



**CLARIFICATION FOR**

**Tender No. EPZA 16/2022-2023: Proposed Industrial Sheds for Investors at Athi River EPZ, Machakos County on Plot LR18474/164**

**Tender No. EPZA 17/2022-2023: Proposed Industrial Sheds for Investors at Athi River EPZ, Machakos County on Plot LR18474/165**

**Tender No. EPZA 18/2022-2023: Proposed Industrial Sheds for Investors at Athi River EPZ, Machakos County on Plot LR18474/166**

**Tender No. EPZA 19/2022-2023: Proposed Industrial Sheds for Investors at Athi River EPZ, Machakos County on Plot LR18474/172**

No		
1	<p>We wish to seek the below clarifications;</p> <p>We make reference to Section 9(1) (f) of the PPADA, 2015, read together with regulation 67 &amp; 68 of the PPADR, 2020 and Guideline No. 1.4 &amp; 1.5 of the Standard Tender Document for Procurement of Works– Appendix 2 To the <b><i>Preface on</i></b> the determination of the Estimates that a Procuring Entity will insert in the tender document for purposes of Tender Security &amp; Evaluation Criteria.</p> <p>The minimum amounts of monies required for tenderers to demonstrate that he is a prime contractor, has access to, or has available, liquid assets, lines of credit, average turn over and specific experience is well guided therein.</p> <p>We therefore note that the amount of money required for experience for this works is 2 billion. (5 contracts of Kshs. 400,000,000.00 each.) instead of 80% of the Engineer/budget estimates per Lot.</p> <p>We also seek clarification on mandatory requirement No. 4 - bid security which requires bid security from Commercial banks only excluding the Insurance firms approved by PPRA &amp; IRA in line with Circular No. PPOA Circular No 3/2012, which allows Insurance Companies to transact bid/security bonds.</p>	<p>Budget /Engineers Estimates are confidential data in the custody of the Procuring Entity. EPZA has given guidelines for each of the four (4) Lots as permitted in the law including but not limited to indications on the minimum turnovers, bid security amount and capacity of contractors the Authority intends to engage within the confines of the</p>

	<p>Further, we noted that the works have been set aside for firms registered under category NCA 2 and above -Builders works, this may exclude AGPO registered firms that are in NCA 4 and above with similar experiences for such works.</p>	<p>relevant procurement and construction laws in Kenya, while at the same time ensuring that the bids will be competitive enough.</p> <p>The Authority has given adequate direction on the same as expounded above to enable prospective bidders bid competitively.</p> <p>Tenders under AGPO are published as such. EPZA has not advertised this tender under AGPO. They have internal policies to ensure they comply with AGPO guidelines under their annual procurement plan.</p> <p>NCA 2 is the allowed class as per the NCA guidelines for any contractor who intends to bid for these scope of works. The information on contracts, 80% and Sums mentioned there is misleading and inaccurate.</p> <p>Bid security. EPZA has set bid-bond from Commercial Bank as a criterion for evaluation and within the guidelines of PPAD Act 2015(rev2022). Prospective bidders to adhere to this guideline issued by the Procuring entity to ensure they are competitive.</p>
2	<p>1. <b>Extension of tender opening date</b> – (Please refer to ITT 24.1 (a) – Particulars of Appendix to Instructions to Tenders). We seek the tender opening date to be pushed from 28<sup>th</sup> June, 2023 to 28<sup>th</sup> July 2023 because of the following reasons;</p> <p>a. This tender is massive. We need to undergo a lot of sourcing for materials for all components both locally and internationally.</p> <p>b. Currently our prices are very fluid due to the weak position of our Kenya Shilling against the international currencies and we need time to discuss and negotiate prices for the project’s inputs. Without this negotiation we shall be badly disadvantaged.</p>	<p>The reasons given thereof are not adequate and satisfactory under procurement laws in Kenya to guarantee the extension of the tender closing date.</p> <p>However, our response to the reasons given seeking for extension of time are as follows; -</p>

- c. We have to source for quality staff to manage the project in case we win the tender. Kindly we require time to undertake this sourcing and enter into agreement with the key staff members and partners.
- d. We have to review the designs and specifications and come up with the best prices for you and us, this requires time and we are only seeking an addition of only 4 weeks. Please give this time to enable us to give you a good and competitive price.
- e. We have only 8 days left from today 20<sup>th</sup> June 2023, of which 2 days are weekends, we are left with 6 days, of which we have spent 1 day seeking clarifications, we are only left with 5 days to look for the bid security, review and fill the tender documents. It will not be practical for us to do and submit a competitive document both pricing and technical.

**2. Revise of contract period** – (Please refer to GCC 1.1 (u) We seek review of the contractor period from 52 weeks to 104 weeks, because of the following reasons:-

- a. This tender is massive. We need to undergo a lot of sourcing for materials for all components both locally and internationally, these shall not be done within the span of 52 weeks. It will bring a lot of challenges which may lead to poor quality works being done. For quality work give us time at least 104 weeks that is 24 months, we shall deliver you a wonderful project.
- b. Currently our prices are very fluid due to the weak position of our Kenya Shilling, we need time to discuss and negotiate prices for the project’s inputs. Without this negotiation we shall be badly disadvantaged. These will affect the quality and quantity of the project being undertaken and may in the long run lead to contractual issues.
- c. We have to source for quality staff to manage the project, quality staff may be unwilling to undertake project contracts of under one year. These may lead us not obtaining quality staff for this project and may affect the quality, quantity and time of undertaking the project.

**3. Variation of prices (VOP)** - (Please refer to IIT 16.5 – (Particulars of Appendix to Instructions to Tenders), we seek reinstatement of this clause to the tender because of the following: -

- a. This tender is massive. We need to undergo a lot of sourcing for materials for all components both locally and internationally. We cannot avoid VOP. It will put us under a lot of financial and project materials constraints and may affect the works in the long run.
- b. Trying to undertake this project in under a year is not practical from the construction point of view unless you have bought all the materials, we are undertaking a labour contract. We shall need time to source for materials as well as source for finances, as contractors we do not have these resources at our

*“Sourcing of materials, negotiations, design and specification review, enter into agreements with key staff members and partners for the contractors”.*  
 The evaluation criteria has been informed by EPZA need to engage contractors who are competent and have capacity to undertake these works. Bidders ability to build/create their internal capacity is not an item for consideration in the evaluation criteria.  
 The prospective bidders **MUST** demonstrate existing capacity as per the set out criteria.

The 14 days given from the date of advert publishing and as guided by the procurement laws in Kenya are adequate to allow the contractors to prepare competitive bids.

Contract Period is not an item for competition in these bids while determining the responsiveness of the bids. Therefore, it is not a matter for discussion at the bid advert stage. Bidders are advised to prepare their work plans and charts as guided in the bid documents.

The Structure of the bid documents satisfies the requirements of EPZA and follows all

yards. We need time which in this case is the fundamental resource without it shall not be practical to get quality works in correct quantities and at appreciable time. It becomes inevitable that the VOP is an important requirement in accordance with the procurement law.

c. We wish to avoid the claim issues from the on site of the project, if the VOP are considered these may be reduced significantly. Kindly consider.

**Bid security** - (Please refer to – (Tender Advert of 13<sup>th</sup> June 2023), due to time constraints we seek that the bid security to be also obtained from the financial institutions. We have only 8 days left, of which 2 days are weekend, we are left with 6 days, of which we have spent 1 days seeking clarification, we are only left with 5 days to look for the bid security, review and fill the tender documents. The Banks require that we secure the bid security and this normally takes more than 14 days. But for financial Institutions it takes a maximum of 7 days.

the guidelines of the procurement and construction laws in Kenya.

The time allocated for the bid advert is adequate and follows the requirements of the PPAD ACT. 2015, rev. 2022. The information on bank security taking more than 14 days is not accurate. EPZA only wishes to engage contractors who have capacity to undertake these works. The criteria as set out has ensured competitiveness and has been guided by the relevant procurement and construction laws in Kenya.

3	Page No.	Section	Item Description	Request for Clarification
	1/35	Mandatory / Statutory requirements	<i>13. Reference letters from a minimum of five (5) corporate clients and consultants. The letters must have clear details of the contact person/s.</i>	· Does this mean that the Contractor should present reference letters from 5 No. corporate Clients and 5 No. Consultants or a cumulative total of 5 reference letters from both Corporate Clients and Consultants? (e.g. 3 from Corporate Clients and 2 from Consultants
	1/37	STAGE TWO – TECHNICAL REQUIREMENTS (MAXIMUM 100 POINTS)	<i>Details of experience and past performance on at least 5 (Five) projects in works of a similar nature and complexity within the past five years (2018 –</i>	· For projects where a prospective Contractor participated as a subcontractor , if the main project had a contract sum of 800,000,000.00 whereas the subcontract had a contract sum of 200,000,000.00 , does this

Reference from 5 Corporate clients with recommendation from consultant’s/Project managers involved in the contracts.

No. Sub-contracts do not apply for the tender. The prospective bidder must meet the minimum set threshold as a Main Contractor.

		<p>RELEVANT EXPERIENCE (30 POINTS)</p>	<p>2022) each with value of not less than Kenya Shillings Four Hundred Million (KShs. 400,000,000/00) or equivalent (in convertible currency) including current contracts, names of clients/firms, clear physical address and contact persons. (Attach award letters, Local Purchase / Service Orders, signed contracts or completion certificates as evidence / proof of contract) (25 Points).</p>	<p>qualify as a project of a similar nature with a value of not less than Ksh 400,000,000.00?</p>	
			<p>Details of projects to include the following (5 Points for each client)  <b>BIDDERS TO SUBMIT ATLEAST 5 CLIENTS WITH THE BELOW DETAILS TO EARN 25 POINTS.</b></p> <ul style="list-style-type: none"> <li>· Name of project – (1 Point)</li> <li>· Address of project - (1 Point)</li> <li>· Contact persons - (1 Point)</li> <li>· Their values (400 million and above) – (1 Points) below 400 million (0 Points)</li> <li>· Proof of having done similar contracts (Attach award letters/ signed contracts/ completion certificates) – (1 Points)</li> <li>· Less number of clients– (Pro-rata)</li> <li>· If no award letters/ completion certificates</li> </ul>	<ul style="list-style-type: none"> <li>· Are the scoring criteria provided here tied to /subject to the provided experience being of a value of not less than Ksh 400,000,000.00 or is it independent? The former would make the fourth score <b>(Their values (400 million and above) – (1 Points) below 400 million (0 Points) redundant .</b></li> </ul>	<p>Yes, they are. The first entry to qualify for the scoring is the value as stated in the criteria.</p>

			<p><i>are attached – (0 Points for the entire project)</i></p>		
4	<p>We take this opportunity to thank EPZA for a well-organized pretender site visit, as advised and in accordance to the tender documents (ITT 2.8.2 — we submit our questions for clarifications) we seek the following clarifications: -</p> <p>Extension of tender opening date — (Please refer to ITT 24.1 (a) — Particulars of Appendix to Instructions to Tenders). We seek the tender opening date to be pushed from 28<sup>th</sup> June, 2023 to 28<sup>th</sup> July 2023 because of the following reasons;</p> <p>This tender is massive we need to under a lot of sourcing for materials for all components both locally and internationally.</p> <ol style="list-style-type: none"> <li>a. Currently our prices are very fluid due to the weak position of our Kenya Shilling, we need time to discuss and negotiate prices for the project's inputs. Without this negotiation we shall be badly disadvantaged.</li> <li>b. We have to source for quality staff to manage the project incase we win the tender. Kindly we require time to undertake this sourcing and enter to agreement with the key staff members and partners.</li> <li>c. We have to review the designs and specifications and come up with the best prices for you and us, this requires time and we are only seeking an addition of only 4 weeks. Please give this time to enable us to give you a good tender.</li> <li>d. We have only 8 days left from today 20<sup>th</sup> June 2023, of which 2 days are <b>weekend</b> we are left with 6 days, of which we have spent 1 days seeking clarifications, we are only left with 5 days to look for the bid security, review and fill the tender documents. It will not be practical for us, it shall to us not doing a good job.</li> </ol> <ol style="list-style-type: none"> <li>1. Revise of contract period — (Please refer to GCC 1.1 (u) We seek review of the contractor period from 52 weeks to 104 weeks, because of the following reasons:- <ol style="list-style-type: none"> <li>a. This tender is massive we need to under a lot of sourcing for materials for all components both locally and internationally, these shall not be done within the span of 52 weeks. It will bring a lot of challenges which may lead to poor quality works being done. For quality work give us time at least 104 weeks that is 24 months, we shall give you a wonderful project.</li> </ol> </li> </ol>				<p>Our response is as above stated under item 2. This is a repetition of the same questions under Item 2.</p>

<p>b. Currently our prices are very fluid due to the weak position of our Kenya Shilling, we need time to discuss and negotiate prices for the project's inputs. Without this negotiation we shall be badly disadvantaged. These will affect the quality and quantity of the project being undertaken and may in the longrun lead to contractual issues.</p> <p>c. We have to source for quality staff to manage the project, quality staff may be unwilling to undertake project contracts of under one year. These may lead us not obtaining quality staff for this project and may affect the quality, quantity and time of undertaking the project.</p> <p>2. Variation of prices (VOP) - (Please refer to ITT 16.5 — (Particulars of Appendix to Instructions to Tenders), we seek reinstatement of this clause to the tender because of the following:-</p> <p>a. This tender is massive we need to under a lot of sourcing for materials for all components both locally and internationally. We cannot avoid VOP. It will put us under a lot of financial and project materials constrains and may affect the works in the long run.</p> <p>b. Trying to undertake this project under a year is not practical from the construction put of view unless you have bought all the materials, we are undertaking a labour contract. We shall need time to source for materials as well as source for finances, as contractors we do not have these resources at our yards. We need time which in this case is the fundamental resource without it shall not practical to get quality works in correct quantities and at appreciable time. It becomes inevitable that the VOP is an important requirement in accordance with the procurement law.</p> <p>c. We wish to avoid the claim issues from the on site of the project, if the VOP are considered these may be reduced significantly. Kindly consider.</p> <p>4. Bid security - (Please refer to — (Tender Advert of 13<sup>th</sup> June 2023), due to time constrains we seek that the bid security to be also obtained from the financial institutions. We have only 8 days left, of which 2 days are weekend, we are left with 6 days, of which we have spent 1 days seeking clarification, we are only left with 5 days to look for the bid security, review and fill the tender documents. The Banks require that we secure the bid security and this normally takes more than 14 days. But for financial Institutions takes a maximum of 7 days. Please consider.</p>	
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