



**NUMERICAL MACHINING COMPLEX LTD.**

KENYA RAILWAYS CENTRAL WORKSHOP

WORKSHOP ROAD

P.O BOX 70660-00400

NAIROBI

TEL: +254 20 2241701

FAX: + 254 20 2244759

Email: [enquiries@nmc.go.ke](mailto:enquiries@nmc.go.ke)

Website: [www.nmc.go.ke](http://www.nmc.go.ke)

**OPEN NATIONAL TENDER**

**TENDER NO: NMC/ONT/07/2020-2021**

**TENDER FOR SUPPLY, INSTALLATION, TESTING, TRAINING  
AND COMMISSIONING OF 1 NO. BENDING MACHINE**

**NOTICE DATE: TUESDAY 1<sup>ST</sup> SEPTEMBER, 2020**

**CLOSING DATE: MONDAY 21<sup>ST</sup> SEPTEMBER, 2020 AT 11.00A.M**

**EAST AFRICAN TIME**

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**SECTION I: INVITATION TO TENDER**  
**NOTICE DATE: Tuesday, 1<sup>st</sup> September, 2020**

**TENDER REF NO: NMC/ONT/07/2020-2021**

**TENDER NAME: TENDER FOR SUPPLY, INSTALLATION, TESTING,  
TRAINING AND COMMISSIONING OF 1NO. BENDING MACHINE**

Numerical Machining Complex LTD is an engineering firm incorporated under the Companies Act as a Limited Liability Company established in 1994 by the Kenyan Government. The Company aims at becoming the regional market leader in steel production, and manufacture of high quality machinery, machine tools and components through employing appropriate state of the art technology and highly skilled man power.

Numerical Machining Complex Ltd invites sealed bids from eligible candidates for **supply, installation, testing, training and commissioning of 1NO. Bending Machine.**

Interested eligible candidates may obtain further information and inspect the tender documents at Numerical Machining Complex Ltd located at Workshop Rd from the Procurement Office during normal working hours.

A complete set of tender documents may be obtained by interested candidates upon payment of non-refundable fees of 1,000 in cash or Bankers cheque payable to Numerical Machining Complex Ltd cash office or downloaded for **free** from the company website [www.nmc.go.ke](http://www.nmc.go.ke) or Public Procurement Information Portal [www.tenders.go.ke](http://www.tenders.go.ke).

Bidders who download the document from the websites MUST register their interest immediately by sending an email to [supplies@nmc.go.ke](mailto:supplies@nmc.go.ke) stating Company name, contact person, email, postal address and telephone number .

Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at Numerical Machining Complex Ltd, Workshop Rd or be addressed to The Managing Director, Numerical Machining Complex Ltd, P.O Box 70660-00400

Nairobi so as to be received on or before **21<sup>st</sup> September, 2020 at 11.00am East African Time.**

Tenders must be accompanied with a bid security from a Commercial Bank for Kshs 100,000.00 and must be valid for 90 days.

Bulky tenders which will not fit in the tender box shall be received by the procuring entity through the office of the Managing Director and shall be recorded.

Prices quoted should be net inclusive of all applicable taxes, delivery at Numerical Machining Complex and must be in Kenya Shillings or any free convertible currency and shall remain valid for **Ninety (90)** days from the closing date of the tender. The exchange rate to be use will be the prevailing CBK exchange rate on the date of opening.

There shall be a mandatory site visit on **09<sup>th</sup> September, 2020 at 2:00pm.** Bidders who attend the site visit will be issued with a duly signed and stamped site visit certificate immediately after the visit and will in addition receive an acknowledging email from [supplies@nmc.go.ke](mailto:supplies@nmc.go.ke) on the same day.

Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at Numerical Machining Complex Ltd.

Only one witness per tenderer will be allowed during opening of tenders. This is in compliance with the GoK guidelines on Covid -19 pandemic management.

Numerical Machining Complex reserves the right to terminate the procurement proceedings, at any time without entering into a contract in accordance with Section 63 of the PPADA, 2015.

**Managing Director**



## SECTION II: INSTRUCTIONS TO TENDERERS

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## **SECTION II – INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall complete the supply, install, test, train and commissioning of the equipment by the intended completion date specified in the tender documents.
- 2.1.2 The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 2.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Eligible Equipment**

- 2.2.1 All equipment to be supplied and installed under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, “origin” means the place where the equipment(s) are produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of equipment is distinct from the nationality of the tenderer and shall be treated thus in the evaluation of the tender.

### **2.3 Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible

or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.3.2 The price to be charged for the tender document shall not exceed Ksh 1,000.00.

2.3.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## **2.4. Contents of Tender Document**

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

- (i) Invitation to Tender
- (ii) Instructions to Tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire Form
- (xiv) Declaration form
- (xv) Request for Review Form

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

## **2.5 Clarification of Tender Documents**

2.5.1 A prospective tenderer making inquiries of the tender documents may notify the Procuring entity in writing or by post at the entity's address indicated in the invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have



received the tender document.

2.5.2 The procuring entity shall reply to any clarifications sought by the tenderer within **3 days** of receiving the request to enable the tenderer to make timely submission of its tender.

## **2.6 Amendment of Tender Documents**

2.6.1 At any time prior to the deadline for submission of tender, the procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.

2.6.2 All prospective tenderers that have obtained the tender documents will be notified of the amendment in writing or by post and will be binding on them.

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

## **2.7 Language of Tender**

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

## **2.8 Documents Comprising the Tender**

2.8.1 The tender prepared by the tenderers shall comprise the following components.

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) documentary evidence established in accordance with paragraph 2.12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) documentary evidence established in accordance with paragraph 2.13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) tender security furnished in accordance with paragraph 2.14

(e) Confidential Business Questionnaire

## 2.9 Tender Form

2.9.1 The tenderer shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the equipment to be supplied, installed and commissioned and a brief description of the equipment, their country of origin, quantity, and prices.

## 2.10 Tender Prices

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices where applicable and total tender price of the equipment and installation it proposes to supply under the contract.

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

- (i) the price of the equipment quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable;
- (ii) charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and
- (iii) installation charges shall also be indicated separately for each equipment

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

## 2.11 Tender Currencies

2.11.1 Prices shall be quoted in the following currencies:

- (a) For equipment that the tenderer will supply from within Kenya, the prices shall be quoted in Kenya Shillings; and
- (b) For equipment that the tenderer will supply from outside Kenya, the prices may be quoted in US Dollars or in another freely convertible currency.
- (c) Cost of installation and commissioning will be in Kenya Shillings.

## 2.12 Tenderers Eligibility and Qualifications

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

- 2.12.1 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1
- 2.12.2 The documentary evidence of the tenderes qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction;
- (a) that, in the case of a tenderer offering to supply equipment under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the equipment, Manufacturer or producer to supply the equipment
  - (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 maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

## **2.13 Goods Eligibility and Conformity to Tender Document**

- 2.13.1 Pursuant paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all equipment which the tenderer proposes to supply under the contract
- 2.13.2 The documentary evidence of the eligibility of the goods shall consist of statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
- 2.13.3 The documentary evidence of conformity of the equipment 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 characteristic of the equipment
  - b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the equipment for a period of two (2) years, following commencement of the use of the equipment by the Procuring entity; and
  - c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the

goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the commentary to be furnished pursuant to paragraph 2.13.3(c ) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

## **2.14 Tender Security**

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.

2.14.2 The tender security shall be in the amount not exceeding 2 percent of the tender price.

2.14.3 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 2.14.7

2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of

- a) Cash
- b) A bank guarantee
- c) Such insurance guarantee approved by the Authority
- d) Letter of credit.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 2.22

2.14.6 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.

2.14.7 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

2.14.8 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 2.27
  1. or
  - ii) to furnish performance security in accordance with paragraph 2.28
- c) If the tenderer rejects correction of an arithmetic error in the tender.

## **2.15 Validity of Tenders**

2.15.1 Tenderers shall remain valid for **90** days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.20. A tender valid for a shorter period shall be rejected by the Procuring entity as non responsive.

2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 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.

## **2.16 Format and Signing of Tender**

2.16.1 The Tenderer shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **2.17 Sealing and Marking of Tenders**

2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given on the Invitation to Tender.

(b) bear the tender number and name in the Invitation to Tender and the words “DO NOT OPEN BEFORE **21<sup>st</sup> September, 2020 at 11:00am.**”

2.17.3 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”.

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## **2.18 Deadline for Submission of Tenders**

2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 not later than ***21<sup>st</sup> September, 2020 at 11:00am .***

2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

2.18.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the Appendix.

## **2.19 Modification and Withdrawal of Tenders**

2.19.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring entity prior to the deadline prescribed for submission of tenders.

2.19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but

followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7

## **2.20 Opening of Tenders**

**2.20.1** The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on **21<sup>st</sup> September, 2020 at 11:00am at Numerical Machining Complex Ltd , Parking Area.**

The tenderers' representatives who are present shall sign a tender opening register evidencing their attendance.

2.20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The Procuring entity will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

2.21.1 To assist in the examination, evaluation and comparison of tenders the 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.

2.21.2 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.

## **2.22 Preliminary Examination and Responsiveness**

- 2.22.1 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.
- 2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures the amount in words will prevail
- 2.22.3 The 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 effect the relative ranking of any tenderer.
- 2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 2.22.5 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 non conformity.

## **2.23 Conversion to Single Currency**

**2.23.1** Where other currencies are used, the Procuring Entity will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

## **2.24 Evaluation and Comparison of Tenders**

2.24.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22



2.24.2 The Procuring entity's evaluation of a tender will exclude and not take into account

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

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

2.24.4 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 2.23.5 and in the technical specifications:

- (a) delivery and installation schedule offered in the tender;
- (b) deviations in payment schedule from the specifications in the Special Conditions of Contract;
- (c) the cost of components, mandatory spare parts and service;
- (d) the availability in Kenya of spare parts and after-sales service for the equipment offered in the tender;

2.24.5 Pursuant to paragraph 2.24.4 the following evaluation methods will be applied

(a) *Delivery schedule*

- (i) The Procuring entity requires that the equipment 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.

(c) *Spare parts and after sales service facilities*

Tenderers must offer items with service and spare parts back-up. Documentary evidence and locations of such back-up must be given. Where a tenderer offers

items without such back-up in the country, he must give a documentary evidence and assurance that he will establish adequate back-up for items supplied.

2.24.6 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.7 Preference where allowed in the evaluation of tenders shall not exceed 15%

## **2.25 Contacting the Procuring Entity**

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

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

## **2.26 Award of Contract**

### **(a) Post-Qualification**

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

2.26.2 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 Procuring entity deems necessary and appropriate.

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

### **(b) Award Criteria**

2.26.4 The Procuring entity will 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.

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

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

**(c) Procuring Entity's Right to Accept or Reject Any or All Tenders**

2.26.6 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 tenderer of the grounds for the procuring entity's action

2.26.7 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination

2.26.8 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.26.9 A tenderer who gives false information in the tender document about is qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

**2.27 Notification of Award**

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

2.27.2 The notification of award will signify the formation of the Contract but will have to wait until the contract is finally signed by both parties. Simultaneous other tenderers shall be notified that their tenders have not been successful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29, the Procuring entity will simultaneously inform the other tenderers that this tenders have not been successful

## **2.28 Signing of Contract**

2.28.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

2.28.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.28.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

## **2.29 Performance Security**

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

2.29.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.28 or paragraph 2.29 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.

## **2.30 Corrupt or Fraudulent Practices**

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

3.30.2 The Procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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

## APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

<b>INSTRUCTIONS TO TENDERERS REFERENCE</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
<b>2.1.1</b>	<i>This tender is an Open National Tender for all qualified candidates</i>
<b>2.5.1</b>	<i>Clarifications may be requested not later than SEVEN (7) days before the submission date. Email: supplies@nmc.go.ke</i>
<b>2.14.1</b>	<i>Tender security of Kshs 100,000.00 valid for 90 days from the date of opening the tender from a Commercial Bank registered in Kenya.</i>
<b>2.16.1</b>	<i>Bidders MUST submit two copies of the tender document, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER”.</i>
<b>2.18.1</b>	<i>The tender will be closed on 21<sup>st</sup> September, 2020 at 11:00am</i>
<b>2.18.1</b>	<i>Tenders will be opened in the presence of bidders who choose to attend on 21<sup>st</sup> September, 2020 at 11:00am at Numerical Machining Complex, Workshop Rd, parking area.</i>
<b>2.29.1</b>	<i>Performance Security is 10% of contract sum in form of Bank guarantee from a Commercial Bank registered in Kenya.</i>
<b>2.27.2</b>	<i>For greater certainty, a notification of intention to enter into a contract does not constitute a contract nor reduce the validity period of the tender security.</i>

### A) MANDATORY REQUIREMENT (Yes/No)

No.	Criteria	Yes	No
1.	Bidder MUST submit two sets of tender documents clearly marked <b>ORIGINAL &amp; COPY</b>		
2.	Bidder MUST provide tender security of Kshs 100,000.00 from a Commercial Bank and valid for 90days		
3.	Bidders equipment's country of origin MUST be any of the following only: Europe, America, South Africa, India, Japan		
4.	Bidder MUST provide Litigation history in the format provided in the Tender document, must be filled, signed and stamped to be returned with tender submission.(Form A.)		
5.	Bidder Must Dully fill, sign and stamp price schedule		
6.	Bidder MUST Duly fill, sign and stamped form of Tender		
7.	Bidder must paginate/serialize all the documents in the tender document in a continous manner without alteration		
8.	Bidder MUST duly fill, stamp and sign the confidential business questionnaire.		
9.	Bidder MUST provide copy of valid tax compliance issued by Kenya Revenue Authority		
10.	Bidder MUST provide Copy of Certificate of Incorporation or a Certificate of Registration		
11.	Bidder MUST provide Copy of valid Business permit from the County Government		
12.	Bidder MUST provide Copy of CR 12		
13.	Bidder MUST Attach Original Equipment Manufacturer's Authorization or Dealership Certificate with clear site and addresses/contacts for verification of the same.		
14.	Bidder MUST provide Power of Attorney		
15.	Bidder MUST provide recommendation letters from three (3) clients whom he/she have supplied, Installed and commissioned a powered equipment		
16.	Bidder MUST provide Copy of brochure/manual for the machine. It Must be in English		
17.	Bidder MUST attach Manufacturer's statement of warranty .Must be in English		
18.	Bidder MUST attach Certified Audited Financial Statement for the last 3-consecutive years.		
19.	Bidder MUST attach a duly signed and stamped form by one of our Engineers as proof of site visit scheduled to take place on 9 <sup>th</sup> September, 2020 at 2:00pm at Numerical Machining Complex Ltd.		

**Bidders who meet all the mandatory requirements for the machine will qualify to proceed to mandatory technical evaluation.**

**B. Mandatory Technical Evaluation (Yes/No)**

ITEM	REQUIREMENT	TENDERER TO SPECIFY
Original Equipment Manufacturer's commitment letter	Mandatory	(Y/N)
Machines literature and specifications supplied (in original colour form) while tendering to support what is filled in specifications.	Mandatory	(Y/N)
All literature, machines markings, machine controls must be in English language	Mandatory	(Y/N)
Attach Manufacturer's statement of warranty of at least 1year	Mandatory	(Y/N)
Commit to provide after sales services	Mandatory	(Y/N)
Commit and list to supply initial batch of support spare parts	Mandatory	..... specify
Maintenance and operation manuals (2No. sets) hard copies and a soft copy	Mandatory	(Y/N)
To be inspected by the Inspection and Acceptance Committee prior to installation	Mandatory	(Y/N)



Supplier to install, test, handover all necessary accessories, software and carry out training (skills transfer) on operations, quality control, maintenance and commissioning  Provide all materials necessary for installation, testing, commissioning and training.	Mandatory	(Y/N)
Supplier to supply, install, test and commissioning all electrical units required for the machine to run	Mandatory	(Y/N)
Supplier to do all the civil works required (Base)	Mandatory	(Y/N)
Operator's handbook, parts catalogue supplied	Mandatory	(Y/N)
Supplier to provide necessary tools for operation and maintenance of the machine	Mandatory	..... specify
Comprehensive onsite training (Operations, quality control & maintenance)	Mandatory	..... specify
Machines to be supplied must be new	Mandatory	(Y/N)

**Bidders who meet all the technical mandatory requirements will qualify to proceed to technical evaluation for general and performance specification.**

**C. TECHNICAL EVALUATION FOR GENERAL AND PERFORMANCE SPECIFICATIONS**

**GENERAL SPECIFICATIONS (5MARKS)**

<b>SPECIFICATION</b>	<b>REQUIREMENT</b>	<b>SCORE</b>	<b>Tenderers Response</b>
Horizontal pipe CNC bending machine	Yes	1	
Supplied new and unused	Yes	1	
MAKE	Specify	1	
MODEL	Specify	1	
COUNTRY OF ORIGIN	Specify	1	

**PERFORMANCE SPECIFICATIONS (86 MARKS)**

	<b>Technical Specifications</b>			<b>Tenderers Response</b>
1	Control	CNC	5	
2	Applicable Material	Carbon Steel, Stainless steel, aluminum copper etc. Specify	5	
3	Power	1000-1500kW	2	
4	Electric Input	240/415V, 50Hz	2	
3	Max bending R for carbon pipe	Approx. 1.4 – 1.6D ,	5	

			45-55 mm x2.0-3.0mm thick		
4	Max feed distance		2400mm	3	
5	Feeding method		Direct	3	
6	Max Radius for bending		200-300mm	5	
7	Max angle for bending		Approx 185°	3	
8	Working rate (adjustable )	Bending Rate	Max.40-45°/sec	5	
		Rotary Rate	Max.270°/sec	5	
		Feeding Rate	Max Aprox.700°/sec	4	
9	Working Accuracy	Bending Angle	±0.15°	5	
		Rotary Angle	±0.1°	5	
		Feeding Length	±0.1mm	3	
11	Rotary Servo motor Power		Up to 850w	3	
12	Feeding Servo motor Power		Approx. 1.0kw	5	
8613	Electric Motor Power		Upto to 5.5kw	3	
14	PLC and CPU		From Reputable manufacturer – Specify	5	
15	Touch screen control		From Reputable Manufacturer - Specify	3	
16	Input Method		XYZ,/ YBC Values	3	
17	Tooling		A set of startup dies	2	
18	Test Capacity		Rebound test	2	

**Bidders who score 90% of the 86 marks i.e 77.4 marks in the technical evaluation for the general and performance specifications will qualify to proceed to the next stage of financial evaluation.**

**Convert the marks to 80 as follows:  $\frac{\text{Bidders marks}}{86} \times 80$**

**86**

**D. Financial Evaluation (20) marks – Pass mark of 15marks**

<b>No.</b>	<b>Criteria</b>	<b>Total Score (Max Score)</b>	<b>Bidder's Score</b>
1.	Minimum Sales annual turnover of Kshs 20,000,000.00 (5marks)		
2.	Current ratio (current Assets /current liabilities) Must be $\geq 1$ (5 marks)		
3.	Net working Capital ratio (current Assets-current liabilities)/current liabilities Must be $>1$ (5 marks)		
4.	Cash Ratio (Cash & Cash equivalents)/current liabilities Must be $\geq 0.5$ (5 marks)		

**Award Criteria**

**The tender will be awarded to the bidder who meet all the mandatory requirements, meets all the technical mandatory specifications, scores at least 72 marks out of 80 marks of the technical evaluation for general and performance specifications, score at least 15marks out 20marks of the financial evaluation and is the tenderer with the lowest evaluated price.**

<b>No.</b>	<b>Evaluation Criteria</b>	<b>Max Marks</b>	<b>Pass mark</b>
1.	Mandatory Requirements	Yes	Yes
2.	Mandatory Technical Specifications	Yes	Yes
3.	Technical Evaluation (Marks have been converted to 80%)	80	72
4.	Financial Evaluation	20	15

**SECTION III: GENERAL CONDITIONS OF CONTRACT**

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

### **3.1 Definitions**

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

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### **3.2 Application**

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment to the extent that they are not superceded by provisions of other part of contract.

### **3.3 Country of Origin**

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

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer and will be treated thus in the evaluation of the tender.

### **3.4 Standards**

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

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

3.5.1 The Candidate shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity 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 Procuring entity'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 Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity

### 3.6 **Patent Rights**

3.6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity's country

### 3.7 **Performance Security**

3.7.1 Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the procuring entity and shall be in the form of

- a) Cash
- b) Bank guarantee
- c) Such insurance guarantee approved by the Authority
- d) Letter of credit

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



### **3.8 Inspection and Tests**

- 3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the equipment to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer. All reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 3.8.3 Should any inspected or tested equipment fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.
- 3.8.4 The Procuring entity's right to inspect test and where necessary, reject the equipment after the equipment arrival and installation shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.9 Packing**

- 3.9.1 The tenderer shall provide such packing and packaging of the equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 3.9.2 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

### **3.10 Delivery and Documents**

- 3.10.1 Delivery of the equipment, documents and installation of the same shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

### **3.11 Insurance**

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

### **3.12 Payment**

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

3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract

### **3.13 Prices**

3.13.1 Prices charged by the tenderer for equipment delivered and installation 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.

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

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

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

### **3.14. Assignment**

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

### **3.15. Subcontracts**

3.15.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

### **3.16. Termination for Default**

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

- (a) if the tenderer fails to deliver any or all of the equipment within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar equipment.

### **3.17. Termination for convenience**

### **3.18. Liquidated Damages**

3.18.1 If the tenderer fails to deliver and/or install any or all of the items within the period(s) specified in the contract, the procuring entity 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 items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

### **3.19. Resolution of Disputes**

3.19.1 The procuring entity 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

3.19.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

### **3.20. Language and Law**

3.20.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise specified in the SCC

### **3.21. Force Majeure**

3.21.1 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.

### **3.22 Notices**

3.22.1 Any notice given by one party to the other pursuant to this contract shall be sent to other party by post or by fax or Email and confirmed in writing to the other party's address specified.

3.22.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

**SECTION IV: SPECIAL CONDITIONS OF CONTRACT**

- 4.1 Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.
- 4.2 Special conditions of contract as relates to the GCC

<b>REFERENCE OF GCC</b>	<b>SPECIAL CONDITIONS OF CONTRACT</b>
3.7.1	<i>Performance security of 10%</i>
3.12.1	<i>Payment terms will be as follows: 60% on Supply, Installation and Testing of Equipment  30% on Training and Commissioning of Equipment  10% on expiry of the warranty period which begins immediately after commissioning</i>
3.18.1	<i>Disputes to be resolved through arbitration</i>
3.8	<i>The equipment to be inspected in the presence of the tenderer and in the event it is rejected it must be carted away from NMC premises within 21 days failure to which it shall be disposed at the tenderers expense.</i>

## **SECTION V: SCHEDULE OF REQUIREMENTS AND PRICES**

### **Notes on Schedule of Requirements and Prices**

- 5.1 This contract is for Supply, Installation, Testing, Training and Commissioning of One (1) Bending Machine.
- 5.2 The training shall be for ten (10) technical staff.
- 5.3 The equipment to be supplied, installed, tested, commissioned and staff trained within six (6) months.
- 5.4 The equipment to be supplied and installed at NMC Premises.
- 5.5 The prices of equipment to comprise the following:

Cost of the equipment, Custom duties, all other applicable taxes, inland transport costs, Insurance, Installation charges, Testing costs, Training Costs and any other local cost incidental to the delivery of the equipment to the final destination.

- 5.6 Bidder to indicate delivery period.

**SECTION V - SCHEDULE OF REQUIREMENTS AND PRICES**

No.	Item Description	Quantity	Unit Price Kshs	Total Price Kshs.
1.	Price of 1 No. Bending Machine	1		
2.	Tool Box & Spares	As listed		
3.	Custom Duty			
4.	All other applicable taxes			
5.	Inland transport costs			
6.	Insurance			
7.	Installation costs			
8.	Testing Costs			
9.	Training Costs			
10.	Civil Works			
11.	Other local costs incidental to delivery of the goods to their final destination			
	<b>Total</b>			

Delivery Period.....

Authorized Official: \_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**SECTION VI: TECHNICAL SPECIFICATIONS**

**PARTICULARS**

ITEM
Original Equipment Manufacturer’s commitment letter
Machines literature and specifications supplied (in original colour form) while tendering to support what is filled in specifications.
All literature, machines markings, machine controls must be in English language
Attach Manufacturer's statement of warranty of at least 1year
Commit to provide after sales services
Commit and list to supply initial batch of support spare parts
Maintenance and operation manuals (2No. sets) hard copies and a soft copy
To be inspected by the Inspection and Acceptance Committee prior to installation
Supplier to install, test, handover all necessary accessories, software and carry out training (skills transfer) on operations, quality control, maintenance and commissioning
Provide all materials necessary for installation, testing, commissioning and training.



Supplier to supply, install, test and commissioning all electrical units required for the machine to run
Supplier to do all the civil works required (Base)
Operator's handbook, parts catalogue supplied
Supplier to provide necessary tools for operation and maintenance of the machine
Comprehensive onsite training (Operations, quality control & maintenance)
Machines to be supplied must be new

Technical Specifications			
1	Control	CNC	
2	Applicable Material	Carbon Steel, Stainless steel, aluminum copper etc. Specify	
3	Power	1000-1500kW	
4	Electric Input	240/415V, 50Hz	
3	Max bending R for carbon pipe	Approx. 1.4 – 1.6D , 45-55 mm x2.0-3.0mm thick	
4	Max feed distance	2400mm	
5	Feeding method	Direct	
6	Max Radius for bending	200-300mm	
7	Max angle for bending	Approx 185°	
8	Working rate (adjustable)	Bending Rate	Max.40-45°/sec
		Rotary Rate	Max.270°/sec
		Feeding Rate	Max Approx.700°/sec
9	Working Accuracy	Bending Angle	±0.15°
		Rotary Angle	±0.1°
		Feeding Length	±0.1mm
11	Rotary Servo motor Power	Up to 850w	
12	Feeding Servo motor Power	Approx. 1.0kw	
8613	Electric Motor Power	Upto to 5.5kw	
14	PLC and CPU	From Reputable manufacturer – Specify	
15	Touch screen control	From Reputable Manufacturer - Specify	
16	Input Method	XYZ,/ YBC Values	
17	Tooling	A set of startup dies	
18	Test Capacity	Rebound test	

## **SECTION VII: STANDARD FORMS**

*Notes on the Standard Forms:*

### **7.1 Form of Tender**

This form 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.

### **7.2 Confidential Business Questionnaire Form**

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

### **7.3 Tender Security Form**

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

### **7.4 Contract Form**

The Contract form shall not be completed by the tenderer at the time of submitting the tenderer at the time of submitting the tender. The contract form shall be completed after contract award.

### **7.5 Performance Security form**

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

### **7.6 Bank Guarantee for Advance Payment.**

When there is an agreement to have Advance payment, this form must be duly completed.

### **7.7 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.

## 7.1 FORM OF TENDER

To: \_\_\_\_\_ Date \_\_\_\_\_  
Tender No. \_\_\_\_\_  
\_\_\_\_\_  
*[name and address of procuring entity]*

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. .... *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply deliver, install and commission ( ..... *(insert equipment description)*) in conformity with the said tender documents for the sum of ..... *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract , in the form prescribed by ..... *( Procuring entity)*.

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

5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

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

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

Duly authorized to sign tender for an on behalf of \_\_\_\_\_

**7.2 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 No.  
 .....  
 Maximum value of business which you can handle at any one time – Kshs.  
 .....  
 Name of your bankers ..... Branch  
 .....

<b>Part 2 (a) – Sole Proprietor</b>			
Your name in full .....		Age .....	
Nationality .....		Country of origin .....	
<ul style="list-style-type: none"> <li>• Citizenship details                      .....</li> <li>•                      .....</li> </ul>			
<b>Part 2 (b) Partnership</b>			
Given details of partners as follows:			
Name	Nationality	Citizenship Details	
Shares			
a. ....			
b. ....			
c. ....			
d. ....			

Part 2 (c ) – Registered Company

Private or Public

.....

State the nominal and issued capital of company-

Nominal Kshs. ....

Issued Kshs. ....

Given details of all directors as follows

	Name	Nationality	Citizenship Details
--	------	-------------	---------------------

Shares

1.....

2.....

3.....

4.....

5.....

Date ..... Seal/Signature of Candidate

.....

### 7.3 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, installation and commissioning of ..... [name and/or description of the equipment]  
(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 Procuring entity] (hereinafter called "the Procuring entity") in the sum of ..... 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 \_\_\_\_\_ 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 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 Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender 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]  
(Amend accordingly if provided by Insurance Company)

## 7.4 CONTRACT FORM

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ between  
..... [*name of Procurement entity*] of ..... [*country of Procurement  
entity*] (hereinafter called “the Procuring entity) of the one part and  
..... [*name of tenderer*] of ..... [*city and country of tenderer*]  
(hereinafter called “the tenderer”) of the other part;  
WHEREAS the Procuring entity invited tenders for [certain 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
  - (b) the Schedule of Requirements
  - (c) the Technical Specifications
  - (d) the General Conditions of Contract
  - (e) the Special Conditions of contract; and
  - (f) the Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the goods and to remedy the defects therein in conformity in all respects with the provisions of this Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provisions 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 Procuring entity)

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

**7.5 PERFORMANCE SECURITY FORM**

To .....  
[name of Procuring entity]

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

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank 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 figure] and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ..... [amount of guarantee] as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed and seal of the Guarantors

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

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

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

(Amend accordingly if provided by Insurance Company)



## 7.6 BANK GUARANTEE FOR ADVANCE PAYMENT

To .....  
[*name of Procuring entity*]

[*name of tenderer*] .....

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 Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract an amount of ..... [*amount of guarantee in figures and words*].

We, the ..... [*bank or financial institutions*], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity 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 there-under or of any of the Contract documents which may be made between the Procuring entity 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 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*]

## 7.7 MANUFACTURER'S AUTHORIZATION FORM

To [name of the Procuring entity] .....

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. .... [reference of the Tender] for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

---

[signature for and on behalf of manufacturer]

*Note:* This letter of authority should be on the letterhead of the Manufacturer and should be signed by an authorized person.

**7.8 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)* \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

**7.9 FORM RB 1**

**REPUBLIC OF KENYA  
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*)  
of .....dated the...day of .....20.....in the matter of Tender  
No.....of .....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax No.....Tel. No.....Email ....., hereby request the  
Public Procurement Administrative Review Board to review the whole/part of the  
above mentioned decision on the following grounds , namely:-

1.

By this memorandum, the Applicant requests the Board for an order/orders  
that: -

1.

SIGNED .....(Applicant)

Dated on.....day of ...../...20...

---

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on  
..... day of .....20.....

SIGNED  
Board Secretary

**FORM A**  
**LITIGATION HISTORY FORM**

Bidders must provide information on any history of litigation or arbitration resulting from contracts executed in the last THREE (3) years or currently under execution.

Year	Award for or against	Name of client, cause of litigation and matter in dispute	Disputed amount (current value, Kshs. equivalent)

(Bidders must fill this form irrespective if they have litigation or not)

Signature: .....

Date:.....

Stamp/Seal: .....