



CHEMELIL SUGAR COMPANY LIMITED

TENDER FOR PROVISION OF
TAX CONSULTANCY SERVICES

YEAR: 2018/2019

TENDER NO: CSCL/T/2018-2019/13

Table of Contents

		Page
Section I	INVITATION FOR TENDERS	3
Section II	INSTRUCTIONS TO TENDERERS	4
Section III	GENERAL CONDITIONS OF CONTRACT	18
Section IV	TECHNICAL SPECIFICATIONS	22
Section V	TENDER FORM AND PRICE SCHEDULE	21
Section VI	STANDARD FORMS	23
6.1	FORM OF TENDER	25
6.2	CONFIDENTIAL BUSINESS QUESTIONNAIRES FORMS	26
6.3	TENDER SECURITY FORM	28
6.4	CONTRACT FORM	29
6.5	STATEMENT OF VERIFICATION FORM	30
6.6	PERFORMANCE SECURITY FORM	31
6.7	BANK GUARANTEE FOR ADVANCE PAYMENT FORM	32
6.8	MANUFACTURER'S AUTHORIZATION	33

Section I - Invitation to Tender

Date: 27th November, 2018

To:

Dear Sir/Madam,

TENDER REF NO: CSCL/T/2018-2019/13

TENDER NAME: TENDER FOR PROVISION OF TAX CONSULTANCY SERVICES

The Chemelil Sugar Company Limited invites sealed tenders from eligible candidates/firms for **PROVISION OF TAX CONSULTANCY SERVICES**

- 1.1 Interested eligible candidates may obtain further information from and inspect the tender documents at Chemelil Sugar Company Limited during normal working hours. It may also be downloaded from our website www.chemsugar.co.ke/corporate documents or the Public Procurement Portal at www.tenders.go.ke free of charge or obtain a set of each hard copy upon payment of a non-refundable fee of Kshs. 1,000.00 payable to Chemelil Sugar Company Ltd either in cash or bankers cheque.
- 1.2 Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings and shall remain valid for 90 days from the closing date of the tender. Items, shall be ordered on as and when required basis.
- 1.3 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at the Company's Reception or be addressed to The Managing Director, Chemelil Sugar Company Limited so as to be received on or before **2.00 p.m. on Monday 10th December, 2018.**
- 1.4 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at the Company's Boardroom. Late bids shall not be accepted under any circumstances.

Yours faithfully,

For: **CHEMELIL SUGAR COMPANY LIMITED**

SHIRLEY SAKWA

SUPPLY CHAIN MANAGER (Ag)

Section II - Instructions to Tenderers

2.1 Introduction

2.1.1 Eligible Tenderers

This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall complete the supply of goods/services by the intended completion date specified in the tender documents.

2.1.2. Invitation of Tender

Suppliers registered with Registrar of Companies under the Laws of Kenya and the relevant Government Ministry in respective service are invited to submit their Tender documents so that they may be considered. The prospective suppliers are required to supply mandatory information for Evaluation.

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 Company 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.

Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.1.3. Experience

Prospective service providers must have carried out successful consultancy services of similar items/services to Government/County /Institutions of similar size and complexity. Potential service provider must demonstrate the willingness and commitment to meet the evaluation criteria.

2.1.4. Scope

The scope of the tender is detailed in section IV

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 Company, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.2.2 The price to be charged for the tender documents shall not exceed Kshs. 5,000.00.

2.3 The Tender Document

2.3.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders.

- i. Invitation for Tenders
- ii. Instructions to tenderers
- iii. General Conditions of Contract
- iv. Schedule of Requirements
- v. Technical Specifications
- vi. Tender Form and Price Schedules
- vii. Tender Security Form
- viii. Contract Form
- ix. Performance Security Form
- x. Bank Guarantee for Advance Payment Form
- xi. Manufacturer's Authorization Form
- xii. Confidential Business Questionnaire

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 tenderer requiring any clarification of the tender document may notify the Company in writing or by cable (hereinafter, the term cable is deemed to include telex and facsimile) at the Company's address indicated in the Invitation for tenders. The Company 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 Company. Written copies of the Company response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderer that have received the tender document.

2.4.2 The Company 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 Company, 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.
- 2.5.2 All prospective tenderers that have received the tender documents will be notified of the amendment in writing or by cable, and 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 Company, at its discretion, may extend the deadline for the submission of tenders.

2.6 Language of Tender

The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Company, 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.

2.7 Documents Comprising of Tender

- 2.7.1 The tender prepared by the tenderer shall comprise the following components:-
- i. A Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below.
 - ii. 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;
 - iii. Documentary evidence established in accordance with paragraph 2.2.1 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
 - iv. Tender security furnished in accordance with paragraph 2.14.

2.8 Tender Form

The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods/services to be supplied/rendered, a brief description of the goods/services, their country of origin, quantity, and prices.

2.9 Tender Prices

- i. The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods/services it proposes to supply under the contract.

- ii. Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.
- iii. Prices quoted by the tenderer shall be fixed during the Tender's performance of the 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**
- iv. The validity period of the tender shall be 90 days from the date of opening of the tender.

2.10 Tender Currencies

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

2.11 Tenderers Eligibility and Qualifications.

- i. Pursuant to paragraph 2.7 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.
- ii. The documentary evidence of the tenderers eligibility to tender shall establish to the Company's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.7.
- iii. The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Company's satisfaction:-
 - a) That, in the case of a tenderer offering to supply goods/service under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods;
 - b) That the tenderer has 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 stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.12 Goods'/ Service eligibility and Conformity to Tender Document.

- i. Pursuant paragraph 2 of this section, the tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract.
- ii. The documentary evidence of the eligibility of the goods/services 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.
- iii. The documentary evidence of conformity of the goods/services 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 clause-by-clause commentary on the Company'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.
 - iv. For purposes of the commentary to be furnished pursuant to paragraph 2.12.iii(b) above, the tenderer shall note that standards for services, workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Company 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 Company satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.13 Tender Security (*not required*)

- i. The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.
- ii. The tender security for this tender shall be in the amount (not to be provided) of the tender price.
- iii. The tender security is required to protect the Company against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7.
- iv. The tender security shall be denominated in Kenya Shillings and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable Insurance Company in the form provided in the tender documents or another form acceptable to the Company and valid for thirty (30) days beyond the validity of the tender.
- v. Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Company as non-responsive, pursuant to paragraph 2.22.
- vi. Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Company.

- vii. The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27, and furnishing the performance security, pursuant to paragraph 2.28.
- viii. The tender security may be forfeited:
 - a) If a tenderer withdraws its tender during the period of tender validity specified by the Company on the Tender Form; or
 - b) In the case of a successful tenderer, if the tenderer fails;
 - c) To sign the contract in accordance with paragraph 2.27 or
 - d) To furnish performance security in accordance with paragraph 2.28.

2.14 Validity of Tenders

- i. Tenders shall remain valid for 90 days or as specified in the tender documents after date of tender opening prescribed by the Company, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Company as non-responsive.
- ii. 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 2.14 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.

2.15 Format and Signing of Tender

- i. The Company 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.
- ii. 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 persons signing the tender.
- iii. The tender shall have no interlineation, 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.

2.16 Sealing and Marking of Tenders

- i. 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.

- ii. The inner and outer envelopes shall:

Be addressed to the Company at the following address:

Managing Director,
Chemelil Sugar Company Limited,
P.O. Box 1649
KISUMU

- iii. Bearing Tender No. CSCL/T/2018-19/13 Tender for Provision of tax consultancy services with the words: “DO NOT OPEN BEFORE,” 2.00 p.m. on Monday 10th December, 2018.
- iv. 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”.
- v. If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Company will assume no responsibility for the tender’s misplacement or premature opening.

2.17 Deadline for Submission of Tenders

- i. Tenders must be received by the Company at the address specified under paragraph 2.17.2 no later than 2.00 p.m. on Monday 10th December, 2018.
- ii. The Company may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Company and tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

2.18 Modification and Withdrawal of Tenders

- i. 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 Company prior to the deadline Prescribed for submission of tenders.
- ii. 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 not later than the deadline for submission of tenders.
- iii. No tender may be modified after the deadline for submission of tenders.

- iv. 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.
- v. The Company may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- vi. The Company 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.

2.19 Opening of Tenders

- i. The Company will open all tenders in the presence of tenderers' representatives, who may attend, at 2.00 p.m. on Monday 10th December, 2018, in the Company's Board Room. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- ii. 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 Company, at its discretion, may consider appropriate, will be announced at the opening.
- iii. The Company will prepare minutes of the tender opening.

2.20 Clarification of Tenders

- i. To assist in the examination, evaluation and comparison of tenders the Company 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.
- ii. Any effort by the tenderer to influence the Company in the Company's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.21 Preliminary Examination

- i. The Company 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.
- ii. 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.

- iii. The Company 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.
- iv. Prior to the detailed evaluation, pursuant to paragraph 2.23, the Company 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 Company's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- v. If a tender is not substantially responsive, it will be rejected by the Company and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

2.22 Conversion to Single Currency

- i. Where other currencies are used, the Company will convert these currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.23 Evaluation and Comparison of Tenders

- i. The Company will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22.
- ii. The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- iii. A tenderer who gives false information in the tender document about its qualification or refuses to enter into a contract after notification of contract shall be considered for debarment from participating in future public procurement.

2.24 Preference

- i. Preference where allowed in the evaluation of tenders shall not exceed 15%.

2.25 Contacting the Procuring entity

- i. Subject to paragraph 2.21 no tenderer shall contact the Company on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

- ii. Any effort by a tenderer to influence the Company in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

2.26 Award of Contract

Post-qualification

- i. In the absence of pre-qualification, the Company 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.
- ii. The determination will take into account the tenderer 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 Company deems necessary and appropriate.
- iii. 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 Company will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

2.27 Preliminary Examination

- i. The Company 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.
- ii. Arithmetical errors will be rectified on the following basis:-
 - a) 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;
 - b) If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited;
 - c) If there is a discrepancy between words and figures, the amount in words will prevail.
- iii. The Company 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.

- iv. Prior to the detailed evaluation, pursuant to paragraph 23, the Company 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 Company's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- v. If a tender is not substantially responsive, it will be rejected by the Company and may not subsequently be made responsive by the tenderer by correction of the nonconformity

2.28 Evaluation and Comparison of Tenders

- i. Bids shall be evaluated in three stages.

- a) **Stage I: Mandatory Requirements.**

Any bid that fails to meet any one of the mandatory requirements shall not proceed to the next stage.

- Stage II: Technical Evaluation.**

Only bids that attain a score equal to or above 50 out of 70 marks applicable in the Technical Evaluation shall proceed to the next stage.

A Technical Evaluation team may wish to visit the premises of the winning bidder to verify information provided before the award of contract.

- b) **Stage III: The Financial Evaluation**

The financial bid will constitute 30 % of the total score. The lowest bid will be assigned the 30% and all other individual bids will be prorated based on the formula in 2.29.2c below

- ii. Evaluation will be based on the guides indicated below:-

Accordingly, bidders shall be evaluated on the basis of the following **Mandatory requirements** and **technical requirements**. Bidders who will pass **all** the mandatory requirements will be considered for technical evaluation.

- i. **Mandatory Requirements**

- 1) Copy of Certificate of Registration/Incorporation
- 2) Copy of KRA Pin Certificate
- 3) Copy of a valid tax compliance certificate
- 4) Duly filled confidential business questionnaire
- 5) Litigation History
- 6) Copies of certified audited accounts for the last two years

- 7) Copy of the registration certificate of the team leader
- 8) 5 reference letters from clients the Consultant has provided tax consultancy services including one from the sugar industry
- 9) Profile and capability statement of the firm

ii. **Technical Evaluation**

Technical Evaluation Criteria

The bidders shall be evaluated on the basis of their responsiveness to the following information using the attached standard forms

- 1) Technical evaluation shall constitute 70 points of total evaluation score.
- 2) Only candidates who score 50/70points shall proceed to Financial Evaluation.

No.	Criteria	Points
1	<p>Specific Experience</p> <ol style="list-style-type: none"> i. The firm should provide at least five (5) reference sites where they have undertaken similar assignments in the last ten years. (1 point for each assignment) ii. Bidders must attach extracts of copies of the contracts for each of the five assignments. (1 point for each contract) iii. Bidder must have handled tax consultancy service for a public sugar miller (3 points) iv. In each of the five assignments, the firm should describe the nature of the assignment, the role of the firm in the planning, implementation and closing of the assignment. (1 point each) v. Explain how your engagement assisted the institution in handling the tax issues (2 points) 	20
2	<p>Work plan & Methodology</p> <p>The firm should provide a logical, well-structured work plan consistent with the timeframes and terms of reference of this RFP to demonstrate</p> <ol style="list-style-type: none"> i. Understanding of the terms of reference and suggestions on the terms of reference (5 points) ii. Technical approach and methodology including proposed concept design, (3 points) iii. Work plan, timelines & work schedule (3 points) iv. Organization and team composition (2 points) 	13
3	<p>Personnel</p> <ol style="list-style-type: none"> i. Bidders should provide evidence of technical training and experience of at least two lead staff for this assignment (5 points) 	37

	<ul style="list-style-type: none"> ii. The bidder should provide the CVs of all Key Technical staffs who will be engaged in the assignment (2 points for each staff, max 5 staff) iii. The team leader should have experience of more than 10 years as a practicing tax advisor for an institution with a gross turnover of more than 5 billion. (1 point for each year) iv. The team leader should be a Fellow of the Institute of Certified Public Accountants of Kenya or a Senior Counsel. (4 points) v. The Technical Staff should include at least two Advocates of the High Court with at least 10 years professional experience as Tax Advisors. (4 points) vi. As evidence of relevant training, bidders should attach copies of professional certificates of the Key Technical Staffs in relevant areas of expertise (4 points) 	
Total		70

iii. **Technical Evaluation Criteria**

The bidders shall be evaluated on the basis of their responsiveness to the following information using the attached standard forms

- 3) Technical evaluation shall constitute 70 points of total evaluation score.
- 4) Only candidates who score 50/70points shall proceed to Financial Evaluation.

iv. **Financial evaluation**

The financial bid will constitute 30 points of the total score. The lowest bid will be assigned the 30 points and all other individual bids will be prorated based on the following formula

$$\text{Bidders' points} = \frac{\text{Lowest bid price} \times 30}{\text{Tenderer's bid price}}$$

v. **Tender Award**

This tender will be awarded to the most competitive evaluated bidder.

2.29 Company's Right to Vary Quantities

The Company reserves the right at the time of contract award and during the contract performance and execution to increase or decrease the quantity of goods originally specified in the Schedule of requirements and tendered for without any change in unit price or other terms and conditions

2.30 Company's Right to accept or Reject any or All Tenders

The Company 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 Company's action.

2.31 Notification of Award

- i. Prior to the expiration of the period of tender validity, the Company will notify the successful tenderer in writing that its tender has been accepted.
- ii. The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties.
- iii. Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Company will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14.

2.32 Signing of Contract

- i. At the same time as the Company notifies the successful tenderer that its tender has been accepted, the Company will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- ii. 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.
- iii. Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Company.

2.33 Performance Security (Not required)

- i. Within thirty (30) days of the receipt of notification of award from the Company, 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 Company.
- ii. Failure of the successful tenderer to comply with the requirement of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Company may make the award to the next lowest evaluated tenderer or call for new tenders.

2.34 Corrupt Fraudulent Practices

- i. The Company requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows:-
 - a) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
 - b) "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

- Company, 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 Company of the benefits of free and open competition;
- ii. The Company 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.
 - iii. Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in Public procurement in Kenya.

Section III - General Conditions of Contract

3.1. Definitions

In this Contract, the following terms shall be interpreted as indicated:

- 3.1.1 “The Contract” means the agreement entered into between the Company 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.
- i. “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
 - ii. “The Good” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Company.
 - iii. “The Company” means Chemelil Sugar Company Limited purchasing the goods under this Contract.
 - iv. “The Tenderer” means the individual or firm supplying the Goods/service under this Contract.

3.2 Application

These General Conditions shall apply in all Contracts made by the Company for the procurement, installation and commissioning of equipment.

3.3 Country of Origin

- i. For purposes of this Clause, “origin” means the place where the Goods/service were mined, grown, or produced.
- ii. 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 tenderer shall not, without the Company'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 Company 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 Company'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 shall remain the property of the Company and shall be returned (all copies) to the Company on completion of the Tenderer's performance under the Contract if so required by the Company.

3.6 Patent Rights

- 3.6.1 The tenderer shall indemnify the Company 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 Company's country.

3.7 Performance Security - *Not required for this tender.*

3.7.1 Inspection and Tests

- i. The Company or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications. The Company shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes. An inspection certificate shall be prepared and issued to the supplier after a successful inspection.
- ii. The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. 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 Company.
- iii. Should any inspected or tested Goods fail to conform to the Specifications, the Company 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 Company

- iv. The Company'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 Company or its representative prior to the Goods' delivery.
- v. Nothing in Paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.8 Packing

3.8.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.8.2 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.

3.9 Delivery and Documents

Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Company in its Schedule of Requirements and the Special Conditions of Contract

3.10 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

3.11 Payment

3.11.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract.

3.11.2 Payments shall be made promptly by the Company as specified in the contract.

3.12 Prices

3.12.1. 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.

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

3.12.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

3.12.4 Price variation request shall be processed by the Company within 30 days of receiving the request.

3.13 Assignment

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

3.14 Subcontracts

3.14.1 The tenderer shall notify the Company 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.

3.15 Termination for Default

3.15.1 The Company 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 and/or in the Local Purchase Order, or within any extension thereof granted by the Company.
- b. If the tenderer fails to perform any other obligation(s) under the Contract.
- c. If the tenderer, in the judgment of the Company has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

3.15.2 In the event the Company 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 Company for any excess costs for such similar Goods.

3.16 Liquidated Damages

3.16.1 If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract and/or in the Local Purchase Order, the Company shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed goods up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

3.17 Resolution of Disputes

3.17.1 The Company 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.

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

3.18 Language and Law

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

3.19 Force Majeure

3.19.1 The tenderer 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.

Section IV. Technical Specifications

Scope

a) General

The consultant shall be expected to:-

- i. Undertake general tax health checks at planned intervals and prior to any KRA audits.
- ii. Review KRA assessment reports and support the Company in resolving contentious matters or disputes.
- iii. Liaise with KRA on behalf of the Company to arrange tax negotiation meetings whenever necessary.
- iv. Conduct training on new tax regulations and compliance requirements as and when agreed with management to keep relevant staff abreast on tax related developments

b) Corporate Tax

- i. Review the transactions of the operations and advice on any tax exposure areas and tax planning measures.
- ii. Compute annual corporation tax computation and file self-assessment returns.
- iii. Submit the self-assessment returns by the due dates.

c) Income tax (Employees and Directors)

- i. Review employment contracts and payroll operations and confirm whether the Company has computed employees' tax in accordance with the provisions of the income tax act.
- ii. Establish whether the Company has correctly computed other statutory deductions and remitted the same to the relevant authorities on the due dates and that the regulations with these bodies are complied with.
- iii. Advice on tax efficient remuneration packages (for employees on contract).

d) Withholding Tax

- i. Audit contracts and payments made by the Company and establish whether tax is deducted and remitted to the tax authorities in accordance with the provisions of the income tax act.

e) Value Added Tax (VAT)

- i. Confirm whether the Company has complied with the VAT act and other regulations thereon.
- ii. Review output tax computations to establish whether VAT is correctly charged on supply of taxable goods.
- iii. Review input tax computations to ascertain whether the Company has claimed any restricted or prohibited input tax.
- iv. Audit Company transactions and advise on VAT implications.
- v. Review withholding tax records to ascertain compliance.

f) Customs and Excise Duty

Test compliance with the Customs and Excise Act in the following areas:-

- i. Identify any customs optimization opportunities and duty strategies including use of bonded warehouse facilities.
- ii. Verify tariff classifications value, country of origin, destination and related financial information documentation in accordance with customs procedures for importation transactions.
- iii. Audit transactions with appointed clearing agents and verify duty payments and hence establish correctness of the agent's tax reimbursement claims.
- iv. Identify import transactions and advise on those eligible for duty remissions under the Customs and Excise Act.
- v. Identify and analyze if any, the elements that come to light during the post clearance inspections.

g) Fringe Benefits Tax -Review the tax computations.

Section VI -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 representative of the tenderer.

2. Confidential Business Questionnaire Form

This form must be completed by the tenderer and submitted with tender documents.

3. Tender Security Form (Not required for this tender)

When required by the tender document the tenderer shall provide the tender security either in the form included therein or in another format acceptable to the Company.

4. Contract Form

The Contract Form shall not be completed by the tenderer at the time of submitting the tenderer. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.

5. Statement of Verification

When required by the tender document, this form must be completed and submitted with the tender document. This form must be completed fully and duly signed by the authorized officials of the Business Unit or Agent

6. Performance Security form

The Performance Security Form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the sum provided herein or in another form acceptable to the Company.

7. Bank Guarantee for Advance Payment

When Advance payment is requested for by the successful bidder and agreed by the Company, this form must be completed fully and duly signed by the authorized officials of the bank.

8. Manufacturer's Authorization Form

When required by the tender document, this form must be completed and submitted with the tender document. This form will be completed by the manufacturer of the goods where the tender is an agent.

6.1 Form of Tender

Date: _____

Tender No: _____

To: MANAGING DIRECTOR
CHEMELIL SUGAR COMPANY LTD
P.O BOX 1649 -40100,
KISUMU

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver[Description of goods]in conformity with the said tender documents for the sum of Kshs..... [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 specified in the Schedule of Requirements.
3. We agree to abide by this Tender for a period of 90 days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and maybe accepted at any time before the expiration of that period.
4. 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.
5. 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

6.2 Confidential Business Questionnaire Form

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

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

Part 1 – General:

Business Name

Location of business premises.

Plot No..... Street/Road

Postal Address Tel No. Fax

E mail

Nature of Business.....

Registration Certificate.....

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

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.

Date Seal/Signature of Candidate

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

6.3 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 of..... [Name and/or description of the goods] (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 [Name of Company] (Hereinafter called “the Company”) in the sum of for which payment well and truly to be made to the said Company, 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 Company 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 Company up to the above amount upon receipt of its first written demand, without the Company having to substantiate its demand, provided that in its demand the Company 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].....

6.4 Contract Form (For information only)

THIS AGREEMENT made the..... day of 20..... between[name of Company) of.....[country of Company] (hereinafter called “the Company”) of the one part and..... [Name of tenderer] of..... [City and country of tenderer] (Hereinafter called “the tenderer”) of the other part:

WHEREAS the Company invited tenders for certain goods, viz..... [brief description of goods] and 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 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;the Schedule of Requirements;
 - b) the Technical Specifications;
 - c) the General Conditions of Contract and
 - d) TheCompany's Notification of Award.
3. In consideration of the payments to be made by the Company to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Company to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Company 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 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 Company)

Signed, sealed, delivered by the (For the tenderer)in the presence of.....

6.5 Statement of Verification

I/we hereby verify and confirm that:-

- a) I/we have not committed an offence under the public Procurement and Asset Disposal Act 2015.
- b) I/we have not committed an offence relating to procurement under any Act.
- c) I/we have not breached a contract for procurement by a public entity.
- d) I/we have not in procurement proceedings, given false information about my/our Qualifications.
- a) I/we have not refused to enter into any previous written contract as required under Section 136 of the Public Procurement and Asset Disposal Act, 2015.

I/we also hereby declare that I/we will not engage in any corrupt practice while participating in the procurement proceedings herein.

Sign: 1. Name:

Designation:

Official rubber stamp

2. Name:

Designation:

Official rubber stamp

3. Name:

Designation:

Official rubber stamp

6.6 Performance Security Form

To: [Name of Company]

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 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 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 theday of20.....

Signature and seal of the Guarantors

[Name of bank or financial institution].....

[Address].....

[Date].....

6.7 Bank Guarantee for Advance Payment

To: [Name of Company]

[Name of Tender].....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment,[name and address of tenderer] (hereinafter called "the tenderer") shall deposit with the Company a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of.....[Amount of guarantee in figures and words].

We, the..... [bank or financial institution], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Company on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding[Amount of guarantee in figures and words].

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract documents which may be made between the Company and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the tenderer under the Contract until [Date]

Yours truly,

Signature and seal of the Guarantors.....

Name of bank or financial institution.....

Address.....

Date.....

6.8 Manufacturer's Authorization Form

To: [Name of the Company].....

WHEREAS [Name of the Manufacturer] who are established and reputable manufacturers of.....[Name and/or description of the goods] having factories 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..... for the above goods manufactured by us.

[Reference of the Tender]

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 Manufacturer]

Note: This letter of authority should be on the letter-head of the Manufacturer and should be signed by a person competent.

