any warranty or other obligations under this contract.

### **3.9 Packing**

The Tenderer shall provide such packing of the Goods as required to prevent their damage or deterioration during transit to their final destination as indicated in the contract.

The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract.

### **3.10 Delivery and Documents**

Delivery of the goods shall be made by the Tenderer in accordance with the terms specified by Nairobi City County in its schedule of Requirements and the special Conditions of Contract.

### **3.11 Insurance**

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

### **3.12 Payment**

3.12.1 The method and conditions of payment to be made to the Tenderer under this Contract shall be specified in special Conditions of Contract.

3.12.2 Payments shall be made promptly by the Nairobi City County as specified in the contract. 3.13 Prices

3.13.1 Prices charged by the Tenderer 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 Tenderer in its Tender.

### **3.14 Assignment**

3.13.1 The Tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Nairobi City County's prior written consent.

### **3.14 Subcontracts**

3.15.1 The Tenderer shall notify the Nairobi City County in writing of all subcontracts awarded under this Contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Tenderer from any liability or obligation under the Contract.

### **3.16 Termination for Default**

3.16.1 The Nairobi City County 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 deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Nairobi City County. (b) If the Tenderer fails to perform any other obligation(s) under the Contract. (c) If the Tenderer, in the judgment of the Nairobi City County has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

3.16.2 In the event the Nairobi City County terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, and the Tenderer shall be liable to the Nairobi City County for any excess costs for such similar Goods.



### **3.17 Liquidated Damages**

3.17.1 If the Tenderer fails to deliver any or all of the goods within the period (s) specified in the contract, the Nairobi City County shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the price of the undelivered goods up to a maximum deduction of 10% of the undelivered goods. After this the Tenderer may consider termination of the contract.

### **3.18 Resolution of Disputes**

3.18.1 The Nairobi City County and the Tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

3.18.2 If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute the provision of the arbitration Act of the Laws of Kenya shall apply.

### **3.19 Language and Law**

3.19.1 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 Tenderer shall not be liable for forfeiture of its performance security, or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

## **4 SPECIAL CONDITIONS OF CONTRACT**

4.1 Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

4.2 The City County shall issue Local Purchase Orders for supply and delivery of various units as and when required during the contract validity period. Payment shall be made after the goods have been supplied and accepted that they are in good order and comply to specifications.

4.3 Where in doubt, the Council shall randomly sample the goods and subject them to compliance testing. No payment shall be made until the Test certificates have been received. If the goods are rejected the supplier shall be required to take away the affected goods and replace with others that comply at their cost.

4.4 To be noted under special conditions of contract. The Nairobi City County shall have a right and would not be held responsible for not issuing the Local Purchase Order for the total quantities in the Contract.

4.5 The Nairobi City County requires that the Tender document MUST be submitted in the same form as provided without any mutilation.

## **TECHINICAL EVALUATION CRITERIA**

- a) Responsiveness at preliminary stage shall qualify candidates to technical Evaluation stage.
- b) Minimum score at the technical evaluation stage is 70 marks, Candidates with highest score of 70 marks and above shall qualify to financial Stage of evaluation.

The table below contains scores for technical requirements for evaluation.

**S/NO ITEM DESCRIPTION MARKS AWARDED**

- 1 Audited financial accounts for the last three (3) financial years. Financial statements without auditor’s report will not be accepted; the report should be stamped and signed by the auditor. **20 marks**
- 2 Certified (by the bidder) copy of Bank statement for the last six months or guarantee or any other relevant document. **10marks**
- 3 Bidders are required to submit evidence of past experience by submitting five Local purchase orders LPOs or Local service orders(LSO) each valued at above 60,000/= from reputable firms. LPOs/LSOs should be for supply or service similar or of the same nature as the bid under consideration. Each LPO/LSO will attract 3 marks. Award letters supported with evidence that the contract has been serviced for a total sum of Ksh. 500,000 will earn full score. **15marks**
- 4 The bidder is required to provide documentation on the company profile and management structure, indicating the present holders of positions provided. **15 marks**
- 5 Original bid document has been filled and returned in its without missing pages. Bidders who do not return the bid document will not be awarded the scores.**10marks**
- 6 Delivery period duly filled for each item tendered for, as per the schedule provided in the bid document. **5marks**
- 7 Business confidential questionnaire (duly filled and signed) it should indicate full names of proprietor(s) or directors of the firm as provided in the form. **10marks**
- 8 Form of tender (duly filled, signed and stamped) **15 marks**

**5 SCHEDULE OF REQUIREMENTS**

The rates inserted here below shall be for the Supply and Delivery of paints for the indicated items conforming to the stated specifications upon issuance of an LPO or Letter of Award.

**TENDER NO: NCC/T/FW/496/2016-2018 SUPPLY AND DELIVERY OF PAINTS**

<b>S/NO</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT OF ISSUE</b>
1	1x4l gloss paint soft white crown grade 1	Tin
2	1x4l gloss paint white crown grade 1	Tin
3	1x4l emulsion paint silk soft white crown	Tin
4	1x4l emulsion paint white crown grade 1	Tin
5	1x20l emulsion paint	drum
6	6" L.G Harris E.A paint brush	Each
7	4" L.G Harris E.A paint brush	Each

8	2" L.G Harris E.A paint brush	Each
9	1x5l turpentine solai	gall
10	1x4l Undercoat paint white crown grade 1	Tin
11	1x4l barmuda blue crown grade 1	Tin
12	1x4l Lagos paint crown grade 1	Tin
13	1x5l ronseal crown grade 1	Tin
14	2.5kg pkt temlaster	pkt
15	2" paint scraper	Each
16	1x4l redoxide crown grade 1	Each
17	1x4l Aluminium paint crown grade 1	Each
18	1x4l Gloss paint yellow roadmaking crown	Each
19	1x4l gloss paint white roadmarking crown	Each

Signature of tenderer -----

## **6 TECHNICAL SPECIFICATIONS**

### **6.1 General**

1. These specifications describe the basic requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc. for the products they intend to supply.
2. Tenderers must indicate on the specifications sheets whether the equipment or goods offered comply with each specified requirement.
3. All the dimensions and capacities of the equipment 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 Nairobi City County reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
4. The tenderers are requested to present information along with their offers as follows:
  - i) Shortest Possible period of each product
  - ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

### **6.2 THE STANDARD AND SPECIAL SPECIFICATIONS**

#### **6.2.1 General**

This special specification is supplementary to the Standard Specification and the two must be read in conjunction. In any case where there appears to be conflict between the two then Special Specification will take precedence.

#### **6.2.2 Compliance with Specification**

All materials, plant, labor and workmanship in and connected with the execution of the works be the best of their respective kinds without regard to any trade terms and the Supplier shall comply in these and all other respects with the following clauses and shall carry out the contract in a proper and workmanlike manner and in strict accordance with the specifications.

### 6.2.3 Test Certificates

When instructed by the procuring entity, the Supplier shall submit certificates of Test from the suppliers of materials and goods to be used for the contract to the Nairobi City County.

Such certificates shall certify that the materials or goods concerned have been tested in accordance with requirement of the Specification and shall give the results of all the tests carried out. The Supplier shall provide adequate means of identifying the materials and good delivered to the site with the corresponding certificates.

### 6.2.4 Approval of Suppliers

The Supplier's attention is drawn to their obligations with regard to quality and delivery schedule of materials and goods obtained for delivery to the Nairobi City County he shall be empowered to reject such goods and materials and shall order that others of acceptable quality replace them. The cost of removal and the new supplies shall all be borne by the Supplier.

### 6.2.5 Date of Manufacture and Expiry

The tenderer who will be awarded this tender is reminded to indicate the date of manufacture and expiry date for all goods that they supply. Failure to indicate manufacture and expiry dates will lead to rejection of the goods by the Nairobi City County.

## **7 FORM AND PRICE SCHEDULES**

### **Form of Tender**

Date: -----

Tender No. -----

County Secretary,  
Nairobi City County,  
P. O. Box 30075 – 00100  
NAIROBI.

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos..... (insert numbers), the receipt of which is hereby duly acknowledged, we, the undersigned, offer to Supply and Delivery of Road Construction Materials in conformity with the said tender documents for the sum of ---

----- (total tender amount in words and figures) or such other

sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this tender.

2. We undertake, if our tender is accepted, to deliver the goods in accordance with the delivery schedule specifies in the Schedule of Requirements.

3. If our tender is accepted, we will obtain the guarantee of bank in a sum equivalent to -----percent of the Contract Price for the due performance of the Contract, in the form prescribed by Nairobi City County.

4. We agree to abide by this tender for a period of -----(number) days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us may be accepted at any time before the expiration of the period.

5. 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.

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

Dated this -----day of -----20-----

----- (Signature)  
(in the capacity of)

Duly authorized to sign tender for and on behalf of -----

(ii) Price Schedule for Goods and rates inserted here below :

**NCC/T/FW/496/2016-2018 SUPPLY AND DELIVERY OF paints**

S/NO	ITEM DESCRIPTION	UNIT OF ISSUE	Unit Price (Kshs)	Country of Origin/brand	Days to deliver
1	1x4l gloss paint soft white crown grade 1	Tin			
2	1x4l gloss paint white crown grade 1	Tin			
3	1x4l emulsion paint silk soft white crown	Tin			
4	1x4l emulsion paint white crown grade 1	Tin			
5	1x20l emulsion paint	drum			
6	6" L.G Harris E.A paint brush	Each			
7	4" L.G Harris E.A paint brush	Each			
8	2" L.G Harris E.A paint brush	Each			
9	1x5l turpentine solai	gall			
10	1x4l Undercoat paint white crown grade 1	Tin			
11	1x4l barmuda blue crown grade 1	Tin			
12	1x4l Lagos paint crown grade 1	Tin			
13	1x5l ronseal crown grade 1	Tin			
14	2.5kg pkt temlaster	pkt			
15	2" paint scraper	Each			
16	1x4l redoxide crown grade 1	Each			

17	1x4l Aluminium paint crown grade 1	Each			
18	1x4l Gloss paint yellow roadmaking crown	Each			
19	1x4l gloss paint white roadmarking crown	Each			

Signature of Tenderer -----

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

8 TENDER SECURITY FORM

Whereas -----(name of the Tenderer) (hereinafter called “the Tenderer”) has submitted its tender dated -----(date of submission of tender) for the Supply and Delivery of Road Construction Materials (hereinafter called “the tender”)----- KNOW ALL PEOPLE by these presents that WE ----- of ----- having our registered office at ----- (hereinafter called “the Bank”) are bound unto ----- Nairobi City County (hereinafter called “Procuring Entity”) in the sum of ----- for which payment well and truly to be made to the said Nairobi City County, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this ----- day of ----- 20----- THE CONDITIONS of this obligation are: - 1. If the Tenderer withdraws its tender during the period of tender validity specified by the Tenderer on the tender form; or 2. if the Tenderer, having been notified of the acceptance of its tender by the Nairobi City County during the period of tender 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 Tenderers. We undertake to pay to the Nairobi City County up to the above amount upon receipt of its first written demand, without the Nairobi City County having to substantiate its demand, provided that in its demand the Nairobi City County 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 Bank not later than the above date. -----

----- (Signature of the Bank) -----

Name of Signatory -----

Seal

**9 CONTRACT FORM**

This agreement made the ----- day of -----20-----between Nairobi City County (hereinafter called “Procuring entity”) of the part and ----- (name of Tenderer) of ----- (City and Country of Tenderer) (hereinafter called “the Tender”) of the other part.

Whereas the Nairobi City County invited Tenders for certain goods, viz, TENDER No. **NCC/T/FW/496/2016-2018 SUPPLY AND DELIVERY OF paints has** accepted a tender by the Tenderer for the supply of those goods in the sum of ----- (contract price in words and figures) (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meaning 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.:

The Tender Form and the Price Schedule Submitted by the Tenderer;

(i) The tender form and the price schedule submitted by the tenderer; (ii) The Schedule of Requirements; (iii) The Technical Specifications; (iv) The General Conditions; (v) The Special Conditions of Contract; and (vi) The Nairobi City County’s Notification of Award.

3. In consideration of the payments to be made by the Nairobi City County to the Tenderer as hereinafter mentioned, the Tenderer hereby covenants with the Nairobi City County to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract. 4. The Nairobi City County hereby covenants to pay the Tenderer in consideration of the provision of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provision of the contract at the times and in the manner prescribed by the Contract.

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

Signature, sealed, delivered by ----- the -----( for the Nairobi City County).

Signed, sealed, delivered by ----- the ----- (

For the Tenderer) in the presence of -----

**10 PERFORMANCE SECURITY FORM**

To: Nairobi City County

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 guarantee by a reputable bank for the sum specified therein as security for compliance with the tenderers 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 figures), 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 your 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-----.

Signature and seal of the guarantors

(name of bank or financial institution)

(address)

\_\_\_\_\_ (date)

11 Date -----Signature of Applicant -----



**11.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 applies to type of business. You are advised that it is a serious offence to give false information on this form. Part-General: -

Business Name:-.....  
Location of Business Premises: -.....  
Plot No: -.....Street/Road:.....  
Nature of Business:-..... Current  
Trade License No: -.....Expiring Date: -.....  
Maximum Value of Business, which you can handle at any one time Kshs:.....  
Name of Bankers:.....Branch:.....

**Part 2(a) – Sole Proprietor**

Your Name in full:.....Age.....  
Nationality:.....Country of Origin.....Citizenship Details:.....

**Part 2 (b) –**

Partnership Give details of partners as follows: -

NO.	NAME	NATIONALITY	CITIZENSHIP DETAILS	SHARES
1	...../.....	...../.....	...../.....	.....
2	...../.....	...../.....	...../.....	.....
3	...../.....	...../.....	...../.....	.....

**Part 2(c) –**

**Registered Company**

Private/Public: ..... State the nominal and issued capital of the Company: - Nominal Kshs: .....Issued Kshs: .....

Give details of all directors as follows: -

NO.	NAME	NATIONALITY	CITIZENSHIP DETAILS	SHARES
1	...../...../...../.....	...../...../...../.....	...../...../...../.....	.....
2	...../...../...../.....	...../...../...../.....	...../...../...../.....	.....

Date: -.....Signature of Applicant.....

If Kenyan Citizen, indicate under “Citizenship Details” Whether by birth,  Naturalization or Registration  GPK (L)

## 12. MANUFACTURER’S AUTHORIZATION FORM

To: Nairobi City County

WHEREAS ----- (name of the manufacture)

who are established and reputable in quarrying and crushing of aggregates having quarries and

crushing plant at ----- (address of factory)

do hereby authorize ----- (name and address of Agent)

to submit a Tender, and subsequently negotiate and sign the Contract with you against tender

No.-----  
(Reference of the tender) for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders. (Signature for and on behalf of manufacture)

Note: This letter of authority should be on the letterhead of the Manufacture and should be Signed by a competent person. This shall be applicable for each category of items to be delivered.