KENYATTA UNIVERSITY

TENDER NO.: KU/TNDR/G/055/SDAFM/2019-2020

RESTRICTED TENDER FOR SUPPLY AND DELIVERY OF ATOMIC FORCE MICROSCOPE

CLOSING DATE: THURSDAY 13TH FEBRUARY 2020, AT 10:00AM
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SECTION I: INVITATION FOR TENDERS

TENDER REF. NO: KU/TNDR/G/055/SDAFM/2019-2020

TENDER NAME: RESTRICTED TENDER FOR SUPPLY AND DELIVERY OF ATOMIC FORCE MICROSCOPE

1.1 Kenyatta University invites sealed tenders from eligible registered firms in the tendered field for Supply and Delivery of Atomic Force Microscope.

1.2 Prices quoted should be net, inclusive of all taxes, and delivery costs, must be in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender.

1.3 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the Tender Box at (Kenyatta University – Procurement Department Reception) or be addressed to (Kenyatta University P.O. Box 43844 – 00100 GPO Nairobi) so as to be received on or before Thursday 13th February, 2020 at 10:00am.

1.4 Tenders will be opened immediately thereafter in the presence of the candidates representatives who choose to attend at (Kenyatta University - Boardroom).
### SECTION II: INSTRUCTIONS TO TENDERERS

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SECTION II: INSTRUCTIONS TO TENDERERS

2.1: ELIGIBLE TENDERERS

2.1.1 This Invitation to Tender is restricted to firms in the tendered field as described in the Invitation to Tender.

2.1.2 Kenyatta University employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender.

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

2.2: ELIGIBLE GOODS

2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.

2.2.2 For purposes of this clause, “origin” means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

2.2.3 The origin of goods is distinct from the nationality of the tenderer.

2.3: COST OF TENDERING

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

2.3.2 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

2.4: CONTENT OF THE 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/Price Schedules
(vi) Tender 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 DOCUMENTS

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify Kenyatta University in writing or by post at University’s address indicated in the Invitation to Tender. The University 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 University. Written copies of The University 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 Kenyatta University 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 DOCUMENTS

2.6.1 At any time prior to the deadline for submission of tenders, Kenyatta University, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received 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, Kenyatta University 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 Kenyatta University, 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 OF 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 2.1 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 2.2 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

2.9: TENDER FORMS

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

2.10: TENDER PRICES

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

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

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

2.10.4 The validity period of the tender shall be 120 days from the date of opening of the tender.

2.11: TENDER CURRENCIES

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

2.12: TENDERERS ELIGIBILITY AND QUALIFICATIONS

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

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to KENYATTA UNIVERSITY satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1
2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to Kenyatta University’s satisfaction;

(a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods’ Manufacturer or producer to supply the goods.

(b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;

(c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer’s 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 DOCUMENTS

2.13.1 Pursuant to 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 goods which the tenderer proposes to supply under the contract.

2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

(a) a detailed description of the essential technical and performance characteristic of the goods;

(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 goods for a period of two (2) years, following commencement of the use of the goods by Kenyatta University; and

(c) a clause-by-clause commentary on Kenyatta University 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 documentary evidence 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 Kenyatta University 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 University satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.
2.14 TENDER SECURITY

2.14.1 No tender security is required for this tender.

2.15: VALIDITY OF TENDERS

2.15.1 Tenders shall remain valid for 120 days or as specified in the Invitation to tender after the date of tender opening prescribed by Kenyatta University, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by The University as non-responsive.

2.15.2 In exceptional circumstances, Kenyatta University 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. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

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.

2.16.4 All required documents must be arranged chronologically as listed in the evaluation criteria and clearly marked.

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 Kenyatta University at the address given in the Invitation to Tender:
   (b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” Thursday 13th February, 2020 at 10.00 a.m

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”.

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

2.18: DEADLINE FOR SUBMISSION OF TENDERS

Tenders must be received by Kenyatta University at the address specified under paragraph 2.17.2 no later than **Thursday 13th February, 2020 at 10.00 a.m**

2.18.1 Kenyatta University 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 Kenyatta University and candidates previously subject to the deadline will therefore be subject to the deadline as extended.

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 Kenyatta University 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.

2.19.5 Kenyatta University may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 Kenyatta University 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.

2.20: OPENING OF TENDERS

2.20.1 Kenyatta University will open all tenders in the presence of tenderer’s representatives who choose to attend, on **Thursday 13th February, 2020 at 10.00 a.m** and in the location specified in the Invitation to Tender.

The tenderer’s representatives who are present shall sign a register evidencing their attendance.

2.20.2 The tenderer’s names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as Kenyatta University, at its discretion, may consider appropriate, will be announced at the opening.
2.20.3 Kenyatta University 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 Kenyatta University 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 Kenyatta University in the tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderer’s tender.

2.22 :PRELIMINARY EXAMINATION

2.22.1 Kenyatta University 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 forfeited. If there is a discrepancy between words and figures the amount in words will prevail.

2.22.3 Kenyatta University may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 Kenyatta University 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. Kenyatta University 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 Kenyatta University 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 these 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 Kenyatta University will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22.

2.24.2 The tender evaluation committee shall evaluate the tender within (30) days of the validity period from the date of opening the tender.
2.24.3 A tenderer who gives false information in the tender document about its 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.

2.25 Preference

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

2.26 Contacting the Kenyatta University

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

2.26.2 Any effort by a tenderer to influence Kenyatta University in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer’s tender.

2.27 Award of Contract

(a) Post-qualification

2.27.1 In the absence of pre-qualification, Kenyatta University 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.

2.27.2 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 Kenyatta University deems necessary and appropriate.

2.27.3 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 Kenyatta University will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer’s capabilities to perform satisfactorily.

(b) Award Criteria

2.27.4 Kenyatta University 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 through post qualification, that the tenderer is determined to be qualified to perform the contract satisfactorily.

(c) Kenyatta University’s Right to Vary Quantities

2.27.5 Kenyatta University 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.

(d) Kenyatta University’s Right to Accept or Reject Any or All Tenders

2.27.6 Kenyatta University 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 Kenyatta University’s action

2.28 NOTIFICATION OF AWARD

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

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties.

2.28.3 Upon the successful Tenderer’s furnishing of the performance security pursuant to paragraph 2.28, Kenyatta University will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14.

2.29 SIGNING OF CONTRACT

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

2.29.2 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.

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to Kenyatta University.

2.30 PERFORMANCE SECURITY

2.30.1 Within Thirty (30) days of the receipt of notification of award from Kenyatta University, 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 University.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event Kenyatta University may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31 CORRUPT OR FRAUDULENT PRACTICES

2.31.1 Kenyatta University requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

(i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
(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 Kenyatta University, 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 University of the benefits of free and open competition;

2.31.2 Kenyatta University 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.

2.31.3 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.

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<td>2.1.1: Eligible Tenderers</td>
<td>Restricted to firms in the tendered field</td>
</tr>
<tr>
<td>2.14 Tender Security</td>
<td>N/A</td>
</tr>
<tr>
<td>2.16.4: Format and Signing of Tender</td>
<td>All Required documents must be arranged chronologically as listed in the evaluation criteria and clearly marked</td>
</tr>
<tr>
<td>2.18.1: Closing Date</td>
<td>Thursday 13\textsuperscript{th} February, 2020 at 10.00 a.m</td>
</tr>
<tr>
<td>2.24: Evaluation and Comparison of tenders</td>
<td>See below</td>
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### EVALUATION CRITERIA – SUPPLY AND DELIVERY OF ATOMIC FORCE MICROSCOPE

<table>
<thead>
<tr>
<th></th>
<th>MANDATORY REQUIREMENTS</th>
<th>POINTS</th>
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</thead>
<tbody>
<tr>
<td>A1</td>
<td>Valid copy of Tax Compliance Certificate</td>
<td>YES/NO</td>
</tr>
<tr>
<td>A2</td>
<td>Valid Business Permit/Trade License</td>
<td>YES/NO</td>
</tr>
<tr>
<td>A3</td>
<td>Valid Certificate of Incorporation/Business Registration</td>
<td>YES/NO</td>
</tr>
<tr>
<td>A4</td>
<td>Complete Mandatory Business Questionnaire attached</td>
<td>YES/NO</td>
</tr>
<tr>
<td>A5</td>
<td>Bid documents to be submitted in two copies clearly marked “Original” and “Copy”</td>
<td>YES/NO</td>
</tr>
<tr>
<td>A6</td>
<td>Complete Oaths and Statutory Declaration Form (signed and stumped)</td>
<td>YES/NO</td>
</tr>
<tr>
<td>A7</td>
<td>Attach a catalogue for the equipment</td>
<td>YES/NO</td>
</tr>
</tbody>
</table>

**NB:**

i. Any information provided by the bidder may be verified by the university.

ii. The University reserves the right to conduct due diligence if deemed necessary.

iii. Bidder **MUST** number all the pages of their tender documents.

iv. Kenyatta University will not take responsibility on any claims of missing pages if a bidder has not paginated their document.

v. The bidder may be requested to provide acceptable samples before the contract is signed.
## SECTION III: GENERAL CONDITIONS OF CONTRACT

### Table of Clauses

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<tr>
<th>Clause</th>
<th>Description</th>
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<tbody>
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<td>Application</td>
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<td>3.3</td>
<td>Country of Origin</td>
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<td>Standards</td>
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<td>Use of Contract documents and information</td>
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<td>Patent Rights</td>
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<td>3.7</td>
<td>Performance security</td>
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<td>3.8</td>
<td>Inspection and Tests</td>
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<td>3.11</td>
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<td>3.12</td>
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<tr>
<td>3.13</td>
<td>Price</td>
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<tr>
<td>3.14</td>
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<td>Sub contracts</td>
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</tr>
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<td>3.16</td>
<td>Termination for default</td>
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</tr>
<tr>
<td>3.17</td>
<td>Liquidated damages</td>
<td>21</td>
</tr>
<tr>
<td>3.18</td>
<td>Resolution of Disputes</td>
<td>21</td>
</tr>
<tr>
<td>3.19</td>
<td>Language and law</td>
<td>21</td>
</tr>
<tr>
<td>3.20</td>
<td>Force Majeure</td>
<td>21</td>
</tr>
</tbody>
</table>
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 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 Procuring Entity under the Contract.

(d) "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 Kenyatta University for the procurement installation and commissioning of equipment.

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.

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 tenderer shall not, without Kenyatta University 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 University 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 Kenyatta University'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 Kenyatta University and shall be returned (all copies) to The University on completion of the Tenderer’s performance under the Contract if so required by The University.
3.6 PATENT RIGHTS

3.6.1 The tenderer shall indemnify Kenyatta University 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 Kenya.

3.7 PERFORMANCE SECURITY

3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to Kenyatta University the performance security in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to Kenyatta University 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 Kenyatta University 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 The University, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by Kenyatta University 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 Kenyatta University or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. Kenyatta University 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 or its subcontractor(s), at point of delivery, and/or at the Goods’ final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to Kenyatta University.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, Kenyatta University 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 University.

3.8.4 Kenyatta University’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 equipment having previously been inspected, tested and passed by The University 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 of the Goods 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 Goods shall be made by the tenderer in accordance with the terms specified by Kenyatta University in its Schedule of Requirements and the Special Conditions of Contract.

3.11  :INSURANCE

3.11.1  The Goods 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 Kenyatta University as specified in the contract.

3.13  PRICES

3.13.1  Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

3.13.2  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 request shall be processed by Kenyatta University within (30) days of receiving the request.

3.14. ASSIGNMENT

3.14.1  The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with Kenyatta University’s prior written consent.

3.15  SUBCONTRACTS

3.15.1  The tenderer shall notify Kenyatta University 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 Kenyatta University may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part

(a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by Kenyatta University if the tenderer fails to perform any other obligation(s) under the Contract

(b) if the tenderer, in the judgment of Kenyatta University has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event Kenyatta University 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 University for any excess costs for such similar goods.

3.17 **LIQUIDATED DAMAGES**

3.17.1 If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, Kenyatta University 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.

3.18 **RESOLUTION OF DISPUTES**

3.18.1 Kenyatta University and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

3.19 **LANGUAGE AND LAW**

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

3.20 **FORCE MAJEURE**

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it’s delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
4. 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

<table>
<thead>
<tr>
<th>REFERENCE OF GCC</th>
<th>SPECIAL CONDITIONS OF CONTRACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.12.1: Payment</td>
<td>Within 30 days after receipt of invoice</td>
</tr>
<tr>
<td>3.18.1: Resolutions of Disputes</td>
<td>Arbitration to be considered before litigation</td>
</tr>
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## SECTION V: SCHEDULE OF REQUIREMENTS/PRICE SCHEDULE FOR SUPPLY AND DELIVERY OF LABORATORY EQUIPMENT- 2019-2020

<table>
<thead>
<tr>
<th>NO.</th>
<th>EQUIPMENT DESCRIPTION</th>
<th>QTY</th>
<th>UNIT PRICE (KSH)</th>
<th>TOTAL COST (KSH)</th>
<th>COUNTRY OF ORIGIN</th>
<th>BRAND</th>
<th>WARRANTY</th>
</tr>
</thead>
</table>
| 1   | AFM (Atomic Force Microscope) **SPECIFICATIONS**  
Probe Types- Industry Standard  
Laser/Detector Adjustment Range: +/- 1.5 mm  
Adjustment Resolution: 1 µm  
Minimum Probe to objective 25 mm  
Laser Type: 670 nm Diode, < 3mW | 1   |                  |                  |                  |       |          |
|     | **TOTAL**             |     |                  |                  |                  |       |          |

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VI: STANDARD FORMS

1. TENDER FORM
2. CONTRACT FORM
3. MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRES
4. OATHS AND STATUTORY DECLARATION FORM
1. FORM OF TENDER (FILL THE PRICE SCHEDULE)

To: Kenyatta University

Date:…………………………………

P.O. Box 43844 – 00100 GPO

NAIROBI

Tender No: KU/TNDR/G/055/SDAFM/2019-2020

Tender Name: Supply and delivery of Laboratory Equipment

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers) ……… the receipt of which is hereby duly acknowledged, we the undersigned, offer to Supply Goods under this tender in conformity with the said Tender document for the sum of Kshs:………………….[Total Tender amount in 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2. CONTRACT FORM

THIS AGREEMENT made the………………………….. Day of………………………………………
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 Kenyatta University invited tenders for supply of laboratory equipment and has accepted a
tender by the tenderer for the supply of goods in the sum of Ksh……………………………………………. [Contract price in words in figures] (Hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSTH 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 Details of cover
   (c) the General Conditions of Contract
   (d) the Special Conditions of Contract

3. In consideration of the payments to be made by Kenyatta University to the tenderer as hereinafter
mentioned, the tenderer hereby covenants with Kenyatta University to supply Goods and to remedy
defects therein in conformity in all respects with the provisions of the Contract.

4. Kenyatta University hereby covenants to pay the tenderer in consideration of the supply of 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 ……………………………. (Kenyatta University)

Signed, sealed, delivered by …………………………….. the ……………………………. (for the tenderer) in
the presence of ……………………………………………..
3. **MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE**
(Must be filled by all applicants who choose to participate in this Tender)

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c)
whichever applies to your type of business and part 3.

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

Name of Applicant(s)……………………………………………………………………………………………………………………………

**Part 1: General:**

1.1: Business Name
………………………………………………………………………………………………………………………………………………………

1.2: Certificate of Incorporation/Registration No: ………………………………………………………………………………………

1.3: Location of business premises
……………………………………………………………………………………………………………………………………………………

1.4: Plot No.
…………………………………………………………………………………………………………………………………………………………

1.5: Street/Road
…………………………………………………………………………………………………………………………………………………………

1.6: Postal Address
……………………………………………………………………………………………………………………………………………………

1.7: Office Tel. No.
…………………………………………………………………………………………………………………………………………………………

1.8: Mobile:
…………………………………………………………………………………………………………………………………………………………

1.9: Fax No:
…………………………………………………………………………………………………………………………………………………………

1.10: Email Address………………………………………………………………………………………………………………………………

1.11: Website…………………………………………………………………………………………………………………………………………

1.12: Nature of business :( Indicate whether Manufacturer, Distributor e.t.c)……………………………………

1.13: Contact Person (Full Names)…………………………………………………………………………………………………………

(a) Directors Name and Mobile Nos: …………………………………………………………………………………………………...
(b) If not Director, Title…………………………………………….. Power of Attorney (Yes/No) if yes, attach written document.

1.14: Maximum value of business which you can handle at any one time Kshs. …………………

1.15: Name of your bankers ………………………… Branch …………………………………………

**Part 2(a) – Sole Proprietor:**

2a.1: Your name in full ……………………………………………………… Age ………………….

2a.2: Nationality ………………….. Country of origin ………………Citizenship details………..

**Party 2(b) – Partnership**

2b.1: Give details of partners as follows

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<th>Name</th>
<th>Nationality</th>
<th>Citizenship Details</th>
<th>Shares</th>
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**Part 2(c) – Registered Company:**

2c.1: Private or public ……………………………………………………………………………………..

2c.2: State the nominal and issued capital of the company –

Nominal Kshs. ……………………………………………..

Issued Kshs……...……………………………………..

2c.3: Give details of all directors as follows

<table>
<thead>
<tr>
<th>Name</th>
<th>Nationality</th>
<th>Citizenship Details</th>
<th>Shares</th>
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</table>
If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

**Part 3 – Eligibility Status**

3.1 Are you related to an Employee who works in the Finance or Procurement Departments, or, is a member of the Tender Committee of Kenyatta University?
   Yes……………… No: …………………

3.2: If answer in ‘3.1’ is **YES** give the relationship: …………………………………………………

3.3: Does an Employee as in “3.1” above, sit in the Board of Directors or Management of your Organisation Subsidiaries or Joint Ventures?
   Yes……….. No…………

3.4: If answer in ‘3.3’ above is **YES** give details…………………………………………………………
………………………………………………………………………………………………………………...

3.5: Has your Organisation, Subsidiary Joint Venture or Sub-contractor been involved in the past directly or indirectly with a firm or any of its affiliates that have been engaged by Kenyatta University to provide consulting services for preparation of design, specifications and other documents to be used for procurement or the goods or services under this invitation? Yes…………….. No…………………

3.6: If answer in ‘3.5’ above is **YES** give details…………………………………………………………
………………………………………………………………………………………………………………...

3.7: Are you under a declaration of ineligibility for corrupt and fraudulent practices?
   Yes……………… No: …………………

3.8: If answer in ‘3.7’ above is **YES** give details…………………………………………………………
………………………………………………………………………………………………………………...

3.9: Have you offered or given anything of value to influence the procurement process?
   Yes……………… No: …………………

3.10: If answer in ‘3.9’ above is **YES** give details…………………………………………………………
………………………………………………………………………………………………………………...

I DECLARE that the information given on this form is correct to the best of my knowledge and belief.

Date: ………………………………. Signature of Candidate: ………………………………

If a Kenyan Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.
OATHS AND STATUTORY DECLARATION FORM

REPUBLIC OF KENYA

I………………………………………………. Of P.O Box…………………………………………………. Being a resident of…………………………………………….. in the Republic of Kenya do hereby make oath and state as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of……………… (name of the Candidate) which is a Candidate in respect of Tender Number…………………….. to supply goods, render services and/or carry out works for Kenyatta University and duly authorized and competent to make this Affidavit.

2. THAT the aforesaid Candidate has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of Kenyatta University, which is the procuring entity.

3. THAT the aforesaid Candidate, its servants and/or agents have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of Kenyatta University.

4. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

SWORN at……………………………… by the said}

…………………………………………………………….}

Name of chief Executive/Managing Director/}

Principal Officer/Director

On this…………………. day of …………. 20…..}
Before me

Commissioner for Oaths