



**MUMIAS SUGAR COMPANY LIMITED**

**MSC-05-2017**

**TENDER FOR SUPPLY OF FUEL AND  
MANAGEMENT OF MUMIAS SUGAR  
FUEL STATIONS**

Mumias Sugar Company Limited  
Private Bag,  
MUMIAS, KENYA  
Website: [www.Mumias-sugar.com](http://www.Mumias-sugar.com)

**February, 2017**

<b><u>SECTION</u></b>	<b>PAGE</b>
<b>Section A</b> INVITATION TO TENDER -----	<b>3</b>
<b>Section B</b> GENERAL INFORMATION -----	<b>4-12</b>
<b>Section C</b> GENERAL CONDITIONS OF CONTRACT ----	<b>13-16</b>
<b>Section D</b> SPECIAL CONDITIONS OF CONTRACT-----	<b>17</b>
<b>Section E</b> TECHNICAL SPECIFICATIONS-----	<b>20</b>
<b>Section F</b> PRICE SCHEDULE	<b>21</b>
<b>Section G</b> TENDER SUBMISSION FORM-----	<b>24</b>
<b>Section H</b> TENDER SECURITY FORM-----	<b>25</b>
<b>Section I</b> CONTRACT FORM-----	<b>26</b>
<b>Section J</b> PERFORMANCE SECURITY FORM-----	<b>27</b>

## **SECTION A**

### **INVITATION TO TENDER**

The Company invites sealed tenders from eligible candidates for the **TENDER FOR SUPPLY OF FUEL AND MANAGEMENT OF MUMIAS SUGAR FUEL STATION** for a period of **Three years**.

Interested companies may obtain further information from the office of the Chief Supply Chain Officer, located at Mumias Factory or through Tel: (254) 0711 094000 or 0734 600334/5, Email: [tenders@mumias-sugar.com](mailto:tenders@mumias-sugar.com) on normal working days beginning date of advert

Where the tender document may be collected upon payment of a non-refundable fee per tender document of **KShs.5,000.00** only payable to Mumias Sugar Company Ltd, **Account No. 0800263393821** Equity Bank, Mumias Branch. The document can also be viewed and downloaded from the website [www.mumias-sugar.com](http://www.mumias-sugar.com). Bidders who download the tender document from the website must forward their particulars immediately to [tenders@mumias-sugar.com](mailto:tenders@mumias-sugar.com) to facilitate any further tender clarification and addenda and would be required to pay a reduced fee of **Kshs 3,000.00** per tender document.

Tenders must be accompanied by a security in the form and amount specified in the tender documents, and must be delivered to:

The Chief Executive Officer  
Mumias Sugar Company Limited,  
Private Bag,  
MUMIAS, Kenya.

The tenders should be dropped in the tender box on the first floor of the main Administration Block at Mumias Sugar Factory

**Site Visit** shall take place on **the following date: 21<sup>st</sup> February 2017 at 10.00am**

Tenders will be opened soon after the closing time in the presence of the candidates' representatives who choose to attend at Mumias Sugar Company Training Centre.

**CHIEF SUPPLY CHAIN OFFICER**

## **SECTION B**

### **GENERAL INFORMATION**

#### **Introduction**

##### **1. Eligible Tenderers**

This Invitation for Tenders is open to all firms licensed by the Ministry Of Energy through the Energy Regulatory Commission (ERC) to trade in fuels. Successful tenderers shall complete the supply of goods, by the intended date specified in the tender documents.

##### **2. Cost of Tendering**

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

#### **The Tender Document**

##### **3 Contents**

3.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 5 of these instructions to tenders.

- (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) Mandatory Business Questionnaire

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.

##### **4. Clarification of Documents**

A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by email to the entity's addresses indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than **five (5)** days prior to the deadline for the submission of tenders, prescribed by the Procuring entity. Written copies of the Procuring entity 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.

## **5. Amendment of Documents**

- 5.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.
- 5.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by email, and will be binding on them.
- 5.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

## **Preparation of Tenders**

### **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 Procuring entity, shall be written in English language

### **7. Documents Comprising the Tender**

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

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 8
- (b) tender security furnished in accordance with paragraph 9

### **8. Tender Form**

The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents.

### **9. Tender Security**

- 9.1 The tenderer shall furnish, as part of its tender, a Tender Security for the amount of **(Kenya Shillings Five Hundred Thousand), Kshs,500,000.00 valid until valid up to 31st May 2017.**
- 9.2 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 9.7
- 9.3 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee issued by a reputable bank located in Kenya or abroad, in the form provided in the tender documents or another form acceptable to the Procuring entity.
- 9.4 Any tender not secured in accordance with paragraph 9.1 and 9.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 17.1 and 17.5.
- 9.5 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible, but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.

9.6 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 25, and furnishing the performance security, pursuant to paragraph 26.

9.7 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
  - (b) in the case of a successful tenderer, if the tenderer fails:
    - (i) to sign the contract in accordance with paragraph 25
- or**
- (ii) to furnish performance security in accordance with paragraph 26.

## **10. Validity of Tenders**

10.1 Tenders shall remain valid for **90 days** or as specified in the tender documents after date of tender opening prescribed by the Mumias Sugar Company Limited, pursuant to paragraph 13. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

10.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 9 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.

## **11. Format and Signing of Tender:**

11.1 The Tenderers shall prepare TWO sets of the tender, clearly marking **one** as "**ORIGINAL TENDER**" and the other **One** as "**COPY OF TENDER.**" In the event of any discrepancy between them, the original shall govern. Tenders not meeting this requirement shall **not** be evaluated by the procuring entity.

11.2 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. Written power-of-attorney accompanying the tender shall indicate the latter authorization. The person or persons signing the tender shall initial all pages of the tender, except for unamended printed literature.

11.3 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**

### **12. Sealing and Marking of Tenders**

12.1 The tenderer shall seal the original and copies of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.

12.2 The inner and outer envelopes shall:

*Tender for Supply of Fuel and management of MSC fuel station*

- (a) be addressed to the Procuring entity at the following address:

The Chief Executive Officer  
Mumias Sugar Company Limited,  
Private Bag,  
MUMIAS, Kenya.

- (b) bear, “**TENDER FOR SUPPLY OF FUEL AND MANAGEMENT OF MUMIAS SUGAR FUEL STATION**”, and the words: “**DO NOT OPEN BEFORE 1st March 2017 at 10.00am.**”

12.3 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”.

12.4 If the outer envelope is not sealed and marked as required by paragraph 12.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

### **13. Deadline for Submission of Tenders**

13.1 Tenders must be received by the Procuring entity at the address specified under paragraph 12.2 not later than **1st March 2017 at 10.00am.**

13.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 5, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

### **14. Modification and Withdrawal of Tenders**

14.1 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 Procuring prior to the deadline prescribed for submission of tenders.

14.2 No tender may be modified after the deadline for submission of tenders.

14.3 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 9.7

### **Opening and Evaluation of Tenders**

#### **15. Opening of Tender**

**15.1** The Procuring entity will open all tenders in the presence of tenderers’ representatives who choose to attend, on **1st March 2017 at 10.30am.** at the Training Centre, Mumias Sugar Company Factory Offices. The tenderers’ representatives who are present shall sign a register evidencing their attendance.

15.2 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 Mumias Sugar Company Limited, at its discretion, may consider appropriate, will be announced at the opening.

**15.3** The Procuring entity will prepare minutes of the tender opening.

#### **16. Clarification of Tenders**

16.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

16.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

#### **17. Preliminary Examination**

17.1 The Procuring entity 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.

17.2 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.

17.3 The Procuring entity 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.

17.4 Prior to the detailed evaluation, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

17.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

#### **18. Evaluation and Comparison of Tenders**

18.1 The Procuring entity will evaluate and compare the tenders, which have been determined to be substantially responsive, pursuant to paragraph 17.

18.2 The Procuring entity'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 12 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;

18.3 Pursuant to paragraph 18.2 the following evaluation methods will be applied:

- (a) *Delivery schedule.*
  - (i) The Procuring entity 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 procuring entity'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 of schedule outlined in the special conditions of contract. Tenders 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 Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

## **19. Contacting the Procuring entity**

Subject to paragraph 16, no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

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

## **Award of Contract**

### **20. Post-qualification**

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

20.2 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

### **21. Award Criteria**

21.1 The Procuring entity may award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

### **22. Procuring entity's Right to Vary quantities**

The Procuring entity 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.

### **23. Procuring entity's Right to Accept or Reject Any or All Tenders**

The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action.

### **24. Notification of Award**

Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

### **25. Signing of Contract**

25.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

25.2 Within Fifteen (15) days of receipt of contract form, the successful tenders shall sign and date the contract and return it to the preparing entity.

### **26. Performance Security**

26.1 Within Fifteen (15) days of the receipt of notification of award from the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

26.2 Failure of the successful tenderer to comply with the requirement of paragraph 25 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

### **27. Corrupt Fraudulent Practices**

27.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Procuring entity:-

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a 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 Procuring entity, 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 Procuring entity 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 in executing, a contract.

27.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

## SECTION C

### GENERAL CONDITIONS OF CONTRACT

#### **1. Definitions**

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

- (a) “The Contract” means the agreement entered into between the Purchaser and the Supplier, 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 Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) “The Goods” means all of the fuel, equipment, machinery, and/or other materials, which the Supplier is required to supply to the Purchaser under the Contract.
- (d) “The Purchaser” means the organization purchasing the Goods under this Contract.
- (e) “The Supplier” means the individual or firm supplying the Goods under this Contract.
- (f) “Day” means calendar day
- (g) “Duration of Contract” means the period named in the Special Conditions of Contract and calculated from start date
- (h) “Commencement date” is given in the Special Conditions of Contract. It is the latest date when the Service Provider shall commence its services under the Contract.

#### **2. Application**

2.1 These General Conditions shall apply in all Contracts made by the Purchaser for the procurement of goods.

#### **3. Country of Origin**

3.1 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced.

3.2 The origin of Goods and Services is distinct from the nationality of the Supplier.

#### **4. Standards**

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

#### **5. Use of Contract Documents and Information**

5.1 The Candidate shall not, without the Purchaser’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 Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract.

5.2 The Supplier shall not, without the Purchaser’s prior written consent, make use of any document or information enumerated in paragraph 5.1 above.

5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain the property of the Purchaser and shall be returned (all copies) to the Purchaser on completion of the Supplier’s performance under the Contract if so required by the Purchaser.

## **6. Patent Rights**

6.1 The Supplier shall indemnify the Purchaser 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 Purchaser's country.

## **7. Performance Security**

7.1 Within **Fifteen (15)** days of receipt of the notification of Contract award, the successful Supplier shall furnish to the Purchaser the performance security in the amount specified in Special Conditions of Contract.

7.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract

7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to Purchaser, in the form provided in the tender documents.

7.4 The performance security will be discharged by the Purchaser and returned to the Candidate not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, under the Contract.

## **8. Inspection and Tests**

8.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

8.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the Supplier 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 Purchaser.

8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.

8.4 The Purchaser'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 Purchaser or its representative prior to the Goods' delivery.

8.5 Nothing in paragraph 8 shall in any way release the Supplier from any warranty or other obligations under this Contract.

## **9. Packing**

9.1 The Supplier 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.

9.2 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.

#### **10. Delivery and Documents**

10.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified by Purchaser in its Schedule of Requirements and the Special Conditions of Contract and/or in the Purchaser's Tender Document.

#### **11. Insurance**

11.1 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

#### **12. Payment**

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

12.2 Payments shall be made promptly by the Purchaser as specified in the contract.

#### **13. Prices**

13.1 Prices charged by the Supplier 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 Supplier in its bid.

13.2 The Contract Price shall be inclusive of all applicable taxes which shall include but not limited to VAT, Withholding Tax and Customs duty where applicable. The details of the taxes shall be included in the price schedule.

13.3 The Purchaser shall withhold any taxes as provided for in the Kenyan Tax Law and issue the Supplier with Withholding Tax Certificate(s).

#### **14. Assignment**

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

#### **15. Subcontracts**

15.1 The Supplier shall notify the Purchaser 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 Supplier from any liability or obligation under the Contract.

#### **16. Termination**

##### **16.1 Termination for Default**

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

- a) if the Supplier fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity.
- b) if the Supplier fails to perform any other obligation(s) under the Contract.  
if the Supplier, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

In the event the Procuring Entity terminates the Contract in whole or in part, it may procure, upon such

terms and in such manner as it deems appropriate, services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar services.

#### **16.2 Termination of insolvency**

The Procuring Entity may at any time terminate the contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the Procuring Entity.

#### **16.3 Termination for convenience**

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

For the remaining part of the contract after termination the Procuring Entity may elect to cancel the services and pay to the Supplier on agreed amount for partially completed services.

#### **17. Liquidated Damages**

- 17.1 If the Supplier fails to deliver any or all of the goods within the period(s) specified in the contract, the Purchaser 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 Supplier may consider termination of the contract.

#### **18. Resolution of Disputes**

- 18.1 The Procuring Entity's and the Supplier shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.
- 18.2 Any dispute between the Parties as to matters arising pursuant to this Contract or its interpretation that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement shall be referred for settlement by a single arbitrator. The Arbitrator shall be agreed upon by the Parties within 30 days of the notification of a dispute by either party to the other and in default of agreement as to the single arbitrator the same shall be appointed by the Chairman for the time being of the Institute of the Chartered Arbitrators of Kenya (Kenya Chapter). Every award made under this Clause shall be expressed to be made under the Arbitration Act 1995 or other Act or Acts for the time being in force in Kenya in relation to arbitration;

#### **19. Language and Law**

- 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.

#### **20. Force Majeure**

- 20.1 The Supplier 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.

#### **21. Notices**

- 21.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or e-mail and confirmed in writing to the other party's address specified in the Special Conditions of Contract.
- 21.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

## SECTION D

### SPECIAL CONDITIONS OF CONTRACT

1. **Definitions**

"Goods" means Automotive Fuels – Unleaded Premium and Automotive Gas Oil

"The Purchaser" is **Mumias Sugar Company Limited of Private Bag Mumias, Kenya.**

2. **Application**

The following 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.

3. The Supplier shall supply fuel that meets the attached specifications and must specifically conform to the batch specification of the product by Kenya Pipeline Company Limited. Supplier should professionally ascertain the product specifications and advise the Purchaser appropriately.

4. **Bidders shall be required to maintain adequate stocks of Unleaded Premium and Automotive Diesel at all times in order to ensure that the Mumias Sugar requirements are satisfied at all times.**

**The average monthly consumption for each area is indicated below**

<b>Power Station</b>	<b>Approximate Sale per month in Liters</b>	
	<b>Petrol</b>	<b>Diesel</b>
Bulk Supply to Factory	0	240,000
Agriculture Heavy Equipment	0	40,000
Fuel Station	8,000	4,000

Please note that the figures quoted above are **estimates**

5. Product price shall be calculated as per the attached Price schedules.
6. Payments for fuel consumed by Mumias Sugar company vehicles and staff will be effected within **7 days** of receipt of the invoice.
7. The supplier shall be required to keep precise records of fuel consumed by specific vehicles indicating whether it is a company vehicle or a staff member's vehicle. The use of Electronic fuel monitoring is mandatory

This detailed information shall be clearly indicated in the invoice.

8. If for any reason the Supplier is unable to provide fuel in time, the Purchaser must be informed immediately of the reasons for the inability and what steps the Supplier is taking to address the situation.

If the Supplier is totally unable to deliver the fuel and gives no satisfactory explanation, they will be deemed to be in breach of contract and shall forfeit their Performance Security.

9. In the event that the Supplier is incapable to perform, the Purchaser, at its discretion, will order any amount of fuel from any other Company without further reference to the Supplier. The defaulting firm shall be charged for the price differential.
10. During the contract period the price of product shall be calculated based on the formulas attached as Section G of this tender document.
11. The physical location of the Suppliers main and branch offices together with telephone and fax numbers and email address **must** be submitted with tender.
- 12. The Supplier must submit together with this Tender, the method to be used to enforce Quality Assurance from the Depot to the delivery point. This will be considered during tender evaluation. The supplier will be responsible for ensuring that the dispensed product remained uncontaminated.**

**The supplier shall be liable for any damages to Mumias Sugar vehicles or equipment attributable to contaminated fuel.**

13. The prospective suppliers are advised to visit the fuel station to satisfy themselves as to the condition of available facilities and their ownership, at their own cost, to enable them submit a complete and responsive tender.
14. Some of the existing storage facilities are not the property of Mumias Sugar. The winning bidder shall therefore be responsible for negotiating with the owners of the existing for their use, or provide their own dispensing and storage facilities at their own cost. The winning bidder must ensure the dispensing facilities are in proper working order. Mumias Sugar shall conduct independent tests to confirm that dispensers are properly calibrated.
15. The completed tender **must** be accompanied by a **Tender Security** in the form of a Bank Guarantee in the format presented in appendix I, issued by a reputable Bank in Kenya, of an amount of **Kshs. 500,000.00**. The tender security shall remain until **31<sup>st</sup> May 2017**.
16. Successful Tenderers will submit a **Performance Security** in form of a bank guarantee issued by a reputable bank in Kenya, of the amounts **Kshs 2,000,000.00**

The security shall be in the format of the Performance security attached and valid for the duration of the contract and 2 months.

17. For the Agricultural Equipment and Bulk Factory Supply, the winning bidder shall be required to give a specific plan for delivering product to the equipment including generators on site. This may require the use of metred bowsers or any other convenient method that **MUST** be communicated in the bid.
18. This contract shall be interpreted in accordance with the Laws of Kenya.
19. The following mandatory documents, which must be submitted, will comprise a responsive tender.
  - a) Duly Completed Price Schedule (Must be completed in the format provided and no other. Any deviation shall be considered a non compliance and the bid shall be disqualified).

*Tender for Supply of Fuel and management of MSC fuel station*



- b) Tender Submission Form
- c) Copy of Valid Tax Compliance certificate
- d) Tender/Bid Security
- e) Copy of Valid Petroleum Business License issued by the Energy Regulatory Commission.
- f) Provision of Electronic Fuel Monitoring System
- g) Copy of Authentic Audited Financial Statements for the last 2 years. Mumias Sugar will at its own discretion confirm authenticity of the documents with the Kenya Revenue Authority.

## SECTION F

### TECHNICAL SPECIFICATIONS

#### MOTOR GASOLINE (UNLEADED PREMIUM PETROL)

TEST			PREMIUM		TEST METHOD	
			REGULAR		ASTM D	IP
Octane No. RON		min	93	83	2699	352
Leads	g/L	*	0.05			
Distillation					86	123
10% evap	°C	max	71			
50% evap	°C	max	115			
90% evap	°C	max	180			
FBP evap	°C	max	205			
Residue	ml	max	2			
Volatility			93(a)		323	69
Existent gum	mg/100ml	max	4		381	131
Induction	mins.	min	240		525	
Copper Corrosion		max	1		130	154
Sulphur	%m	max	0.2		2784	243
Doctor Test or			Negative		4952	30
Mercaptan Sulphur	%m	max	0.0015		3227	342
Odour			Marketable			
Colour	Red	Green	Red	Green	Visual	
Dye	g/m <sup>3</sup>	max	1.3			

- (a) Volatility for Premium and Regular is defined as;  
 $RVP + 0.7E70$ , where RVP is determined in kPa and E70 is the percentage evaporated at 70°C in ASTM distillation.

## TECHNICAL SPECIFICATIONS

### AUTOMOTIVE GAS OIL (DIESEL)

TEST			AUTOMOTIVE GAS OIL (DIESEL)
Specific Gravity at 60°F	D1298	Cst	0.84
Colour ASTM		°F	Max. 3.5
Cetane Index (Calculated)		% wt	Min. 40
Viscosity Kinematic @100°F			Max. 5
Cloud Point			Max. 40
Sulphur content	D445	% wt	Max. 0.05
Copper Corrosion (3h/100°C)		% Vol	1
Conradson Carbon Residue (On 10% Residue)		% Vol	Max. 0.25
Water		mg KOH/gm	Max. 0.1
Sediment		mg KOH/gm	Max. 0.01
Ash			Max. 0.01
Neutralization value: Strong Acid Number		°F	Nil
Total Acid number		% Vol	<b>Max. 0.5</b>
Flash Point PM cc (Pensky Martens cc)	D129 D524 D95	°C	Min. 150
Distillation + Recovery at 357°			<b>Min. 90</b>
End Point			Max. 385

**SECTION G**

**PRICE SCHEDULES**

**BULK FACTORY SUPPLY**

<b>PRICING STRUCTURE</b>		
<b>PRODUCT: AUTOMOTIVE DIESEL</b>		
<b>For the Month of</b>		<b>US\$/MT</b>
FOB Mean of Diesel Platts ( <b>For previous month</b> ) AG		
<b>Freight</b>		
<b>CNF (Usd / Mt)</b>		
Marine Insurance (1.003xCNFx.0770%)		
War Risk (1.003xCNFx0.0275%)		
<b>CIF</b>		
Port Handling Charges	<b>3.82</b>	
IDF Fees (2.25% of CIF)		
<b>CIFLW</b>		
Ocean Loss (0.5% of CIFLW)		
Administration Fees (0.5% of CIF)		
<b>Premium/Profit Margin</b>		
<b>Total (USD/MT)</b>		
Average exchange rate (Mean CBK for Previous Month)		
<b>KShs/MT</b>		
Base cost Conversion factor (MT to Litre)		
<b>Total cost Mombasa (KShs/ltr) -B</b>		
Add: Excise Duty	8.244.00	
Add; Petroleum Development Levy	400.00	
Add: Road Maintenance Levy	9000.00	
KPC Tariff (Msa to Ksm)		
Add: local delivery to Mumias Sugar Company		
<b>Net delivered Price (Kshs/ltr)</b>		

## FUEL STATION

<b>PRICING STRUCTURE</b>		
<b>PRODUCT: AUTOMOTIVE DIESEL</b>		
<b>For the Month of</b>		<b>US\$/MT</b>
FOB Mean of Diesel Platts ( <b>For previous month</b> ) AG		
<b>Freight</b>		
<b>CNF (Usd / Mt)</b>		
Marine Insurance (1.003xCNFx.0770%)		
War Risk (1.003xCNFx0.0275%)		
<b>CIF</b>		
Port Handling Charges	<b>3.82</b>	
IDF Fees (2.25% of CIF)		
<b>CIFLW</b>		
Ocean Loss (0.5% of CIFLW)		
Administration Fees (0.5% of CIF)		
<b>Premium/Profit Margin</b>		
<b>Total (USD/MT)</b>		
Average exchange rate (Mean CBK for Previous Month)		
<b>KShs/MT</b>		
Base cost Conversion factor (MT to Litre)		
<b>Total cost Mombasa (KShs/ltr) -B</b>		
Add: Excise Duty	8.244.00	
Add; Petroleum Development Levy	400.00	
Add: Road Maintenance Levy	9000.00	
KPC Tariff (Msa to Ksm)		
Add: local delivery to Mumias Company		
Site Management fee		
<b>Net delivered Price (Kshs/ltr)</b>		

## FUEL STATION

<b>PRICING STRUCTURE</b>		
<b>PRODUCT: UNLEADED PREMIUM</b>		
<b>For the Month</b>		<b>US\$/MT</b>
FOB Mean of Premium Platts ( <b>For Previous Month</b> ) AG		
Premium & Freight		
<b>CNF (Usd / Mt)</b>		
Marine Insurance (1.003xCNFx.0770%)		
War Risk (1.003xCNFx0.0275%)		
<b>CIF</b>		
Port Handling Charges	<b>3.82</b>	
IDF Fees (2.25% of CIF)		
<b>CIFLW</b>		
Ocean Loss (0.5% of CIFLW)		
Administration Fees (0.5% of CIF)		
<b>Premium/Profit Margin</b>		
<b>Total (USD/MT)</b>		
Average exchange rate (Mean CBK for Previous Month)		
<b>KShs/MT</b>		
Base cost Conversion factor (MT to Litre)		
<b>Total cost Mombasa (KShs/ltr) –B</b>		
Add: Excise Duty	19,895.00	
Add; Petroleum Development Levy	400.00	
Add: Road Maintenance Levy	9000.00	
KPC Tariff (Msa to Ksm)		
Add: local delivery to Mumias Sugar Company		
Site Management fee		
<b>Net delivered Price (Kshs/Ltr)</b>		

**Note: The supplier could use Discount ex Kisumu ERC Prices for the month of February 2017**

**SECTION F**

**TENDER SUBMISSION FORM**

To: Chief Executive Officer  
Mumias Sugar Company Limited  
Private Bag  
MUMIAS, KENYA

Dear Sir,

We, the undersigned, offer to upgrade and manage Mumias Sugar fuel stations in accordance with your invitation to tender and we hereby submit our Tender Document.

Our Tender is binding to us.

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

We remain

Yours sincerely,

Name of Tenderer .....

Address: .....Postal Code.....

Physical Location .....

Tel. No's..... Fax No's.....

Email.....

Authorised Signature: .....

Name and Title of Signatory .....

Rubber Stamp.....

**SECTION H**

**TENDER SECURITY FORM**

*(To be on the Letterhead of the Bank)*

Whereas \_\_\_\_\_ (hereinafter called “the Tenderer”) has submitted its tender date \_\_\_\_\_ for the SUPPLY OF FUEL AND MANAGEMENT OF MSC FUEL STATION (hereinafter called “the Tender”).

KNOW ALL PEOPLE by these presents that WE \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called “the Bank”), are bound unto \_\_\_\_\_ (hereinafter called “the Procuring Entity”) in the sum for which payment well and truly to be made to the said Procuring Entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**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 Procuring Entity 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 Procuring Entity up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Procuring Entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

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

\_\_\_\_\_  
(Signature of the Bank)



**SECTION I**

**CONTRACT FORM**

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_, 2017\_\_\_\_\_ between **Mumias Sugar Company Limited** whose registered office is at Mumias Sugar Company, PRIVATE BAG MUMIAS (hereinafter called “**the Purchaser**”) of the one part and \_\_\_\_\_ of P.O. Box \_\_\_\_\_ (hereinafter called “**the Supplier**”) of the other;

WHEREAS the Purchaser invited bids for \_\_\_\_\_ and has accepted a bid by the Supplier for a consideration of the rates tabulated below; **\*\*\*\*\*** (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 constitute the Contract documents and shall be interpreted in the order of priority outlined hereafter.
  - (a) This Contract Agreement
  - (b) Purchaser’s Notification of Award and Letter of Acceptance;
  - (c) Special Conditions of Contract;
  - (d) General Conditions of Contract;
  - (e) Purchaser’s Tender document;
  - (f) Supplier’s Bid
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the goods in conformity with all the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration for the provision of the goods, 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 Purchaser and the Supplier hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

**FOR AND ON BEHALF OF:  
MUMIAS SUGAR COMPANY  
LIMITED**

**FOR AND ON BEHALF OF:**  
\_\_\_\_\_

---

**MANAGING DIRECTOR & CEO**

---

**MANAGING DIRECTOR**

**WITNESSED BY:**

---

**LEGAL AFFAIRS MANAGER**

---

**DIRECTOR/COMPANY  
SECRETARY**

**SECTION J**

**PERFORMANCE SECURITY FORM**

*(Must be on the Letterhead of the Bank)*

To: Mumias Sugar Company Limited,  
Mumias Sugar Company  
Private Bag,  
**MUMIAS. Kenya.**

WHEREAS \_\_\_\_\_ *[name of Supplier]* (hereinafter called “the Supplier”) has undertaken, in pursuance of the Bid dated \_\_\_\_\_ 2017 to supply specified Fuel and Management of the Fuel Station (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of \_\_\_\_\_ *(words)* \_\_\_\_\_ *(figures)*, and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ 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 \_\_\_\_\_ 2017.

Signature and seal of the Guarantors

\_\_\_\_\_  
*[name of bank or financial institution]*

\_\_\_\_\_  
*[address]*

\_\_\_\_\_  
*[date]*

Valid Single Business Permit from the relevant Local Authority

**SECTION K**

**MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE**

*(Must be filled by all applicants or renderers' who choose to participate in this tender)*

<i>Name of Applicant (S)</i>
------------------------------

You are requested to give the particulars in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. Part 2 (d) to part 2(i) must be filled.

You are advised that giving wrong or false information on this Form will lead to automatic disqualification / termination of your business proposal at your cost.

**Part 1 – General**

Business

Name:.....

Certificate of Incorporation / Registration No.

Location of business premises: Country

Physical address .....Town

Building.....

Floor.....

Plot No. ....Street / Road

Postal Address .....Postal / Country

Code.....

Telephone No's ..... Fax No's.

E-mail address

Website .....

Contact Person (*Full Names*) ..... Direct / Mobile No's.

Title ..... Power of Attorney (**Yes / No**) If **Yes**, attach written document.

Nature of Business (*Indicate whether manufacturer, distributor, etc*)

**(Applicable to Local suppliers only)**

Local Authority Trading License No. .... Expiry Date

Value Added Tax

No.....

Value of the largest single assignment you have undertaken to date (**US\$/KShs**) .....

Was this successfully undertaken? **Yes / No**. ....(If **Yes**, attach reference)

Name (s) of your banker (s)

Branches ..... Tel No's.

**Part 2 (a) – Sole Proprietor**

Full names

Nationality ..... Country of Origin

\*Citizenship details

Company Profile ..... (Attach brochures or annual reports in case of public companies)

**Part 2 (b) – Partnerships**

Give details of partners as follows:

<u>Full Names</u>	<u>Nationality</u>	<u>Citizenship Details</u>	<u>Shares</u>
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1. ....

2. ....

3. ....

4. ....

Company Profile .....(Attach brochures)

**Part 2 (c) – Registered Company**

Private or public .....

Company Profile .....(Attach brochures or annual reports in case of public companies)

State the nominal and issued capital of the Company

Nominal KShs .....

Issued KShs .....

List of top ten (10) shareholders and distribution of shareholding in the company.

Give details of all directors as follows:-

<u>Full Names</u>	<u>Nationality</u>	<u>Citizenship Details</u>	<u>Shares</u>
-------------------	--------------------	----------------------------	---------------

1. ....

2. ....

3. ....

4. ....

**Part 2 (d) – Debarment**

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

Full Names .....

Signature .....

Dated this .....day of .....2017.

In the capacity of .....

Duly authorized to sign Tender for and on behalf of .....

**Part 2 (e) – Criminal Offence**

I/We, (Name (s) of Director (s)):-

- a) .....
- b) .....
- c) .....
- d) .....

have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed .....

For and on behalf of M/s .....

In the capacity of .....

Dated this .....day of .....2017.

Suppliers' / Company's Official Rubber Stamp .....

**Part 2 (f) – Conflict of Interest**

I/We, the undersigned state that I / We have no conflict of interest in relation to this procurement:

- a) .....
- b) .....
- c) .....
- d) .....

For and on behalf of M/s .....

In the capacity of .....

Dated this .....day of .....2017

Suppliers' / Company's Official Rubber Stamp .....

**Part 2 (g) – Interest in the Firm:**

Is there any person / persons in Mumias Sugar or any other public institution who has interest in the Firm? Yes / No?

..... (Delete as necessary) Institution .....

.....  
(Title)

.....  
(Signature)

.....  
(Date)

**Part 2(h) – Experience**

Please list here below similar projects accomplished or companies / clients you have supplied with similar items or equipments in the last two (2) years.

<u>Company Name</u>	<u>Country</u>	<u>Contract/ Order No.</u>	<u>Value</u>
1.....	.....	.....	.....
2.....	.....	.....	.....
3.....	.....	.....	.....

Contact person (Full Names) ..... E-mail address.....

Cell phone no ..... (Note: The person should be at the level of director)

\*Attach proof of citizenship

\* Attach certified copies of the following documents:

- a) Previous orders from companies supplied before
- b) Certificate of Incorporation / Registration
- c) Tax Compliance Certificate (for local suppliers)
- d) VAT Certificate (for local suppliers)
- e) Audited Financial Statements / Accounts for the last two (2) years
- f) Valid Single Business Permit from the relevant Local Authority
- g) The Power of Attorney)

**Part 2(i) – Declaration**

I / We, the undersigned state and declare that the above information is correct and that I / We give Mumias Sugar Company Limited authority to seek any other references concerning my / our company from whatever sources deemed relevant, e.g. Office of the Registrar of Companies, Bankers, etc.

Full names .....

Signature.....

For and on behalf of M/s .....

In the capacity of .....

Dated this .....day of .....2017.

Suppliers' / Company's Official Rubber Stamp .....