**{PROCURING AND DISPOSING ENTITY CREST OR LOGO}**

**{NAME OF PROCURING AND DISPOSING ENTITY}**

BIDDING DOCUMENT FOR

**FRAMEWORK AGREEMENTS FOR**

**GOODS, SERVICES AND WORKS**

|  |  |
| --- | --- |
| Subject of Procurement: |  |
| Procurement Reference Number: |  |
| Procurement Method: |  |
| Date of Issue: |  |

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| SECTION 1. INSTRUCTIONS TO BIDDERS | | | | | | | | | | | | | |
| A GENERAL | | | | | | | | | | | | | |
| 1. SCOPE OF BID | | | |  | | | | | | | | | |
| 1.1 The Procuring and Disposing Entity indicated in the Bid Data Sheet (BDS), invites bids for the supply of goods, services or construction of works under Framework Agreement and as specified in Section 7, Statement of Requirements.  1.2 The Instructions to Bidders shall be read in conjunction with the BDS. The subject and procurement reference number, and number of lots of this Bidding Document are provided in the BDS. | | | | | | | | | | | | | |
| 2. SOURCE OF FUNDS |  | | | | | | | | | | | | |
| 2.1 The Procuring and Disposing Entity indicated in the BDS has an approved budget from public funds towards the cost of the procurement named in the BDS. The Procuring and Disposing Entity intends to use these funds for a Framework Agreement for which these Bidding Documents are issued. | | | | | | | | | | | | | |
| 2.2 The Procuring and Disposing Entity shall make payments to the supplier for each call-off order which will be subject in all respects, to the terms and conditions of the resulting agreement executed with the Procuring and Disposing Entity. | | | | | | | | | | | | | |
| 3. CORRUPTION AND FRAUD | | | | | | | | | | | | | |
| the Malawi Government requires that all Bidders comply with the legal framework on corrupt and fraudulent practices as outlined in Anti-Corruption legal framework; andin line with the existing anti-corruption legal framework and policy in Malawi, regulations and policy, and as provided in this clause, a Bidder, including its agents, sub-contractors, sub-consultants, service providers, suppliers, and personnel are subject to the signed Anti-Corruption Declaration in the bidding documents as part of the qualification criteria. | | | | | | | | | | | | | |
| 4. ELIGIBLE BIDDERS | |  | | | | | | | | | | | |
| 1. A Bidder may be a natural person, private entity, government-owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association all parties shall be jointly and severally liable. 2. A bidder wishing to be considered for preferences and other reservation schemes like the micro, small and medium-sized enterprise preferences, shall comply with the Public Procurement and Disposal of Public Assets (Participation by Micro Small and Medium Enterprises) Order 2020 (MSME Order).   4.3 A bidder found to be in conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process, if the bidder and parties are 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 Government of Malawi to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this Invitation for Bids.  4.4 A Bidder that has been debarred from participating in public procurement in accordance with Section 79 of the Act, at the date of the deadline for bid submission or thereafter, shall be ineligible.  4.5 Government-owned enterprises shall be eligible if they can establish that they are legally and financially autonomous and are not a dependent agency, directly or indirectly, of the Procuring and Disposing Entity or the Government of Malawi.  4.6 A Bidder shall provide evidence of their eligibility satisfactory to the Procuring and Disposing Entity, to verify that the Bidder—   * 1. has the legal capacity to enter into an Agreement and is registered with appropriate professional regulatory institution as required by existing legislation;   2. is not insolvent, in receivership, bankrupt or being wound up, not have had their business activities suspended and not be the subject of legal proceedings for any of the foregoing; and   3. has fulfilled their tax obligations in accordance with the relevant tax laws.   4.7 To demonstrate compliance with the criteria in sub-clause 4.6, a Bidder shall submit with its Bid—   1. a certified copy of its business registration certificate; 2. professional registration certificates where applicable based on the business the bidder does; 3. a declaration that the Bidder is not debarred; 4. tax registration certificates for the Bidders issued by the Malawi Revenue Authority; 5. tax clearance certificate for Bidders that have operated a business for a minimum of two years; and 6. such other documentary evidence as may be specified in the BDS. | | | | | | | | | | | | | |
| 5. ELIGIBLE GOODS, WORKS AND SERVICES | | |  | | | | | | | | | | |
| 5.1 All Goods, Works and Services to be supplied under the Agreement shall have as their country of origin an eligible country in accordance with Section 5, Eligible Countries. | | | | | | | | | | | | | |
| 5.2 The term “country of origin” means the country where goods have been mined, grown, cultivated, produced, manufactured, or processed, or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components. | | | | | | | | | | | | | |
| 5.3 The nationality of the provider that produces, assembles, distributes, or sells the goods shall not determine their origin. | | | | | | | | | | | | | |
| 5.4 If required in the BDS, a Bidder shall demonstrate that it has been duly authorised by the manufacturer of the goods to supply, in the Republic of Malawi, the goods indicated in its bid. | | | | | | | | | | | | | |
| B. BIDDING DOCUMENTS | | | | | | | | | | | | | |
| 6. SECTIONS OF BIDDING DOCUMENT | | | | | | | | | | | | | |
| 6.1 The Bidding Document consists of Parts 1, 2, and 3, which include all the Sections indicated below, which shall be read in conjunction with any addenda issued in accordance with clause 8. | | | | | | | | | | | | | |
| **PART 1 BIDDING PROCEDURES**   1. Section 1. Instructions to Bidders (ITB) 2. Section 2. Bid Data Sheet (BDS) 3. Section 3. Evaluation and Qualification Criteria (EQC) 4. Section 4. Bidding Forms 5. Section 5. Eligible Countries 6. Section 6. Fraud and Corruption   **PART 2 STATEMENT OF REQUIREMENTS**  Section 7. Statement of Requirements  **PART 3 AGREEMENT**   1. Section 8. Terms of Agreement (TA) 2. Section 9. Special Terms of Agreement (STA) 3. Section 10. Agreement Forms | | | | | | | | | | | | | |
| 6.2 The Invitation to Bid or any Pre-Qualification Notice is not part of the Bidding Document.  6.3 The Procuring Entity is not responsible for the completeness of the Bidding Documents and their addenda if they were not obtained directly from the Procuring Entity. A Bidder who did not obtain the Bidding Document directly from the Procuring and Disposing Entity shall be rejected during evaluation. Where a Bidding Document is obtained from the Procuring and Disposing Entity on a Bidder’s behalf, the Bidder’s name must be registered with the Procuring and Disposing Entity at the time of sale and issue.  6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document.  6.5. Failure to furnish all information or documentation required by the Bidding Document, may result in the rejection of the bid. | | | | | | | | | | | | | |
| 7. CLARIFICATION OF BIDDING DOCUMENT | | | | |  | | | | | | | | |
| 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Procuring and Disposing Entity in writing at the Procuring and Disposing Entity’s address indicated in the BDS.  7.2. The Procuring and Disposing Entity will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Bids indicated in the BDS.  7.3. The Procuring and Disposing Entity shall forward copies of its response to all Bidders who have acquired the Bidding Document directly from it, including a description of the inquiry but without identifying its source.    7.4 Where a Procuring and Disposing Entity determines that it is necessary to amend the Bidding Document as a result of a clarification given under this paragraph, it shall amend the Bidding Document following the procedure under clause 8 and sub-clause 24.2. | | | | | | | | | | | | | |
| 8. AMENDMENT OF BIDDING DOCUMENT | | | | | | | | | | | | | |
| 8.1 At any time prior to the deadline for submission of Bids, the Procuring and Disposing Entity may amend the Bidding Document by issuing an addendum.  8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all Bidders who obtained the Bidding Document directly from the Procuring and Disposing Entity.  8.3 To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring and Disposing Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to clause 24.2. | | | | | | | | | | | | | |
| C. PREPARATION OF BIDS | | | | | | | | | | | | | |
| 9. COST OF BIDDING | |  | | | | | | | | | | | |
| A Bidder shall bear all costs associated with the preparation and submission of its bid, and the Procuring and Disposing Entity shall not be responsible or liable for costs, regardless of the conduct or outcome of the bidding process. | | | | | | | | | | | | | |
| 10. LANGUAGE OF BID AND COMMUNICATIONS | | | | | | | | | | | |  | |
| 10.1 All communication in the bidding process shall be in English and in writing unless otherwise specified in the BDS.  10.2 The Bid including correspondence and documents relating to the bid exchanged by the Bidder and the Procuring and Disposing Entity, shall be written in English unless otherwise specified in the BDS.  10.3 Supporting documents and printed literature which are part of the bid may be in another language provided that the documents are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the bid, such translation shall govern. | | | | | | | | | | | | | |
| 11. DOCUMENTS COMPRISING THE BID | | | | | | | | | | | | | |
| The bid shall comprise the following—   1. the Bid Submission Sheet and the applicable Price Schedules, in accordance with clauses 12, 14, and 15; 2. a Bid Security, in accordance with clause 21 (a) or; a Bid Securing Declaration, in accordance with clause 21 (b); 3. written confirmation authorising the signatory of the bid to commit the Bidder, in accordance with sub clause 22.2; 4. documentary evidence in accordance with clause 16 establishing the Bidder’s eligibility to bid; 5. documentary evidence in accordance with clause 17 establishing that the Goods or Services to be supplied by the Bidder are of eligible origin; 6. documentary evidence in accordance with clauses 18 and 30, that the Goods or Services conform to the Bidding Documents; 7. documentary evidence in accordance with clause 19 establishing the Bidder’s qualifications to perform the agreement if its bid is accepted; and 8. any other document(s) required in the BDS. | | | | | | | | | | | | | |
| 12. BID SUBMISSION SHEET AND PRICE SCHEDULES | | | | | |  | | | | | | | |
| 12.1 A Bidder shall submit the Bid Submission Sheet using the form in Section 4, Bidding Forms. The form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested, as follows—   1. the reference of the Bidding Document and the number of each addendum received; 2. a brief description of the Goods, Works and Services offered; 3. the total bid price, based on the estimated quantities specified in Section 7, Statement of Requirements; 4. any discounts offered and the methodology for their application; 5. the period of validity of the bid; 6. a commitment to submit any Performance Security required and the amount; 7. a declaration of nationality of the Bidder; 8. a declaration that the Bidder, including all parties comprising the Bidder, is not participating, as a Bidder, in more than one bid in this bidding process; 9. except for alternative bids in accordance with clause 13; 10. confirmation that the Bidder has not been suspended by the Authority; 11. the names and addresses of the Directors and Beneficial owners of the Bidder; 12. a declaration on gratuities and commissions; and 13. an authorised signature of the Bidder. | | | | | | | | | | | | | |
| 12.2 The Bidder shall submit the Price Schedule for Goods, Works, and Services, using the format provided in Section 4, Bidding Forms. The Price Schedule shall include— | | | | | | | | | | | | | |
| (a) the item number;  (b) a brief description of the Goods or Services to be supplied;  (c) their country of origin and percentage of Malawi content; | | | | | | | | | | | | | |
| (d) the quantity, which shall be the estimated quantity specified in Section 7, Statement of Requirements;  (e) the unit prices;  (f) customs duties and all taxes paid or payable in Malawi; | | | | | | | | | | | | | |
| (g) the total price per item;  (h) subtotals and totals per Price Schedule; and  (i) an authorised signature. | | | | | | | | | | | | | |
| 13. ALTERNATIVE BIDS | |  | | | | | | | | | | | |
| * + - 1. 13.1 Alternative bids shall not be considered unless otherwise indicated in the BDS.       2. 13.2 Where permitted, alternative bids may not conform precisely to the Statement of Requirements, but shall at least—       3. *(a)* meet the objectives and performance requirements prescribed in the Statement of Requirements;       4. *(b)* be substantially within any delivery or completion schedule, budget or other performance parameters stated in the solicitation document; and       5. *(c)* clearly state the benefits of the alternative bid over any solution which conforms precisely to the Statement of Requirements, in terms of technical performance, price, operating costs or any other benefit.       6. 13.3 A bidder may submit both a main Bid which conforms precisely to the Statement of Requirements and an alternative Bid.       7. 13.4 Where a Bidder submits more than one Bid, each Bid shall be submitted as a complete separate Bid and shall conform to the instructions for preparation and submission of Bids, without any reliance on any other Bid. Each Bid shall be separately signed, authorized, sealed, labeled and submitted in accordance with the instructions for submission of Bids and shall be accompanied by a separate Bid Security or Bid Securing Declaration, if so required. Such Bids shall be labeled “Main Bid” and “Alternative Bid”.       8. 13.5 The evaluation of alternative Bids shall use the same methodology, criteria and weights as the evaluation of main Bids, except that the detailed technical evaluation shall take into account only the objectives and/or performance requirements prescribed in the Statement of Requirements. | | | | | | | | | | | | | |
| 14. BID PRICES AND DISCOUNTS | |  | | | | | | | | | | | |
| 14.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet and in the Price Schedules shall conform to the requirements specified in clauses 14.2 to14.6 below.  14.2 All items in the Statement of Requirements shall be listed and priced separately in the Price Schedules. Items not listed in the Price Schedule shall be assumed to be not included in the bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with sub-clause 31.3. | | | | | | | | | | | | | |
| 14.3 The price to be quoted in the Bid Submission Sheet, in accordance with clause 12.1(c), shall be the total price of the Bid, based on the estimated quantities specified, excluding any discounts offered. | | | | | | | | | | | | | |
| 14.4 The Bidder shall quote any unconditional and conditional discounts and the methodology for their application in the Bid Submission Sheet, in accordance with clause 12.1(d) and clause 14.8 respectively. | | | | | | | | | | | | | |
| 14.5 The terms Ex Works (EXW), Cost Insurance Freight (CIF), Carriage and Insurance Paid (CIP), and other similar terms shall be governed by the edition of Incoterms, published by the International Chamber of Commerce, as specified in the BDS. | | | | | | | | | | | | | |
| 14.6 Prices quoted on the Price Schedule for Goods or Services, shall be disaggregated, when appropriate, as indicated in this sub-clause. This disaggregation shall be solely for the purpose of facilitating the comparison of bids by the Procuring and Disposing Entity. The disaggregation shall not in any way, limit the Procuring and Disposing Entity’s right to agreement on any of the terms offered—   * + 1. for Goods—  *(i)* the price of the Goods, quoted CIP or other Incoterm as specified in the BDS;*(ii)* all custom duties, sales tax, and other taxes applicable in Malawi, paid or payable, on the Goods or on the components and raw materials used in their manufacture or assembly, if the Agreement is awarded to the Bidder; and*(iii)* the total price for the item.  * + 1. for Services—  *(i)* the price of the related services;*(ii)* all custom duties, sales tax, and other taxes applicable in Malawi, paid or payable, on the Services, if the Agreement is awarded to the Bidder; and*(iii)* the total price for the item. | | | | | | | | | | | | | |
| 14.7 Prices quoted by the Bidder shall be fixed during the Bidder’s performance of the Agreement and shall not be subject to variation on any account, unless otherwise specified in the BDS.  14.8 A Bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to clause 30.  14.9 If, in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Agreement, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero. | | | | | | | | | | | | | |
| 15. CURRENCIES OF BID   The bid price shall be quoted in Malawi Kwacha unless otherwise specified in the Bid Data Sheet. | | | | | | | | | | | | |  |
| 16. DOCUMENTS ESTABLISHING THE ELIGIBILITY OF A BIDDER | | | | | | | | | | | | | | |
| To establish eligibility in accordance with clause 4, a Bidder shall complete the eligibility declarations in the Bid Submission Sheet, included in Section 4, Bidding Forms, and submit the documents required in Section 3, Evaluation Methodology and Criteria. | | | | | | | | | | | | | |
| 17. DOCUMENTS ESTABLISHING THE ELIGIBILITY OF GOODS AND SERVICES | | | | | | | | | | | | | |
| To establish the eligibility of Goods, Works and Services, in accordance with clause 5, Bidders shall complete the country-of-origin declarations in the Price Schedule included in Section 4, Bidding Forms. | | | | | | | | | | | | | |
| 18. DOCUMENTS ESTABLISHING CONFORMITY OF GOODS, WORKS AND SERVICES TO THE BIDDING DOCUMENTS | | | | | | | | | | | | | |
| 18.1 To establish the conformity of Goods, Works and Services to the Bidding Documents, the Bidder shall provide as part of its Bid, documentary evidence specified in Section 7, Statement of Requirements.  18.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed description of the essential technical and performance characteristics of the Goods, Works and Services, demonstrating substantial responsiveness of the Goods, Works and Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of the Statement of Requirements. | | | | | | | | | | | | | |
| 18.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring and Disposing Entity in the Statement of Requirement, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring and Disposing Entity’s satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Statement of Requirement. | | | | | | | | | | | | | |
| 19. DOCUMENTS ESTABLISHING THE QUALIFICATIONS OF A BIDDER | | | | | | | |  | | | | | |
| To establish its qualifications to perform the Agreement, the Bidder shall submit evidence indicated for each qualification criteria specified in Section 3, Evaluation Methodology and Criteria. | | | | | | | | | | | | | |
| 20. PERIOD OF VALIDITY OF BIDS | |  | | | | | | | | | | | |
| 20.1 Bids shall remain valid for the period specified in the BDS after the date of the bid submission deadline prescribed by the Procuring and Disposing Entity. The Procuring and Disposing Entity shall reject a Bid valid for a shorter period as non-responsive. | | | | | | | | | | | | | |
| 20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring and Disposing Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing.  20.3. If a Bid Security or Bid Securing Declaration is requested in accordance with clause 21(a) or (b), it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. Similarly, a Bidder who submitted a Bid Securing Declaration may refuse the request without being penalized. A Bidder accepting the request shall not be required or permitted to modify its bid. | | | | | | | | | | | | | |
| 21. BID SECURITY AND BID SECURING DECLARATION **(A) BID SECURITY**  21.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its Bid, a Bid Security in original form and in the amount and currency specified in the BDS. | | | | | | | | | | | | | |
| 21.2 The Bid Security shall be, at the Bidder’s option, in any of the following forms—  *(a)* a demand guarantee;  *(b)* an irrevocable letter of credit;  *(c)* a cashier’s or certified check; or  *(d)* any other security indicated in the BDS,  from a reputable source from an eligible country. The Bid Security shall be submitted either using the Bid Security Form included in Section 4, Bidding Forms, or in another substantially similar format. In either case, the form shall include the complete name of the Bidder.  21.3 The Bid Security shall be valid for twenty-eight days after the end of the validity period of the bid. This shall also apply if the period for bid validity is extended. | | | | | | | | | | | | | |
| 21.4 The Procuring and Disposing Entity shall reject, as non-compliant, any bid that is not accompanied by a substantially responsive Bid Security, if a Bid Security is required in accordance with clause 21.1. | | | | | | | | | | | | | |
| 21.5 Bid Securities for both successful and unsuccessful Bidders shall be returned as promptly as possible once the successful Bidder has signed the Agreement and furnished any required Performance Security. | | | | | | | | | | | | | |
| 21.6 The Bid Security may be forfeited— | | | | | | | | | | | | | |
| *(a)* if a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in sub-clause 20.2; or  *(b)* if the successful Bidder fails to— *(i)* sign the Agreement in accordance with clause 46;*(ii)* furnish any Performance Security in accordance with clause 45; or*(iii)* accept the correction of its bid price pursuant to sub-clause 31.5.(B) **BID SECURING DECLARATION**21.7 Unless otherwise specified in the BDS, a Bidder shall furnish as part of its Bid, a Bid Securing Declaration in original form and in the manner specified in the BDS. 21.8 The Bid Securing Declaration is an alternative to the Bid Security. 21.9 The Bid Securing Declaration shall be submitted using the Form included in Section 4 of the Bidding Document.21.10 The Bid Securing Declaration shall be valid for twenty-eight days after the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.21.11 A Bid shall be rejected as non-compliant if the bid is not accompanied by a substantially responsive Bid Securing Declaration, if one is required in accordance with clause 21.1.21.12 The punitive measures of the Bid Securing Declaration shall be applied if thesuccessful bidder—*(i)* withdraws its bid before opening deadline;*(ii)* fails to sign the Agreement in accordance with clause 43; or*(iii)* fails to accept the correction of its bid price pursuant to sub-clause 31.5. | | | | | | | | | | | | | |
| 22. FORMAT AND SIGNING OF BID | |  | | | | | | | | | | | |
| 22.1 A Bidder shall prepare one original of the documents comprising the bid as per ITB Clause 11 and clearly mark it “ORIGINAL.” In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark each of them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail. | | | | | | | | | | | | | |
| 22.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization shall be typed or printed below the signature. All pages of the bid, except for un-amended printed literature, shall be signed or initialed by the person signing the Bid. | | | | | | | | | | | | | |
| 22.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid. | | | | | | | | | | | | | |
| D SUBMISSION AND OPENING OF BIDS | | | | | | | | | | | | | |
| 23 SEALING AND MARKING OF BIDS | | | | | | | | | | | | | |
| 23.1 A Bidder shall enclose the original and each copy of the bid, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes containing the original and the copies shall then be enclosed in one single plain envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected. | | | | | | | | | | | | | |
| 23.2 The inner and outer envelopes shall—  (a) bear the name and address of the Bidder;  (b) be addressed to the Procuring and Disposing Entity in accordance with clause 24.1; | | | | | | | | | | | | | |
| (c) bear the Procurement Reference number of this bidding process; and  (d) bear a warning not to open before the time and date for bid opening, in accordance with clause 27.1. | | | | | | | | | | | | | |
| 23.3 If all envelopes are not sealed and marked as required, the Procuring and Disposing Entity will assume no responsibility for the misplacement or premature opening of a bid. | | | | | | | | | | | | | |
| 24 DEADLINE FOR SUBMISSION OF BIDS | | | | | | | | | | | | | |
| 24.1 Bids must be received by the Procuring and Disposing Entity at the address and no later than the date and time indicated in the BDS.  24.2 The Procuring and Disposing Entity may, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with clause 8, in which case all rights and obligations of the Procuring and Disposing Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. | | | | | | | | | | | | | |
| 25 LATE BIDS | |  | | | | | | | | | | | |
| 25.1 The Procuring and Disposing Entity shall not consider any bid that is submitted after the deadline for submission of bids, in accordance with clause 24.  25.2 A bid received by the Procuring and Disposing Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder. | | | | | | | | | | | | | |
| 26. MODIFICATION, SUBSTITUTION AND WITHDRAWAL OF BIDS | | | | | | | |  | | | | | |
| 26.1 A Bidder may modify, substitute, or withdraw its bid after it has been submitted at any time before the deadline for submission of bids by sending a written notice, duly signed by an authorized representative, which shall include a copy of the authorization in accordance with clause 22.2. Any corresponding replacement of the bid shall accompany the respective written notice. All notices shall be—   * 1. submitted in accordance with clauses 22 and 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “MODIFICATION”, “SUBSTITUTION” OR “Withdrawal,”; and   2. received by the Procuring and Disposing Entity prior to the deadline prescribed for submission of bids, in accordance with clause 24. | | | | | | | | | | | | | |
| 26.2 Bids requested to be withdrawn in accordance with sub-clause 26.1 shall be returned unopened to the Bidders. | | | | | | | | | | | | | |
| 26.3 No bid may be modified, substituted, or withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.     * + - 1. 26.4 Bids may only be modified by withdrawal of the original bid and submission of a replacement bid in accordance with sub-clause 26.1. Modifications submitted in any other way shall not be considered in the evaluation of bids. | | | | | | | | | | | | | |
| 27. BID OPENING | |  | | | | | | | | | | | |
| 27.1 The Procuring and Disposing Entity shall conduct the bid opening in the presence of Bidders` designated representatives who choose to attend the bid opening, at the address, date and time specified in the BDS. | | | | | | | | | | | | | |
| 27.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened but returned to the Bidder.    27.3 No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at the bid opening.    27.4. All other envelopes including those marked “REPLACEMENT” shall be opened  and the relevant details read out. Replacement bids shall be recorded as such on the record of the bid opening. Only envelopes that are opened and read out at the bid opening shall be considered further.  27.5. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further. | | | | | | | | | | | | | |
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| 27.6 The Procuring and Disposing Entity shall prepare a record of the Bid opening that shall include, as a minimum—   1. the name of the Bidder and whether there is a modification, substitution, or withdrawal; 2. the Bid Price, per lot if applicable, including any discounts; and 3. the presence or absence of a Bid Security or Bid Securing Declaration, if one was required.   27.7 The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall immediately after opening, be distributed to Bidders upon request or published on the website of the Procuring and Disposing Entity within one working day from the date of the bid opening. | | | | | | | | | | | | | |
| E. EVALUATION OF BIDS | | | | | | | | | | | | | |
| 28. CONFIDENTIALITY | |  | | | | | | | | | | | |
| 28.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids, and recommendation of agreement award, shall not be disclosed to a bidder or any other person not officially concerned with such process until information on Agreement award is communicated to all Bidders. | | | | | | | | | | | | | |
| 28.2 Any effort by a Bidder to influence the Procuring and Disposing Entity in the examination, evaluation, comparison, and post-qualification of the bids or agreement award decisions shall result in the rejection of its Bid. | | | | | | | | | | | | | |
| 28.3 Notwithstanding clause 28.2, from the time of bid opening to the time of Agreement award, if any Bidder wishes to contact the Procuring and Disposing Entity on any matter related to the bidding process, it should do so in writing. | | | | | | | | | | | | | |
| 29. CLARIFICATION OF BIDS | |  | | | | | | | | | | | |
| 29.1 To assist in the examination, evaluation, comparison and post-qualification of the bids, the Procuring and Disposing Entity may, ask any Bidder for a clarification of its Bid.  29.2 Any clarification submitted by a Bidder that is not in response to a request by the Procuring and Disposing Entity shall not be considered. The Procuring and Disposing Entity’s request for clarification and the response shall be in writing.    29.3 No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring and Disposing Entity in the evaluation of the Bids, in accordance with clause 31.4. | | | | | | | | | | | | | |
| 30. COMPLIANCE AND RESPONSIVENESS OF BIDS | | | | | | | | | | | | | |
| 30.1 The Procuring and Disposing Entity’s determination of a Bid’s compliance and responsiveness shall be based on the contents of the Bid. | | | | | | | | | | | | | |
| 30.2 A substantially compliant and responsive bid shall be one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that—  *(a)* affects in any substantial way, the scope, quality, or performance of the Goods, Works and Services specified in the Agreement; | | | | | | | | | | | | | |
| *(b)* limits in any substantial way, inconsistent with the Bidding Document, the Procuring and Disposing Entity’s rights or the Bidder’s obligations under the Agreement; or  *(c)* if rectified, would unfairly affect the competitive position of other Bidders presenting substantially compliant and responsive bids. | | | | | | | | | | | | | |
| 30.3 If a Bid is not substantially compliant and responsive to the Bidding Document, it shall be rejected by the Procuring and Disposing Entity and may not subsequently be made compliant and responsive by the Bidder by correction of the material deviation, reservation, or omission. | | | | | | | | | | | | | |
| 31. NONCONFORMITIES, ERRORS, AND OMISSIONS | | | | | | |  | | | | | | |
| 31.1 Where a Bid is substantially compliant and responsive, the Procuring and Disposing Entity may waive any non-conformity or omissions in the bid that does not constitute a material deviation. | | | | | | | | | | | | | |
| 31.2 Where a Bid is substantially compliant and responsive, the Procuring and Disposing Entity may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. | | | | | | | | | | | | | |
| 31.3 Where a Bid is substantially compliant and responsive, the Procuring and Disposing Entity shall rectify nonmaterial nonconformities or omissions. After the rectification, the Bid Brice shall be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component. The cost of any missing items will be added to the bid price using the highest price from other Bids submitted. | | | | | | | | | | | | | |
| 31.4 Where a bid is substantially compliant and responsive, the Procuring and Disposing Entity shall correct arithmetic errors on the following basis—  *(a)* if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring and Disposing Entity, there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected; | | | | | | | | | | | | | |
| *(b)* if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and  *(c)* if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. | | | | | | | | | | | | | |
| 31.5 Where the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be rejected and its Bid Security may be forfeited. In the same manner, if the lowest evaluated Bidder submitted a Bid Securing Declaration to secure its bid, the Authority may suspend it. | | | | | | | | | | | | | |
| 32. PRELIMINARY EVALUATION | | | | | | | | | | | | | |
| * + - 1. 32.1 The Procuring and Disposing Entity shall examine all legal documents and other information submitted by Bidders to verify the eligibility of Bidders and Goods, Works and Services in accordance with clauses 4 and 5.       2. 32.2 If after the examination of eligibility, the Procuring and Disposing Entity determines that the Bidder’s Goods, Works and Services are not eligible, the Procuring and Disposing Entity shall reject the bid.   32.3 The Procuring and Disposing Entity shall examine the bids to confirm that all documents and technical documentation requested in clause 11 have been provided, and to determine the completeness of each document submitted. | | | | | | | | | | | | | |
| 32.4 The Procuring and Disposing Entity shall confirm that the documents listed in this clause and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.  *(a)* the Bid Submission Sheet, including— *(i)* a brief description of the Goods, Works and Services offered;*(ii)* the price of the Bid; and*(iii)* the period of validity of the Bid; *(b)* the Price Schedule; | | | | | | | | | | | | | |
| *(c)* written confirmation of authorisation to commit the Bidder; and  *(d)* a Bid Security or a Bid Securing Declaration, if applicable | | | | | | | | | | | | | |
| 33. DETAILED TECHNICAL EVALUATION | | | | | | | | | |  | | | |
| 33.1 The Procuring and Disposing Entity shall examine a Bid to confirm that a Bidder, without any material deviation or reservation, has accepted all terms and conditions specified in the Terms of Agreement and the Special Terms of Agreement.  33.2 If, after the examination of the terms and conditions, the Procuring and Disposing Entity determines that the Bid is not substantially responsive in accordance with clause 30, the Procuring and Disposing Entity shall reject the Bid.  33.3 The Procuring and Disposing Entity shall evaluate the technical aspects of the bid submitted in accordance with clause 18, to confirm that all requirements specified in Section 7, Statement of Requirements of the Bidding Document, have been complied with, without any material deviation or reservation.  33.4 If, after the technical evaluation, the Procuring and Disposing Entity determines that the Bid is not substantially responsive in accordance with clause 30, it shall reject the Bid. | | | | | | | | | | | | | |
| 34 CONVERSION TO SINGLE CURRENCY | | | | | | | | |  | | | | |
| For evaluation and comparison purposes, the Procuring and Disposing Entity shall convert all bid prices expressed in various currencies into a single currency, using the selling exchange rate established by the source and on the date specified in the BDS. | | | | | | | | | | | | | |
| * + - 1. **35. PREFERENCES AND RESERVATION SCHEMES** | | | | | | | | | | | | | |
| * + - 1. 35.1 A Procuring and Disposing Entity may apply a preference if specified in the BDS.       2. 35.2 Where a preference applies, the details to be applied shall be provided in Section 3 Evaluation Methodology and Criteria.       3. 35.3 The Procuring and Disposing Entity shall apply the preference for micro, small and medium enterprises, and marginalised groups in accordance with the MSME Order. If specified in the BDS, Bid Evaluation shall be in accordance with the procedures and criteria specified in Section 3, Evaluation and Qualification criteria.       4. 35.4 The Procuring and Disposing Entity shall set aside certain procurement requirements for micro, small and medium enterprises, and marginalised groups by restricting bidding to those enterprises in accordance with the MSME Order.   1. The Procuring and Disposing Entity shall indicate in the BDS, all procurements that have been set aside for micro, small and medium enterprises.   2. If the procurement is not contained in the Schedule under the MSME Order, the Procuring and Disposing Entity may reserve some portions of procurement for award to MSMEs and marginalized groups. Such reservations shall be specified in the BDS.   3. A Bidder shall be eligible to participate in the bidding process as a Bidder qualified under the MSME Order only if the bidder furnishes the Procuring and Disposing Entity or the Authority, as the case may be, evidence proving eligibility in accordance with relevant Regulations or the MSME Order. | | | | | | | | | | | | | |
| 36. FINANCIAL EVALUATION | | | | | | | | |  | | | | |
| * + - 1. 36.1 The Procuring and Disposing Entity shall financially evaluate each Bid that has been determined, up to this stage of the evaluation, to be substantially compliant and responsive. | | | | | | | | | | | | | |
| 36.2 To financially evaluate a Bid, the Procuring and Disposing Entity shall only use the criteria and methodologies defined in this Clause and in Section 3, Evaluation Methodology and Criteria. No other criteria or methodology shall be permitted. | | | | | | | | | | | | | |
| * + - 1. 36.3 The Procuring and Disposing Entity’s financial comparison of bids may require the consideration of factors other than costs, in addition to the bid price quoted in accordance with clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods, Works and Services. The factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in Section 3, Evaluation Methodology and Criteria. The factors to be used and the methodology of application shall be indicated of Section 3, Evaluation Methodology and Criteria. | | | | | | | | | | | | | |
| * + - 1. 36.4 To financially compare bids, the Procuring and Disposing Entity shall—   *(a)* determine the bid price, taking into account the costs listed in Section 3, Evaluation Methodology and Criteria;  *(b)* correct any arithmetic errors in accordance with sub-clause 31.4;  *(c)* apply any unconditional discounts offered in accordance with sub-clause 12.1(d); | | | | | | | | | | | | | |
| *(d)* make adjustments for any nonmaterial nonconformities and omissions in accordance with sub-clause 31.3;  *(e)* apply any non-cost factors in accordance with ITB sub-clause 36.3;  *(f)* convert all bids to a single currency in accordance with clause 34;  *(g)* apply any margin of preference in accordance with clause 35; and  *(h)* determine the total evaluated price of each bid. 37. ENVIRONMENTAL AND SOCIO-ECONOMIC POLICIES  1. Bidders shall be evaluated taking into account compliance with Environmental protection, policies, laws and regulations applicable in Malawi for sustainable development. 2. The Procuring and Disposing Entity may specify in its evaluation criteria, a method to determine or assess how Bidders promote general as well as specific policies and programmes for sustainability and environmental protection. 3. A Bidder shall be evaluated taking into account compliance with Child Labour, child protection policies, laws and regulations applicable in Malawi. 4. The Procuring and Disposing Entity may specify in its evaluation criteria, a method to determine or assess how Bidders should show compliance with Child Labour and Unfair Labour Practices general laws and regulations as well as specific policies and programmes for protection of children from any form of child labour and adherence to applicable fair labour practices. | | | | | | | | | | | | | |
| 38. DETERMINATION OF LOWEST EVALUATED BID | | | | | | | | | | | | | |
| * + - 1. 38.1 The Procuring and Disposing Entity shall compare all substantially compliant and responsive bids to determine the lowest evaluated bid or bids – where multiple awards have been provided for, in accordance with Section 3, Evaluation and Qualification Criteria. | | | | | | | | | | | | | |
| 39. POST-QUALIFICATION OF THE BIDDER | | | | | | | | | | | | | |
| 39.1 The Procuring and Disposing Entity shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated bid is qualified to perform the Agreement satisfactorily. | | | | | | | | | | | | | |
| 39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to clause 19, to clarifications in accordance with clause 29 and the qualification criteria indicated in Section 3, Evaluation Methodology and Criteria. Factors not included in Section 3 shall not be used in the evaluation of the Bidder’s qualification. | | | | | | | | | | | | | |
| 39.3 An affirmative determination shall be a prerequisite for award of the Agreement to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Procuring and Disposing Entity shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder’s capabilities to perform satisfactorily. | | | | | | | | | | | | | |
| * + - 1. 39.4 If pre-qualification has been conducted, no post-qualification will be conducted but pre-qualification information shall be verified. | | | | | | | | | | | | | |
| 40. PROCURING AND DISPOSING ENTITY’S RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS | | | | | | | | | | |  | | |
| The Procuring and Disposing Entity reserves the right to accept or reject any Bid, and to annul the bidding process and reject all bids at any time prior to agreement award, without thereby incurring any liability to Bidders. | | | | | | | | | | | | | |
| F. AWARD OF AGREEMENT | | | | | | | | | | | | | |
| 41. AWARD PROCEDURE | |  | | | | | | | | | | | |
| 41.1 The Procuring and Disposing Entity shall issue a Notice of Acceptance of the bid and invite the lowest evaluated bidder for negotiations, where applicable.  41. If negotiations are not successful, the Procuring Entity shall invite the second lowest evaluated bidder for negotiations. Where negotiations have been successful, the Procuring and Disposing Entity shall issue a Notice of Intention to Award an Agreement for fourteen (14) days in two widely read Newspapers and Authority’s website.  41.3 The Procuring and Disposing Entity shall issue a Notification of Award to the Bidder whose bid has been determined to be the lowest evaluated, provided that the Bidder is determined to be qualified to perform the Agreement satisfactorily and then enter into an Agreement with the said Bidder.  41.4 The Agreement shall be a Framework Agreement, which provides—   * 1. that the procuring and disposing entity shall use its planned data or quantities in Invitation for Bids and all other similar communication;   2. that notwithstanding clause 40, the Procuring and Disposing Entity is not bound to procure all the estimated quantities listed and detailed in Section 7, Statement of Requirements of the bidding document; and   3. that the Procuring and Disposing Entity may procure more or less of the estimated quantity without incurring any responsibility whatsoever. | | | | | | | | | | | | | |
| 42. PROCURING AND DISPOSING ENTITY’S RIGHT TO VARY QUANTITIES AT TIME OF AWARD | | | | | | | | | | | | | |
| At the time the Agreement is awarded, the Procuring and Disposing Entity reserves the right to increase or decrease the estimated quantity or minimum value of Goods, Works or Services originally specified in Section 7, Statement of Requirements, provided this does not exceed the percentages indicated in the BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Document. | | | | | | | | | | | | | |
| 43. NOTICE OF INTENTION TO ENTER INTO AN AGREEMENT | | | | | | | | | | | | | |
| The Procuring and Disposing shall publish the intention to award agreement in two widely circulated newspapers and on the Authority's website for a period of fourteen days for any procurement agreement above a threshold, set by the Director General, before signing the agreement. | | | | | | | | | | | | | |
| 44. NOTIFICATION OF AWARD | | | | | | | | | | | | | |
| * + - 1. 44.1 Prior to the expiration of the period of bid validity, the Procuring and Disposing Entity shall notify the successful Bidder, in writing, that its bid has been accepted by issue of a Notification of Award. | | | | | | | | | | | | | |
| **45. PERFORMANCE SECURITY** | |  | | | | | | | | | | | |
| 45.1 Within twenty-eight (28) days of the receipt of the Notification of Award from the Procuring and Disposing Entity, the successful Bidder shall furnish a Performance Security, if so required, in accordance with the Special Terms of Agreement, using for that purpose the Performance Security Form included in Section 9, Agreement Forms, or another form acceptable to the Procuring and Disposing Entity. | | | | | | | | | | | | | |
| 45.2 Failure of the successful Bidder to submit the above-mentioned Performance Security, if required by the Procuring and Disposal Entity, or sign the Agreement shall constitute sufficient grounds for the annulment of the agreement award and forfeiture of the Bid Security or sanction the Bidder in line with the provisions of the Bid Securing Declaration. In that event, the Procuring and Disposing Entity may enter into an Agreement with the next lowest evaluated bidder who is determined by the Procuring and Disposing Entity to be qualified to perform the Agreement satisfactorily. | | | | | | | | | | | | | |
| 46. SIGNING THE AGREEMENT | |  | | | | | | | | | | | |
| * 1. Promptly after notification, or after the elapsing of the fourteen (14) days of the still period, or after successfully attending to all objections to the intention to sign the Agreement above the set threshold, the Procuring and Disposing Entity shall send the successful Bidder the Agreement documents.   2. Within thirty (30) days of receipt of the Agreement documents, the successful Bidder shall sign, date, and return the Agreement documents to the Procuring and Disposing Entity to finalise the signing process. | | | | | | | | | | | | | | | |

**SECTION 2. BID DATA SHEET**

| **Instructions to Bidders Reference** | **Data relevant to the ITB** |
| --- | --- |
| **A. General** | |
| **ITB 1.1** | The Procuring and Disposing Entity is: |
| **ITB 1.1** | The subject of procurement is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under Framework Agreement for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| **ITB 1.1** | Procurement Reference number: |
| **ITB 1.1** | The number and identification of lots comprising this Bidding Document is:  The maximum/minimum number of Lots a Bidder may bid for is: |
| **ITB 5.5** | The Bidder [*shall/shall not*] be required to include with its Bid, documentation from the Manufacturer of the Goods, that the bidder has been duly authorised to supply, in Malawi, the goods indicated in its bid by submitting the Manufacturers Authorisation Form in Section 4, Bidding Forms. |
| **B. Bidding Document** | |
| **ITB 7.1** | For clarification purposes only, the Procuring and Disposing Entity’s address is:  **Attention:**  **Street Address:**  **Name of Building:**  **Floor/Room number:**  **Town/City:**  **Postal Address:**  **Telephone:**  **Email address:** |
| **ITB 7.1** | The Procuring and Disposing Entity will respond to any request for clarification provided that such request is received no later than \_\_\_\_\_\_ days prior to the deadline for submission of Bids. |
| **C. Preparation of Bids** | |
|  |  |
|  |  |
| **ITB 11.1(h)** | The Bidder shall submit with its bid the following additional documents: |
| **ITB 13.1** | Alternative Bids \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ be permitted. |
| **ITB 14.5** | The Incoterms edition is: |
| **ITB 14.6(a)(i)** | For Goods, the Bidder shall quote prices using the following Incoterms: |
| **ITB 14.7** | For Goods, Services and Works, the prices quoted by the Bidder shall be: |
| **ITB 15.1(a)** | For Goods, Works and Services originating in Malawi the currency of the bid shall be: |
| **ITB 15.1(b)** | For Goods, Works and Services originating outside of Malawi the currency of the bid shall be: |
| **ITB 20.1** | The bid validity period shall be ……........days. |
| **ITB 21 (a)** | A Bid Security [*shall/shall not*] be required.  Where a Bid Security is required, the amount and currency shall be:….. |
| **ITB 21 (b)** | A Bid Securing Declaration [*shall/shall not*] be required  Where a Bid Securing Declaration is required, it shall be in: ………… |
| **ITB 22.1** | In addition to the original of the Bid, the number of copies required is: |
| **ITB 22.2** | The written confirmation of authorisation to sign on behalf of the Bidder shall consist of: |
| **D. Submission and Opening of Bids** | |
| **ITB 24.1** | For bid **submission purposes** only, the Procuring and Disposing Entity’s address is:  **Attention:**  **Street Address:**  **Name of Building:**  **Floor/Room number:**  **District/Town/City:**  **Postal Address:**  The deadline for bid submission is:  **Date:**  **Time (local time):**  **Late Bids shall be rejected and returned unopened** |
| **ITB 27.1** | The **bid opening** shall take place at:  **Street Address:**  **Name of Building:**  **Floor/Room number:**  **Town/City:**  **Date:**  **Time:** |
| **E. Evaluation of Bids** | |
| **ITB 34.1** | The currency that shall be used for financial comparison to convert all bid prices expressed in various currencies into a single currency is:  The source of exchange rate shall be:  The date for the exchange rate shall be: |
| **ITB 35.1** | A margin of preference [*shall/shall not*] apply.  If a margin of preference applies, the application methodology and the level of margin shall be specified in Section 3 Evaluation Methodology and Criteria. |
| **F. Award of Agreement** | |
| **ITB 41.1** | The percentage by which the estimated quantity or minimum value may be increased is:  The percentage by which the estimated quantity or minimum value may be decreased is: |
| **ITB 46.1** | A bidder who feels injured by these proceedings may: |

# SECTION 3. EVALUATION AND QUALIFICATION CRITERIA

This section, read in conjunction with Section 1, Instructions to Bidders and Section 2, Bid Data Sheet, contains all the factors, methods and criteria that the Procuring and Disposing Entity shall use to evaluate a bid and determine whether a bidder has the required qualifications. No other factors, methods or criteria shall be used.

1. ADDITIONAL EVALUATION FACTORS

1.1 In accordance with clause 36.3(e) of the ITB, the Procuring and Disposing Entity’s evaluation of a bid will take into account, in addition to the bid price, the following factors, which will be quantified as specified in 1.2 below—

(a) compliance with the minimum technical specification is required for all items marked as mandatory;

(b) for non-mandatory items, all deviations will be reviewed, and those items with inferior specifications subjected to an adjustment to the bid price;

(c) the delivery schedule offered by the Bidder; and

(d) the payment schedule proposed by the Bidder.

1.2 The factors specified in 1.1 above will be quantified as follows—

(a) failure to meet or exceed the specified minimum technical specifications for mandatory requirements will result in rejection of the bid. Superior specifications will be considered on the same basis as those bids meeting the minimum technical specification;

(b) for each non-mandatory technical specification, bids offering a lower specification of the item will be reviewed, and a notional adjustment made to the bid price for evaluation purposes only. For each percentage drop in the specification offered against the required technical specification, a corresponding percentage of the estimated cost of replacement of the item with a fully conforming specification will added to the bid price for evaluation. Bids with inferior non-mandatory technical specifications or a performance of less than 75% of the required item specification may be subject to rejection. Superior specifications will be considered on the same basis as those bids meeting the minimum technical specification;

(c) late delivery schedules proposed by the Bidder will result in a 1% addition to the bid price (for evaluation purposes only) for each week of delay up to a maximum of 15%. Bids offering delivery schedules later than **[number]** months after the specified delivery period may be rejected at the discretion of the Procuring and Disposing Entity; and

(d) for payment schedules proposed by the bidder which would result in earlier payment to the Supplier than that proposed in the bidding documents, the difference in the net present value of the Bidder’s proposal shall be added to the bid price for evaluation purposes.

2. EVALUATION OF MULTIPLE AGREEMENTS

If in accordance with clause 36.4 of the ITB, the Procuring and Disposing Entity is allowed to award multiple lots to a Bidder. The Procuring and Disposing Entity shall determine the lowest-evaluated lot combinations, by—

(a) evaluating only lots or agreements that include at least the percentages of items per lot and quantity per item as specified in clause 14.9 of the ITB.

(b) considering—

* + - 1. the lowest-evaluated bid for each lot that meets the requirement of evaluation criteria;

(ii) the price reduction per lot and the methodology for their application as offered by the Bidder in its bid; and

(iii) the agreement-award sequence that provides the optimum economic combination, taking into account any limitations due to constraints in supply or execution capacity determined in accordance with the post-qualification criteria, as set in clause 4, Post Qualification.

3. Preferences and set asides

The Procuring and Disposing Entity shall grant a margin of preference to locally manufactured goods supplied from within Malawi by Malawian suppliers for the purpose of bid comparison, in accordance with the procedures outlined in clause 35 of the ITB of the Bidding Document.

Similarly, MSMEs including marginalised groups shall have procurements set aside for them in accordance with the Public Procurement and Disposal of Assets (Participation by Micro, Small and Medium Enterprises) Order 20202 and in the manner prescribed in the EQC.

4. POST QUALIFICATION

After determining the lowest-evaluated bid in accordance with clause 38 of the ITB, the Procuring and Disposing Entity shall carry out the post-qualification of the Bidder in accordance with clause 39 of the ITB.

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| SECTION 4. BIDDING FORMS |

**TABLE OF FORMS**

Bid Submission Form

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*[This Bid Submission Form should be on the letterhead of the Bidder and should be signed by a person with the proper authority to sign documents that are binding on the Bidder]*

**BID SUBMISSION FORM**

*[Input of Information to be completed by Bidder]*

Date: ……./……./……………. *[insert date (as day, month and year) of Bid Submission]*

Procurement Reference Number: …………………….. *[insert reference number]*

To: *[insert complete name of Procuring and Disposing Entity].*

…………………………………………………………………………………………………………………………..

…………………………………………………………………………………………………………………………..

We, the undersigned, declare that:

1. We have examined and have no reservations to the Bidding Documents, including where applicable, addenda No: *[insert the number and issuing date of each Addenda]*; ……………………………………………………………………………………………………

…………………………………………………………………………………………………………………….

1. We offer to supply in conformity with the Bidding Documents and in accordance with the delivery schedule specified in the Statement of Requirements the following Goods, Works and Services: *[insert a brief description of the Goods, Works and Services]*; ……………………………………………………………………………………………………..

…………………………………………………………………………………………………………………….

1. The estimated total price of our Bid is: [*insert the estimated total bid price in words and figures, indicating the various amounts and the respective currencies];*

*………………………………………………………………………………………………………………….*

*………………………………………………………………………………………………………………….*

1. Our bid shall be valid for a period of *[specify the number of calendar days]* days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before expiry of that period;
2. We, including any subcontractor to the Agreement for any part of the Agreement resulting from this procurement process, are eligible to participate in public procurement in accordance with clause 4.1 of the ITB and have not been debarred by the Authority or any cooperating partner which has entered into a cross debarment agreement with the Authority from participating in public procurement;
3. We are not participating, as Bidders, in more than one bid in this bidding process;
4. We do not have any conflict of interest and have not participated in the preparation of the original Statement of Requirements for the Procuring and Disposing Entity;
5. Our firm, its affiliates or subsidiaries, including subcontractor or suppliers for any part of the Agreement are not under investigation by the Anti-Corruption Bureau or any other law enforcement body in Malawi relating to participation in any public procurement tender exercise or execution of any public procurement agreement relating to the purchase of goods, works and services by any Procuring and Disposing Entity.
6. The names and physical addresses of the Directors of our firm are provided in the table below

|  |  |
| --- | --- |
| NAME | ADDRESS |
|  |  |
|  |  |

1. The names and physical addresses of the beneficial owners of our firm are provided in the table below

|  |  |
| --- | --- |
| NAME | ADDRESS |
|  |  |
|  |  |

1. We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a non-binding agreement between us, based on which call-off shall be made from time to time where need arises.

(l) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

AUTHORISED BY:*[to be completed by someone who has the power of attorney for the bidder]*

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Position: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Authorised for and on behalf of (Company name): | | | *(DD/MM/YY)* |
| Company: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |

Registered Address: …………………………………………………………………………………………..…………………………...

……………………………………………………………………………………………………….........……….

**Beneficial Ownership Disclosure Form**

***INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM***

*This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the Bidder. In case of joint venture, the Bidder must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Bidder is any natural person who ultimately owns or controls the Bidder by meeting one or more of the following conditions:*

1. *directly or indirectly holding 5% or more of the shares*
2. *directly or indirectly holding 5% or more of the voting rights*
3. *directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder.*
4. *directly or indirectly, has a substantial economic interest in or receives substantial economic benefit from, a company, whether acting alone or together with other persons;*
5. *has a significant stake in a company and on whose behalf activity of a company is conducted; or*
6. *exercises significant control or influence over a person through a formal or informal agreement, and where such ownership, control or interest is through a trust, the trustee (s), beneficiaries, or anyone who controls the trust.*

Date: **[insert date]**

Procurement Reference No.: **[insert procurement reference number]**

Page **[insert page number]** of **[insert total number of pages]** pages

To: [**insert complete name of Procuring and Disposing Entity**]

In response to your request in the Letter of Acceptance dated [insert date of letter of Acceptance] to furnish additional information on beneficial ownership: [select one option as applicable and delete the options that are not applicable]

(i) we hereby provide the following beneficial ownership information.

Details of beneficial ownership

| **Identity of Beneficial Owner** | **Directly or indirectly holding 5% or more of the shares**  **(Yes / No)** | **Directly or indirectly holding 5 % or more of the Voting Rights**  **(Yes / No)** | **Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Bidder**  **(Yes / No)** |
| --- | --- | --- | --- |
| [include full name (last, middle, first), nationality, country of residence] |  |  |  |

**OR**

(ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions:

* directly or indirectly holding 5% or more of the shares
* directly or indirectly holding 5% or more of the voting rights
* directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder.
* directly or indirectly, has a substantial economic interest in or receives substantial economic benefit from, a company, whether acting alone or together with other persons;
* has a significant stake in a company and on whose behalf activity of a company is conducted; or
* exercises significant control or influence over a person through a formal or informal agreement, and where such ownership, control or interest is through a trust, the trustee (s), beneficiaries, or anyone who controls the trust.

**OR**

(iii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Bidder shall provide explanation on why it is unable to identify any Beneficial Owner]

* directly or indirectly holding 5% or more of the shares
* directly or indirectly holding 5% or more of the voting rights
* directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder]”
* directly or indirectly, has a substantial economic interest in or receives substantial economic benefit from, a company, whether acting alone or together with other persons;
* has a significant stake in a company and on whose behalf activity of a company is conducted; or
* exercises significant control or influence over a person through a formal or informal agreement, and where such ownership, control or interest is through a trust, the trustee (s), beneficiaries, or anyone who controls the trust.

Name of the Bidder: [insert **complete name of the Bidder**][[1]](#footnote-2)

Name of the person duly authorized to sign the Bid on behalf of the Bidder: [insert **complete name of person duly authorized to sign the Bid**][[2]](#footnote-3)

Title of the person signing the Bid: [insert **complete title of the person signing the Bid**]

Signature of the person named above:

Date signed [insert **ordinal number**] day of [insert **month**], [insert **year**]

*[This Price Schedule should be signed by a person with the proper authority to sign documents for the Bidder. The Bidder in its bid should include it. The Bidder may reproduce this in landscape format but is responsible for its accurate reproduction].*

**PRICE SCHEDULE** **FOR GOODS AND SERVICES**

**[INPUT INFORMATION TO BE COMPLETED BY BIDDER]**

|  |  |
| --- | --- |
|  | D  *[iDate: [insert date (as day, month and year) of Bid Submission].*  Procurement Reference Number: *[insert number of bidding process]* |
| Name of the Bidder: …………………………………………[*Insert full name of Bidder]* | |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| *1* | *2* | *3* | *4* | *5* | *6* | *7* |
| *Item No.* | *Good or Related Service* | *Country of origin* | *Estimated Quantity (No. of units)* | *Unit price 1* | *Import Duties, Sales Taxes and other Taxes, per  unit 1* | *Total Price* |
| [Insert number of item] | [name of items, good or related service] | [insert country of origin of this item] | [insert number of units of this item to be purchased] | [insert the unit price of this item, excluding all import duties and taxes, paid or payable in the Republic of Malawi] | [insert all import duties, taxes paid or payable in the Republic of Malawi on this item] | [insert the total price for this item, which is the sum of columns 5 and 6] |
| *1* |  |  |  |  |  |  |
| *2* |  |  |  |  |  |  |
| *Sub-Total* | | | | | |  |
| *VAT* | | | | | |  |
| *PPDA Levy (1%)* | | | | | |  |
| *Total Bid Price* | | | | | |  |

*Notes:*

*Note: The Procurement Levy is calculated based on Sub-total before taxes.*

AUTHORISED BY:[*to be completed by someone who has the power of attorney for the bidder*]

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Position: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Authorised for and on behalf of (Company name): | | | *(DD/MM/YY)* |
| Company: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |

Registered Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**PRICE SCHEDULE**

**(FOR WORKS ONLY)**

**[INPUT INFORMATION TO BE COMPLETED BY BIDDER]**

*Note to Bidders: Bidders shall submit a fully priced Bills of Quantities for Admeasurement Agreements or Activity Schedule for Lump Sum Agreements as provided in Section 7 of the Bidding Documents.*

*Each page of the Bills of Quantities or the Activity Schedule should be signed by a person with the proper authority to sign documents for the Bidder.*

**PRICED SCHEDULES**

**(BILLS OF QUANTITIES OR ACTIVITY SCHEDULE)**

***(THE FOLLOWING TABULATION IS PART OF PRICE SCHEDULE AND SHALL BE ADAPTED AND USED WHEN CALCULATING FINAL BID PRICES FOR WORKS PROCUREMENTS)***

|  |  |
| --- | --- |
| DESCRIPTION | TOTAL PRICE |
| 1 |  |
| 2 |  |
| *Sub Total* |  |
| *VAT* |  |
| *NCIC Levy* |  |
| *PPDA Levy (1%)* |  |
| TOTAL |  |

|  |
| --- |
| **BID SECURITY**  **[INPUT OF INFORMATION TO BE COMPLETED BY GUARANTOR]** |
| Date: ……/……/……… *[insert date (as day, month and year)* of Bid Submission].  Procurement Reference Number: …………………………………... *[insert reference number]*  Alternative No:………………….. *[insert identification No if this is a Bid for an alternative*] | | |

To: …………………………………………………………………………………………………………*[insert complete name of Procuring and Disposing Entity]*

Whereas ……………………………………………. *[insert complete name of Bidder]* (hereinafter the “Bidder”) has submitted its bid dated …………………………………[*insert date (as day, month and year) of bid submission]* for Procurement Reference Number ……………………………*[insert Procurement Reference Number]* for the provision of *[insert brief description of the Services and Related Goods]*, hereinafter called the “Bid”.

KNOW ALL PEOPLE by these presents that WE……………………………………………………………………………………………………………………………………………………………………………………………………………………..……………… *[insert complete name of institution issuing the Bid Security], of [insert city of domicile and country of nationality]* having our registered office at ………………………………………………………………….*[insert full address of the issuing institution]* (hereinafter the “Guarantor”), are bound unto ………………………………………………………. *[insert complete name of the Procuring and Disposing Entity]* (hereinafter the “Procuring and Disposing Entity”) in the sum of ……………………………………………………………………………………………………………………………………………………………………………………………………….*[specify in words the amount and currency of the bid security] (specify the amount and currency in figures)*, for which payment well and truly to be made to the aforementioned Procuring and Disposing Entity, the Guarantor binds itself, its successors or assignees by these presents. Sealed with the Common Seal of this Guarantor……/……../……….. *this [insert day in numbers]* day of…………………. *[insert month], [insert year].*

THE CONDITIONS of this obligation are the following—

1. if the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Submission Form, except as provided in sub-clause 21.2 of the; or

2. if the Bidder, having been notified of the acceptance of its bid by the Procuring and Disposing Entity, during the period of bid validity, fails or refuses to—

1. execute the Agreement;
2. furnish the Performance Security, in accordance with the ITB Clause 45; or
3. accept the correction of its bid by the Procuring and Disposing Entity, pursuant to clause 32 of the ITB;

we undertake to pay the Procuring and Disposing Entity up to (indicate amount) upon receipt of its first written demand, without the Procuring and Disposing Entity having to substantiate its demand, provided that in its demand the Procuring and Disposing Entity states that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred conditions.

This security shall remain in force up to and including twenty-eight (28) days after the period of bid validity, and any demand in respect thereof should be received by the Guarantor no later than the above date.

AUTHORISED BY:[*to be completed by someone who has the power of attorney for the bidder*]

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Position: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Authorised for and on behalf of (Company name): | | | *(DD/MM/YY)* |
| Company: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |

Registered Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**BID SECURING DECLARATION**

[*The Bidder shall fill in this form in accordance with the instructions indicated.]*

Date: ……../……./………..*[insert date (as day, month and year) of bid submission]*

NCB No.: *[insert number of bidding process]*

ALTERNATIVE NO.: ……… [*insert identification No. if this is a bid for an alternative]*

To: …………………………………………… *[insert complete name of Procuring Entity]*

We, the undersigned, declare that—

1. We understand that, according to your conditions, bids shall be supported by a Bid Securing Declaration.
2. We accept that we shall automatically be suspended from being eligible for bidding in any agreement with the Procuring and Disposing Entity and any other government entity for a period of *twenty-four (24) months* starting on the date as may be determined by the Authority if we are in breach of our obligation(s) under the bid conditions, because we—
3. have withdrawn our bid during the period of bids validity specified by us in the Bid Data Sheet;
4. having been notified of the acceptance of our bid by the Procuring and Disposing Entity during the period of bid validity, (i) refuse or fail to execute the agreement, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with clause 44 of the ITB; or
5. refuse to accept the correction of our bid by the Procuring and Disposing Entity, pursuant to clause 30 of the ITB.

3 We understand that this Bid Securing Declaration shall expire if we are not the successful

Bidder, upon the earlier of (i) our receipt of a copy of your notification of the name of the

successful bidder; or (ii) thirty days after the expiration of the bid.

4 We understand that if we are a Joint Venture, the Bid Securing Declaration shall be in the

name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

AUTHORISED BY:[*to be completed by someone who has the power of attorney for the bidder*]

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Position: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Authorised for and on behalf of (Company name): | | | *(DD/MM/YY)* |
| Company: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |

Registered Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

|  |  |
| --- | --- |
| **MANUFACTURER’S AUTHORISATION**  **(FOR GOODS ONLY)**  [Input of Information to be completed by Manufacturer] | |
| Date: [insert date (as day, month and year) of Bid Submission].  Procurement Reference Number: [insert number of bidding process] | |

To: ………………………………………………………………………………….. *[insert complete name of Procuring and Disposing Entity]*

WHEREAS………………………………………………. *[insert complete name of Manufacturer],* who are official manufacturers of………………………………………………….. *[insert type of goods manufactured]*, having factories at …………………………………………….*[insert full address of Manufacturer*], do hereby authorise …………………………………………………. *[insert complete name of Bidder]* to submit a bid in relation to the Invitation for Bids indicated above, the purpose of which is to provide the following Goods, manufactured by us ……………………………………… *[insert name and or brief description of the Goods],* and to subsequently negotiate and sign the Agreement.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the Terms of Agreement, with respect to the Goods offered by the (indicate firm) in reply to this Invitation for Bids.

AUTHORISED BY:*[to be completed by someone who has the power of attorney for the bidder***]**

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Position: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Authorised for and on behalf of (Company name): | | | *(DD/MM/YY)* |
| Company: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |

Registered Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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*Note: This letter of authorisation should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. It should be included by the Bidder in its bid, if so indicated in the BDS.*

ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY REQUIREMENTS

*[The Procuring and Disposing Entity shall use the services of suitably qualified environmental, social, health and safety specialists to prepare the specifications for ESHS.*

*The Procuring and Disposing Entity shall attach or refer to its environmental, social, health and safety policies that will apply to the project.*

*If these are not available, it shall use the guidance in the User Guide in drafting an appropriate policy for the works]*

**ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY DECLARATION**

We, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Name of bidder*) bearing the company registration number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby:

1. PLEDGE THAT:

We have read, understood, and will comply with—

1. the Environment Management legal framework or policies in conservation and management of the environment;
2. all necessary and appropriate measures to protect and manage the environment;
3. all necessary and appropriate measures to conserve natural resources and to promote sustainable utilization of natural resources; and
4. all steps and measures necessary for ensuring that social safeguard issues including but not limited to gender, human rights, disability, Child Protection, HIV and AIDS are mainstreamed throughout all construction stages to minimize the negative impacts on the environment, social, health and safety matters.

2. AGREE THAT:

1. In the event that our bid is successful, we shall, within 15 days from the receipt of the Acceptance Letter comply with the requirements to produce the following environmental, social, health and safety plans as provided in Section 10:- Site Organisation Plan, Mobilisation and Construction Schedule Plan, Code of Conduct for Contractors Personnel Plan, Environment, Social, Health & Safety Management Strategies and Implementation Plan.
2. Contract negotiations shall only commence if our plans comply with the Malawi standards on the protection and management of the environmental, social, health and safety matters.

Signed: *[insert signature of person whose name and capacity are shown]* ………………………………………………………………………………………………………………………….In the capacity of ……………………………………………………………………………………………..…

……………………………………………………………………………………………………………………*[insert legal capacity of person signing the Bid]*

Name:………………………………………………………………………………………………………………….

…………………………………………………………………………………………………………………………. *[insert complete name of person signing the Bid]*

Duly authorised to sign the bid for and on behalf of:……………………………………………… *[insert complete name of Bidder]*

Dated on \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ [*insert date of signing]*

**QUALIFICATION INFORMATION FORM**

**(FOR WORKS ONLY)**

*Note to Bidders: The information to be filled in by bidders in the following pages will only be used for purposes of post-qualification or for verification of pre-qualification as provided for in Clause 4 of the Instructions to Bidder, and will not form part of the Agreement. Attach additional pages as necessary. If used for pre-qualification verification, the Bidder should fill in updated information only.*

**QUALIFICATION INFORMATION FORM**

|  |  |
| --- | --- |
| **1.***Individual Bidders or Individual**Members of Joint Ventures* | 1.1 Constitution or legal status of Bidder: *[attach copy]*  Place of registration: *[insert]*  Principal place of business: *[insert]*  Power of attorney of signatory of Bid: *[attach]*   * 1. Average annual volume of construction work performed in the previous number of years specified in Section 3, Evaluation and Qualification Criteria: *[insert details below and state average]* |
|  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Year: |  |  |  |  |  |
| Volume: |  |  |  |  |  |

|  |  |
| --- | --- |
|  | 1.3 Work performed as prime contractor on works of a similar nature and volume over the last five (5) years. Also list details of work under way or committed, including expected completion date. |

|  |  |  |  |
| --- | --- | --- | --- |
| Project name and country | Name of client and contact person | Type of work performed and year of completion | Value of agreement |
| (a)  (b) |  |  |  |

|  |  |
| --- | --- |
|  | 1.4 Major items of Equipment proposed for carrying out the Works. List all information requested below. |

|  |  |  |  |
| --- | --- | --- | --- |
| Item of equipment | Description, make, and age (years) | Condition (new, good, poor) and number available | Owned, leased (from whom?), or to be purchased (from whom?) |
| (a)  (b) |  |  |  |

|  |  |
| --- | --- |
|  | 1.5 Qualifications and experience of key personnel for administration and execution of the Agreement. Attach biographical data. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Position | Name | Qualifications | Years of experience (general) | Years of experience in proposed position |
| (a)  (b) |  |  |  |  |

|  |  |
| --- | --- |
|  | 1.6 Proposed sub-agreements and firms involved. |

|  |  |  |  |
| --- | --- | --- | --- |
| Sections of the Works | Value of sub-agreement | Sub-agreement Parties  (name and address) | Experience in similar work |
| (a)  (b) |  |  |  |

|  |  |
| --- | --- |
|  | 1.7 Financial reports for the last five (5) years: balance sheets, profit and loss statements, auditors’ reports, etc. List below and attach copies.  1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supporting documents.  1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Procuring and Disposing Entity.  1.10 Information on any current litigation in which the Bidder is involved. |

|  |  |  |
| --- | --- | --- |
| Other party(ies) | Cause of dispute | Amount involved |
| (a)  (b) |  |  |

|  |  |
| --- | --- |
|  | 1.11 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents. |
| **2.** *Joint Ventures* | 2.1 The information listed in 1.1 - 1.10 shall be provided for each partner of the joint venture.  2.2 The information in 1.11 above shall be provided for the joint venture.  2.3 Attach the power of attorney of the signatory(ies) of the Bid authorising signature of the Bid on behalf of the joint venture.  2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that  (a) all partners shall be jointly and severally liable for the execution of the Agreement in accordance with the Agreement terms;  (b) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and  (c) the execution of the entire Agreement, including payment, shall be done exclusively with the partner in charge. |
| *3. Additional Requirements* | 3.1 Bidders should provide any additional information required in Sections 2 or 3 of the Bidding Document or to fulfill the requirements of Sub-Clause 4.1 and Clause 30 of the Instructions to Bidders, if applicable. |

# SECTION 5. ELIGIBLE COUNTRIES

**PROCUREMENT REFERENCE NUMBER:**

**(FOR GOODS ONLY)**

All countries are eligible except countries subject to the following provisions –

(a) A country shall not be eligible if as a matter of law, the Government of Malawi prohibits commercial relations with that country; and

(b) All countries from the Common Market for Eastern and Southern Africa, the African Union and the Southern African Development Community are by virtue of belonging to these economic blocks, automatically eligible countries unless otherwise specifically directed by the Government of Malawi.

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| SECTION 6. CORRUPTION AND FRAUD   |  | | --- | | 1. The Malawi Government requires that Procuring and Disposing Entities, Bidders and Suppliers, participating in public procurement, observe the highest standard of ethics during the procurement and execution of such contracts.    * 1. For purposes of this provision—  "corrupt practice" has the meaning ascribed to the term by the Corrupt Practices Act of 2004;"fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process, the execution of a contract or avoid an obligation;“collusive practices” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring and Disposing Entity, designed to establish prices at artificial, noncompetitive levels;“coercive practices” mean practices intended at harming or threatening to harm, directly or indirectly, a person or a person’s asset, to influence that person’s participation in a procurement proceeding, or effect the execution of a procurement contract; and“obstructive practice” means deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation  * + 1. The Malawi Government will reject a recommendation for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question;     2. The Authority will debar a Bidder from participation in public procurement for a specified period of time if it at any time determines that the firm has engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a contract; and     3. The Procuring and Disposing Entity will cause every bidder to acknowledge and sign Anti-Corruption Declaration in this Section under Oath, a confirmation that the bidder, its subcontractors, joint venture partners, or any other associate has not been convicted or is under investigation on corruption and fraud related cases. Failure to sign the Declaration shall lead to disqualification. |  1. Bidders shall read and understand this provision and will show acknowledgement of having read and understood this Section by signing compliance Form In this Section below:   **ANTI-CORRUPTION DECLARATION FORM**  We/I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Name of bidder*) bearing the company registration number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby:   1. PLEDGE THAT:    1. We have read and understood, and will comply with all applicable laws, regulations and policies relating to anti-corruption and fraud;    2. We shall not, through any of our representatives, agents or any persons associated to us, commit any corruption offence or breach any of the applicable laws and/or provisions. We shall not encourage any corruption elements within our business practices, activities, operations, and transactions;    3. We have not been convicted nor are we aware that we are subject of any corrupt related investigation, inquiry, or enforcement proceedings by the relevant authorities and will report of such investigation as soon as we become aware as reasonably practicable and to the extent permitted by law;    4. We shall take all measures and implement appropriate measures to ensure compliance with the Anti-Corruption Legal Framework; and    5. We shall report to any relevant Authority, a public officer attempting to solicit a bribe or advantage from us, or any other person connected to us to be awarded a contract.   2. AGREE THAT:  In the event that we are in a confirmed breach of this declaration, the Procuring and Disposing Entity may disqualify the bid, revoke or terminate the contract if awarded to us without any liability whatsoever on its part, indemnify the Procuring and Disposing Entity for any loss.  Signed: *[insert signature of person whose name and capacity are shown]*…………………………………………………………………………………………………………….…….In the capacity of [insert legal capacity of person signing the Bid]  Name:……………………………………………………………………………………………….. *[insert complete name of person signing the Bid]*  Duly authorised to sign the bid for and on behalf of: *[insert complete name of Bidder] …………………………………………………………………………………………………………………………………………………………………………………………………………………………………..* | |
| SECTION 7. STATEMENT OF REQUIREMENTS |

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1. List of Goods, Works and Services 2

2. Delivery and Completion Schedule 4

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1. LIST OF GOODS, WORKS AND SERVICES

1. LIST OF GOODS
2. The quantities indicated below are estimates only. Actual quantities of Goods / Works / Services to be procured shall be based on a series of call-off (orders) in accordance with the agreement
3. The Procuring and Disposing Entity should provide the nearest estimated quantities not just one unit. The estimated quantity should be arrived at based on the estimated annual requirement for Goods/Works/Services.

| ITEM NUMBER | BRIEF DESCRIPTION OF GOODS, WORKS AND RELATED SERVICES | ESTIMATED QUANTITY | UNIT OF MEASURE |
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The attached commodity specific conditions will form an integral part of any resulting agreement.

1. DETAILED TECHNICAL SPECIFICATIONS

FOR GOODS

1. TECHNICAL SPECIFICATIONS **(***Input to be provided by the Procuring and Disposing Entity***)**

FOR WORKS

1. SCOPE OF WORKS **(***Input to be provided by the Procuring and Disposing Entity***)**

The works shall involve [describe the general scope of works envisaged to be performed by the contractor]

Bidders shall be required to quote for inputs in terms of materials and labor and payment shall be based on the actual cost of materials (reimbursement plus handling costs) and the unit cost of labor (unskilled/semiskilled/skilled).

FOR SERVICES

1. DESCRIPTION OF SERVICES **(***Input to be provided by the Procuring and Disposing Entity***)**

2.Delivery and Completion Schedule

Procurement Reference Number**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The Delivery Period shall commence from the date of each call-off (order). The supplier, contractor or service provider shall meet the delivery or completion period for any call-off (order), subject to the limitations in the agreement.

Call-off (order) may be issued at any time during a period of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

| ITEM NUMBER | BRIEF DESCRIPTION OF GOODS, WORKS AND RELATED SERVICES | DELIVERY PERIOD  *(DAYS/WKS/MTHS)* | DELIVERY POINT/ SITE |
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**3. TECHNICAL SPECIFICATIONS OR DESCRIPTION OF SERVICES**

**PROCUREMENT REFERENCE NUMBER**:

*Column b states the minimum technical specifications of the goods, works or services required by the Procuring and Disposing Entity.*

*The Bidder shall complete column c with the technical specification of the Goods, Works or Services offered and to state “comply” or “not comply” and give details of the areas of non-compliance, where applicable.*

| ITEM NO. | TECHNICAL SPECIFICATIONS OR DESCRIPTION OF SERVICES REQUIRED INCLUDING APPLICABLE STANDARDS | COMPLIANCE BY GOODS, WORKS OR SERVICES   OFFERED |
| --- | --- | --- |
| *A* | *B* | *C* |
| **1** |  |  |
| **2** |  |  |
| **3** |  |  |
| **4** |  |  |
| **5** |  |  |

The detailed technical evaluation will examine the technical specification of the goods, works and services offered in column c and determine whether this meets the minimum requirements in column b. Bidders must complete column c or the bid will be rejected.

*For Goods, bidders are required to include technical literature to support the details provided in column c.*

**4. DRAWINGS**

(For Goods and Works Only)

Procurement Reference Number:

| List of related Drawings | | |
| --- | --- | --- |
| Drawing number | Drawing name | Purpose |
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# SECTION 8. TERMS OF AGREEMENT

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# TERMS OF AGREEMENT

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| 1. DEFINITIONS | | | | | | | | | | | | | | | | | |  | | | | | | |
| * 1. In this Agreement, unless the context requires otherwise—     (a) “completion” means the delivery of the Goods, works or provision of Services by the Supplier in accordance with the terms and conditions set forth in the Agreement;  (b) “Agreement” means the Agreement entered into between the Procuring and Disposing Entity and the Supplier, together with the Agreement Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;  (c) “Agreement documents” means the documents listed in the Agreement, including any amendments thereto;  (d) “Agreement Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Agreement;  (e) “Day” means calendar day;  (f) “Delivery” means the transfer of the Goods, works or Services from the Supplier to the Procuring and Disposing Entity in accordance with the terms and conditions set forth in the Agreement;  (g) “Eligible Countries” means the countries and territories eligible as listed in the STA;  (m) “goods” means goods, raw materials, products, equipment or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights as well as services incidental to the provision of such goods where the value of such services does not exceed the value of the goods;  (i) “Procuring and Disposing Entity” means the entity purchasing the Goods, works or Services, as specified in the Agreement;  (j) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Agreement has been accepted by the Procuring and Disposing Entity and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier;  (k) “STA” means the Special Terms of Agreement;  (l) “Sub-contractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods, Works or Services to be provided or execution of any part of the Services is subcontracted by the Supplier;  (n) “ site,” where applicable, means the place named in the STA;  (n) “Supplier” means works contractor, goods supplier of Goods and service provider as applicable; and  (h) “TA” means the Terms of Agreement. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. AGREEMENT DOCUMENTS | | | | | |  | | | | | | | | | | | | | | | | | | |
| * 1. The documents forming the Framework Agreement (FA) shall be interpreted in the following order of priority—   (a) Agreement;  (b) the Supplier’s Bid, as amended by any clarifications;  (c) Special Terms of Agreement;  (d) Terms of Agreement;  (e) Statement of Requirements;  (f) the Notification of Award;  (g) any other document listed in the STA as forming part of the Agreement.  2.2 Subject to the order of precedence set forth in Sub-Clause 2.1, all documents forming the Agreement (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. CORRUPT PRACTICES | | | |  | | | | | | | | | | | | | | | | | | | | |
| * 1. Procuring and Disposing Entities, Bidders and Suppliers under Government financed Agreements, shall observe the highest standard of ethics during the procurement and execution of such Agreements. In pursuit of this policy—      1. for the purposes of this provision—   (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 Agreement execution; and  (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of an Agreement to the detriment of the Procuring and Disposing Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring and Disposing Entity of the benefits of free and open competition; and  (b) will suspend a firm, either indefinitely or for a stated period of time, from being awarded a Government funded Agreement if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Government funded Agreement.  3.2 A supplier shall permit the Government of Malawi to inspect the accounts and records of the supplier relating to the performance of the Supplier and to have them audited by auditors appointed by the Government of Malawi, if so required by the Government.  3.3 In pursuit of Clause 3.1, the Procuring and Disposing Entity may terminate an Agreement for Goods, works or Services if the Procuring and Disposing Entity at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring and Disposing Entity or of a Supplier, during the procurement or the execution of that Agreement, without the Procuring and Disposing Entity having taken timely and appropriate action satisfactory to the Government of Malawi to remedy the situation. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. INTERPRETATION | | |  | | | | | | | | | | | | | | | | | | | | | |
| 4.1 If the context so requires, singular means plural and vice versa.  4.2 Incoterms  *(a)* Unless otherwise specified in the STA, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms; and  *(b)*  EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the edition of Incoterms, published by the International Chamber of Commerce as specified in the STA. | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. ENTIRE AGREEMENT  The Agreement constitutes the entire agreement between the Procuring and Disposing Entity and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Agreement. | | | | | | | | | | | | | | | | | | | | | | | | |
| 6.AMENDMENT  No amendment or other variation of the Agreement shall be valid unless it is in writing, is dated, expressly refers to the Agreement, and is signed by a duly authorised representative of each party thereto. | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 NON-WAIVER  (a) Subject to sub-clause (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Agreement or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Agreement, neither shall any waiver by either party of any breach of Agreement operate as waiver of any subsequent or continuing breach of Agreement.  (b) Any waiver of a party’s rights, powers, or remedies under the Agreement must be in writing, dated, and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived. | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 SEVERABILITY  If any provision or condition of the Agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Agreement. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. LANGUAGE | |  | | | | | | | | | | | | | | | | | | | | | | |
| 9.1 The Agreement as well as all correspondence and documents relating to the Agreement exchanged by the Supplier and the Procuring and Disposing Entity, shall be written in English unless specified otherwise in the STA. Supporting documents and printed literature that are part of the Agreement may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Agreement, this translation shall govern.  9.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. JOINT VENTURE, CONSORTIUM OR ASSOCIATION | | | | | | | | | | | | | | | | | | |  | | | | | |
| Unless otherwise specified in the STA, if the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring and Disposing Entity for the fulfilment of the provisions of the Agreement and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring and Disposing Entity. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. ELIGIBILITY | |  | | | | | | | | | | | | | | | | | | | | | | |
| 11.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Sub-Contractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.  11.2 All Goods, works or Services to be provided under the Agreement shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the Goods have been grown, mined, cultivated, produced, manufactured, or processed, or through manufacture, processing, or assembly, another commercially recognised article results that differs substantially in its basic characteristics from its imported components. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. NOTICES | |  | | | | | | | | | | | | | | | | | | | | | | |
| * 1. Any notice given by one party to the other under the Agreement shall be in writing to the address specified in the STA.     12.2. The term “in writing” means communicated in written form with proof of receipt.  12.3 A notice shall be effective when delivered or on the notice’s effective date, whichever is later. | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. GOVERNING LAW | | | |  | | | | | | | | | | | | | | | | | | |
| The Agreement shall be governed by and interpreted in accordance with the laws of Malawi unless otherwise specified in the STA. | | | | | | | | | | | | | | | | | | | | | | |
| 1. SETTLEMENT OF DISPUTES | | | | | | | |  | | | | | | | | | | | | | | |
| * 1. The Procuring and Disposing Entity and the Supplier shall make every effort to resolve amicably any disagreement or dispute arising between them under or in connection with the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 14.2 If the parties fail to resolve a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may decide that the dispute be referred for resolution under the Arbitration Act, (Cap 6:03) of Laws of Malawi, International Arbitration Act (No. 7 of 2024), or such other formal mechanism specified in the STA. | | | | | | | | | | | | | | | | | | | | | | |
| 1. SCOPE OF SUPPLY | | |  | | | | | | | | | | | | | | | | | | | |
| 11.1 The Goods, works or Services to be provided shall be as specified in the Statement of Requirements and executed through call-off orders.  11.2 The Goods or Services shall include all such items not specifically mentioned in the Agreement but that can be reasonably inferred from the Agreement as being required for attaining Delivery and Completion of the Goods or Services as if such items were expressly mentioned in the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 1. DELIVERY AND DOCUMENTS | | | | | | | | | | | | | | | | | | | |  | | |
| Subject to clause 36.1, the Delivery of the Goods and Completion of the works or Services shall be in accordance with the Bills of Quantities, Delivery and Completion Schedule specified in the Statement of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the STA. | | | | | | | | | | | | | | | | | | | | | | |
| 1. SUPPLIER’S RESPONSIBILITIES | | | | | | | | | | | | |  | | | | | | | | |
| The Supplier shall provide all the Goods, works or Services included in the Terms of Reference or Specifications in accordance with clause 15, and the Bills of Quantities, Delivery and Completion Schedule, as per clause 16. | | | | | | | | | | | | | | | | | | | | | | |
| 1. PROCURING AND DISPOSING ENTITY’S RESPONSIBILITIES | | | | | | | | | | | | | | | | | | | | |  | |
| * 1. Whenever the provision of Goods, works or Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities in Malawi, the Procuring and Disposing Entity shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.   18.2 The Procuring and Disposing Entity shall pay all costs involved in the performance of its responsibilities, in accordance with sub-clause 18.1. | | | | | | | | | | | | | | | | | | | | | | |
| 1. AGREEMENT PRICE | | |  | | | | | | | | | | | | | | | | | | |
| * 1. The Agreement Price shall be as specified in the Agreement and shall be estimated only but the actual total price payable to the supplier shall be calculated based on the unit prices specified in the Price Schedule.   2. The quantities specified in Statement of Requirements, subject to any minimum or maximum quantity or value, are subject to additions and subtractions as may be made pursuant to the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 19.3 Prices charged by the Supplier for the Goods delivered and Works or Services performed under the Agreement shall not vary from the prices quoted by the Supplier in its bid, except for any price adjustments authorised in the STA. | | | | | | | | | | | | | | | | | | | | | | |
| 1. Terms of Payment | | | | | |  | | | | | | | | | | | | | | | | |
| * 1. The Agreement Price shall be paid as specified in the STA.   20.2 The Supplier’s request for payment shall be made to the Procuring and Disposing Entity in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Works and Services performed, and by the documents submitted pursuant to clause 16 and upon fulfilment of all the obligations stipulated in the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 20.3 Unless otherwise specified in the STA, the Procuring and Disposing Entity shall make payments promptly, not later than forty-five (45) days after receipt of an invoice or request for payment from the Supplier, and its certification by the Procuring and Disposing Entity.    20.4 The Procuring and Disposing Entity shall certify or reject such invoices or payment requests within five (5) days from receipt if such invoices have errors. Where such invoices or payment requests are rejected, the Procuring and Disposing Entity shall advise the Supplier of the reasons for rejection.  20.5 The currency or currencies in which payments shall be made to the Supplier under this Agreement shall be specified in the STA. | | | | | | | | | | | | | | | | | | | | | | |
| 1. TAXES AND DUTIES | | | | | | |  | | | | | | | | | | | | | | |
| * 1. Except as otherwise specifically provided in the STA, the Supplier shall bear and pay all taxes, import duties, and levies imposed on the Supplier, by all central or local government authorities, both within and outside Malawi, in connection with the Goods, Works or Services to be supplied under the Agreement.   21.2 Notwithstanding clause 21.1, the STA may specify that the Procuring and Disposing Entity shall bear and promptly pay all taxes, import duties, and levies imposed by law in Malawi on the Goods, Works, or Services when the Goods, Works or Services are supplied from and delivered or completed outside Malawi.    21.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Supplier in Malawi, the Procuring and Disposing Entity shall use its best efforts to enable the Supplier to benefit from the tax savings to the maximum allowable extent.  21.4 For the purpose of the Agreement, the Agreement Price specified in the Agreement is based on the taxes, duties, levies, and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in Malawi (called “tax” in this sub-clause).  21.5. If any tax rates are increased or decreased, a new tax is introduced, an existing tax is abolished, or any change in interpretation or application of any tax occurs in the course of the performance of the Agreement, which was or will be assessed on the Supplier, its Sub-Contractors, or their employees in connection with performance of the Agreement, an equitable adjustment to the Agreement Price shall be made to fully take into account any such change by addition to or reduction from the Agreement Price, as the case may be. | | | | | | | | | | | | | | | | | | | | | | |
| 1. COPYRIGHT | | |  | | | | | | | | | | | | | | | | | | |
| The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring and Disposing Entity by the Supplier herein shall remain the property of the Supplier, or, if they are furnished to the Procuring and Disposing Entity directly or through the Supplier by any third party, including Suppliers of materials, the copyright in such materials shall remain vested in such third party. | | | | | | | | | | | | | | | | | | | | | | |
| 1. CONFIDENTIAL INFORMATION | | | | | | |
|  | | | | | | |
| * 1. The Procuring and Disposing Entity and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Agreement, whether such information has been furnished prior to, during or following completion or termination of the Agreement.     23.2. Notwithstanding Clause 24.1 the Supplier may furnish to its Sub-Contractor such documents, data, and other information received from the Procuring and Disposing Entity to the extent required for the Sub-Contractor to perform its work under the Agreement, in which event, the Supplier shall obtain from such Sub-Contractor, an undertaking of confidentiality similar to the undertaking imposed on the Supplier under clause 24. | | | | | | | | | | | | | | | | | | | | | | |
| * 1. The Procuring and Disposing Entity shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Agreement. Similarly, the Supplier shall not use such documents, data, and other information received from the Procuring and Disposing Entity for any purpose other than the design, procurement, or other work and services required for the performance of the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 23.4 The obligation of a party under clauses 24.1 and 24.2, shall not apply to information that—  (a) the Procuring and Disposing Entity or Supplier is required to share with any institution participating in the financing of the Agreement;  (b) enters the public domain through no fault of that party;  (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or  (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality. | | | | | | | | | | | | | | | | | | | | | | |
| 23.5 Clause 24 shall not in any way modify any undertaking of confidentiality given by either of the parties prior to the date of the Agreement in respect of the Supply or any part thereof.  23.6 The provisions of clause 24 shall survive completion or termination, for whatever reason, of the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 1. SUB-CONTRACTING | | | | | | |  | | | | | | | | | | | | | | |
| * 1. The Supplier shall notify the Procuring and Disposing Entity in writing of all sub-contracts awarded under the Agreement if not already specified in the bid.   24.2. Sub-contracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Agreement.  24.3 Sub-contracts shall comply with TA Clauses 3 and 15. | | | | | | | | | | | | | | | | | | | | | | |
| 1. SPECIFICATIONS AND STANDARDS | | | | | | | | | | | | | | | |  | | | | | |
| 25.1 Technical Specifications and Drawings  (a) The Supplier shall ensure that the Goods, Works, or Services comply with the Statement of Requirements and the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| (b) The Supplier may disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring and Disposing Entity, by giving a notice of such disclaimer to the Procuring and Disposing Entity.  (c) The Goods, Works and Services completed, delivered, or performed under this Agreement shall conform to the standards mentioned in the Statement of Requirements and, where no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Goods, Works, or Services. | | | | | | | | | | | | | | | | | | | | | | |
| 25.2 Wherever references are made in the Agreement to codes and standards in accordance with which the Agreement shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Statement of Requirements. During Agreement execution, any changes in any such codes and standards shall be applied only after approval by the Procuring and Disposing Entity and shall be treated in accordance with clause 36. | | | | | | | | | | | | | | | | | | | | | | |
| 1. PACKING AND DOCUMENTS | | | | | | | | |  | | | | | | | | | | | | |
| * 1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Agreement.     26.2. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit. | | | | | | | | | | | | | | | | | | | | | | |
| 26.3 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 Agreement, including additional requirements, if any, specified in the STA, and in any other instructions ordered by the Procuring and Disposing Entity. | | | | | | | | | | | | | | | | | | | | | | |
| 1. INSURANCE | | |  | | | | | | | | | | | | | | | | | | |
| Unless otherwise specified in the STA, the Goods, Works, or Services provided under the Agreement shall be fully insured, in a freely convertible currency from an eligible country, against loss, personal injury or death or damage of Plant, and Materials and goods incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterm or in the manner specified in the STA. | | | | | | | | | | | | | | | | | | | | | | |
| 1. TRANSPORTATION | | | | | | | | |  | | | | | | | | | | | | |
| Responsibility for transportation of the Goods shall be in accordance with the Incoterms  specified in the STA. | | | | | | | | | | | | | | | | | | | | | | |
| 1. INSPECTIONS AND TESTS | | | | | | | | | |  | | | | | | | | | | | | | | |
| * 1. The Supplier shall at its own expense and at no cost to the Procuring and Disposing Entity carry out all such tests and inspections of the Goods as are specified in the Statement of Requirements. | | | | | | | | | | | | | | | | | | | | | | |
| 29.2 The inspections and tests may be conducted at the site, on the premises of the Supplier or its Sub-Contractor, at point of delivery, or at the Goods’ final destination of the Goods as may be applicable, or in another place in Malawi as specified in the STA. Subject to subclause 29.3, if conducted on the premises of the Supplier or its Sub-Contractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring and Disposing Entity. | | | | | | | | | | | | | | | | | | | | | | |
| 29.3 The Procuring and Disposing Entity or its designated representative shall be entitled to attend the tests and inspections referred to in subclause 29.2, provided that the Procuring and Disposing Entity bears all its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses. | | | | | | | | | | | | | | | | | | | | | | |
| 29.4 Whenever the Supplier is ready to carry out any such test and inspection, the Supplier shall give a reasonable advance notice, including the place and time, to the Procuring and Disposing Entity. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring and Disposing Entity or its designated representative to attend the test and inspection. | | | | | | | | | | | | | | | | | | | | | | |
| 29.5 The Procuring and Disposing Entity may require the Supplier to carry out any test or inspection not required by the Agreement but deemed necessary to verify that the characteristics and performance of the Goods or Services comply with the Statement of Requirements’ codes and standards under the Agreement, provided that the Supplier’s reasonable costs and expenses incurred in the carrying out of such test or inspection shall be added to the Agreement Price. If such test or inspection impedes the progress of manufacturing or the performance of other obligations of the Supplier under the Agreement, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected. | | | | | | | | | | | | | | | | | | | | | | |
| 29.6 The Supplier shall provide the Procuring and Disposing Entity with a report of the results of any such test or inspection.  29.7 The Procuring and Disposing Entity may reject any Goods, Works or Services that fail to pass any test or inspection or do not conform to the terms of reference and technical specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications or correct the notified Defect at no cost to the Procuring and Disposing Entity, and shall repeat the test or inspection, at no cost to the Procuring and Disposing Entity, upon giving a notice pursuant to sub-clause 29.4. | | | | | | | | | | | | | | | | | | | | | | |
| 29.8 The Supplier agrees that neither the execution of a test or inspection of the Goods, Works or Service, nor the attendance by the Procuring and Disposing Entity or its representative, the issue of any report pursuant to sub-clause 29.6, shall release the Supplier from any warranties or other obligations under the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 1. LIQUIDATED DAMAGES | | | | | | | | | | |  | | | | | | | | | | |
| If in the STA and except as provided under clause 35, where the Supplier fails to deliver any or all of the Goods or perform the Services within the period specified in the Agreement, the Procuring and Disposing Entity may without prejudice to all available other remedies under the Agreement, deduct (1%-3%) from the Agreement Price, as liquidated damages, a sum equivalent to the percentage specified in the STA of the Agreement Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the STA. Once the maximum is reached, the Procuring and Disposing Entity may terminate the Agreement pursuant to TA Clause 38. | | | | | | | | | | | | | | | | | | | | | | |
| 1. WARRANTY | | | | | |  | | | | | | | | | | | | | | | |
| 31.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 31.2 Subject to clause 25.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in Malawi. | | | | | | | | | | | | | | | | | | | | | | |
| 31.3 Unless otherwise specified in the STA, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the STA, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.  31.4. The Defects Liability Period shall be specified in the STA and extended for as long as the Defects remain to be corrected. | | | | | | | | | | | | | | | | | | | | | | |
| 31.5 The Procuring and Disposing Entity shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring and Disposing Entity shall afford all reasonable opportunity for the Supplier to inspect such defects. | | | | | | | | | | | | | | | | | | | | | | |
| 31.6 Upon receipt of such notice, the Supplier shall, within two weeks or such other period specified in the STA, expeditiously repair or replace the Goods or parts thereof, at no cost to the Procuring and Disposing Entity.  31.6 If after notification under sub-clause 31.5 the Supplier fails to remedy the defect within the period specified in sub-clause 31.6, the Procuring and Disposing Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier’s risk and expense and without prejudice to any other rights which the Procuring and Disposing Entity may have against the Supplier under the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 1. PATENT INDEMNITY | | | | | | | | | | | | | |  | | | | | | | |
| * 1. The Supplier shall, subject to compliance to sub-clause 32.2 by the Procuring and Disposing Entity, indemnify and hold harmless, the Procuring and Disposing Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney’s fees and expenses, which the Procuring and Disposing Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of—   *(a)* the installation of the Goods by the Supplier or their use in Malawi or where the Site is located; and  *(b)* the sale in any country of the products produced by the Goods.  The indemnity shall not cover any Goods, Works or Services or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, neither any infringement resulting from the Goods, Works or Services or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 32.2 If any proceedings are brought or any claim is made against the Procuring and Disposing Entity arising out of the matters referred to in sub-clause 32.1, the Procuring and Disposing Entity shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the name of the Procuring and Disposing Entity conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. | | | | | | | | | | | | | | | | | | | | | | |
| * 1. Where the Supplier fails to notify the Procuring and Disposing Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring and Disposing Entity shall be free to conduct the same on its own behalf.   28.4 The Procuring and Disposing Entity shall, at the Supplier’s request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing. | | | | | | | | | | | | | | | | | | | | | | |
| 28.5 The Procuring and Disposing Entity shall indemnify and hold harmless, the Supplier and its employees, officers, and Sub-Contractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney’s fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Agreement arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring and Disposing Entity. | | | | | | | | | | | | | | | | | | | | | | |
| 1. LIMITATION OF LIABILITY | | | | | | | | | | | |  | | | | | | | | | |
| Except in cases of gross negligence or wilful misconduct—  (a) neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring and Disposing Entity; and  (b) the aggregate liability of the Supplier to the Procuring and Disposing Entity, whether under the Agreement, in tort, or otherwise, shall not exceed the total Agreement value or such other amount specified in the STA, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Procuring and Disposing Entity with respect to patent infringement. | | | | | | | | | | | | | | | | | | | | | | |
| 1. CHANGE IN LAWS | | | | | | | | | | | | | | |  | | | | | | |
| 34.1 Unless otherwise specified in the Agreement, if after the date of the Bidding Document, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated, or changed in Malawi or where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date or the Agreement Price, then such Delivery Date or Agreement Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Agreement.  34.2. Notwithstanding sub-clause 34.1, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with clause 19. | | | | | | | | | | | | | | | | | | | | | | |
| 1. FORCE MAJEURE | | | |  | | | | | | | | | | | | | | | | | |
| * 1. The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Agreement is the result of an event of Force Majeure. | | | | | | | | | | | | | | | | | | | | | | |
| 35.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include acts of the Government of Malawi in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.  35.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring and Disposing Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring and Disposing Entity in writing, the Supplier shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. | | | | | | | | | | | | | | | | | | | | | | |
| 1. CHANGE ORDERS AND AGREEMENT AMENDMENTS | | | | | | | | | | | | | | | | | | |  | | |
| 36.1 The Procuring and Disposing Entity may at any time, order the Supplier through notice in accordance with clause 12, to make changes within the general scope of the Agreement in any one or more of the following—  (a) drawings, designs, or specifications, where Goods to be furnished under the Agreement are to be specifically manufactured for the Procuring and Disposing Entity;  (b) the method of shipment or packing;  (c) the place of delivery; and  (d) the Services to be provided by the Supplier. | | | | | | | | | | | | | | | | | | | | | | |
| 36.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier’s performance of any provisions under the Agreement, an equitable adjustment shall be made in the Agreement Price or in the Delivery/Completion Schedule, or both, and the Agreement shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier’s receipt of the Procuring and Disposing Entity’s change order.  33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Agreement shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services. | | | | | | | | | | | | | | | | | | | | | | |
| 1. EXTENSIONS OF TIME | | | | | | | | | |  | | | | | | | | | | | | |
| 37.1 If at any time during performance of the Agreement, the Supplier or its Sub-Contractors encounters conditions impeding timely delivery of the Goods, Works or Services pursuant to TA Clause 16, the Supplier shall promptly notify the Procuring and Disposing Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier’s notice, the Procuring and Disposing Entity shall evaluate the situation and may at its discretion extend the Supplier’s time for performance, in which case the extension shall be ratified by the parties by amendment of the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| 37.2 Except in case of Force Majeure, as provided under TA Clause 35, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to TA Clause 30, unless an extension of time is agreed upon, pursuant to TA Sub-Clause 37.1. | | | | | | | | | | | | | | | | | | | | | | |
| 1. TERMINATION | | | | | |  | | | | | | | | | | | | | | | |
| 35.1 TERMINATION FOR DEFAULT  (a) The Procuring and Disposing Entity, without prejudice to any other remedy for breach of Agreement, by notice of default sent to the Supplier, may terminate the Agreement in whole or in part if— | | | | | | | | | | | | | | | | | | | | | | |
| (i) the Supplier fails to deliver, complete or perform any or all of the Goods, Works Services within the period specified in the Agreement, or within any extension thereof granted by the Procuring and Disposing Entity pursuant to clause 37;  (ii) the Supplier fails to perform any other obligation under the Agreement; or  (iii) the Supplier, in the judgment of the Procuring and Disposing Entity has engaged in corrupt or fraudulent practices, as defined in clause 3, in competing for or in executing the Agreement. | | | | | | | | | | | | | | | | | | | | | | |
| (b) If the Procuring and Disposing Entity terminates the Agreement in whole or in part, pursuant to sub-clause 38.1(a), the Procuring and Disposing Entity may procure, upon such terms and in such manner as it deems appropriate Goods, Works or Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring and Disposing Entity for any additional costs for such similar Goods, Works or Services. The Supplier shall continue performance of the Agreement which has not been terminated. | | | | | | | | | | | | | | | | | | | | | | |
| 34.2 TERMINATION FOR INSOLVENCY  The Procuring and Disposing Entity may, at any time, terminate the Agreement by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination shall be without compensation to the Supplier, provided that such termination shall not prejudice or affect any right of action or remedy that has accrued or will accrue after the termination, to the Procuring and Disposing Entity. | | | | | | | | | | | | | | | | | | | | | | |
| 34.3 TERMINATION FOR CONVENIENCE  *(a)* The Procuring and Disposing Entity, may by notice sent to the Supplier, terminate the Agreement, in whole or in part, at any time for its convenience;  *(b)* The notice of termination shall specify that termination is for the Procuring and Disposing Entity’s convenience, the extent to which performance of the Supplier under the Agreement is terminated, and the date upon which such termination becomes effective; and | | | | | | | | | | | | | | | | | | | | | | |
| (c) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier’s receipt of notice of termination shall be accepted by the Procuring and Disposing Entity at the Agreement terms and prices. For the remaining Goods, the Procuring and Disposing Entity may elect to\_\_\_\_  *(i)* have any portion completed and delivered at the Agreement terms and prices; or  *(ii)* cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier. | | | | | | | | | | | | | | | | | | | | | | |
| 1. ASSIGNMENT | | | | |  | | | | | | | | | | | | | | | | |
| Neither the Procuring and Disposing Entity nor the Supplier shall assign, in whole or in part, their obligations under this Agreement, except with prior written consent of the other party. | | | | | | | | | | | | | | | | | | | | | | |

# SECTION 9. SPECIAL TERMS OF AGREEMENT

The following Special Terms of Agreement (STA) shall supplement the Terms of Agreement (TA). Whenever there is a conflict, the provisions herein shall prevail over those in the TA.

| **TA clause reference** | **Special Terms** |
| --- | --- |
| **TA 1.1(i)** | The Procuring and Disposing Entity is: |
| **TA 1.1 (g)** | For Goods, the Eligible Countries are: |
| **TA 1.1 (o)** | For Works, the Site(s) is/are: |
| **TA 1.1** | In addition to the definitions in TA 1.1, the following words and expressions shall have the meanings hereby assigned to them\_\_\_\_  *(a)* “Framework Agreement” means an agreement arrangement in which the Procuring and Disposing Entity promises to procure an estimated quantity or minimum value of Goods, Works and Related Services at fixed rates, but where actual quantities are purchased by means of call-off orders and payment is made for the actual quantities delivered;  *(b)* “Call-Off Order” means an order issued by the Procuring and Disposing Entity on a supplier, contractor or service provider for the purchase of specified quantities of the Goods, Works and Related Services under a framework agreement; and    (c) “Response Time” means the period for delivery of the Goods, Works and Related Services, calculated from the date of a call-off order. |
| **TA 2.1(g)** | The other documents forming part of the Agreement are …………… issued under the Agreement. |
| **TA 4.2 (b)** | The version of Incoterms shall be: |
| **TA 9.1** | The language shall be: |
| **TA 10.1** | The individuals or firms in a joint venture, consortium or association be …………………… liable. |
| **TA 12.1** | For *notices*, and the issue of call-off orders, the Procuring and Disposing Entity’s address shall be:  ***Attention***: The Head of Procurement and Disposal Unit  *Street Address:*  *Name of Building:*  *Floor/Room number:*  *Town/City:*  *Postal Address:*  *Telephone:*  *Email address:*  For *notices,* including call-off orders, the supplier’s address shall be:  Attention:  *Street Address:*  *Name of Building:*  *Floor/Room number:*  *Town/City:*  *Postal Address:*  *Telephone:*  *Email address:* |
| **TA 13.1** | The Governing law shall be the Laws of Malawi. |
| **TA 14.2** | The formal mechanism for the resolution of disputes shall be: |
| **TA 15.1** | Notwithstanding the provisions of TA 11.1, the quantities specified in the Statement of Requirements are estimated only and may or may not be procured by the Procuring and Disposing Entity through this agreement. Therefore, quantities of Goods, Works and Related Services to be provided shall be as specified in: ……………..……. |
| **TA 16.1** | The Delivery (or completion) of the Goods, Works and Related Services shall be in accordance with each call-off order. Delivery and Completion shall be within the response times specified in the Delivery and Completion Schedules or Bills of specified in the Statement of Requirements, calculated from the date of each call-off order.  The shipping and other documents to be furnished by the supplier for each call-off order are: ………………………… |
| **TA 19.1** | Notwithstanding the provisions of TA 19.1 and TA 1.1(d), the total Agreement Price specified in the Agreement |
| **TA 19.2** | The quantities specified in Statement of Requirements are subject to: |
| **TA 20.1** | Payment shall ……………… for each call-off order following delivery of the Goods, Works and Related Services |
| **TA 20.3** | The payment period shall be: |
| **TA 20.4** | The currency for payments shall be: |
| **TA 21.1** | The supplier shall be responsible for all taxes, import duties and levies imposed on the supplier except for the following: |
| **TA 21.2** | The Procuring and Disposing Entity shall be responsible for all taxes, import duties and levies imposed by law in Malawi on the Goods, Works and Related Services except for the following: |
|  |  |
|  |  |
|  |  |
| **TA 26.2** | The packing, marking and documentation within and outside the packages shall be: |
| **TA 27.1** | The insurance coverage shall be: |
| **TA 28.1** | The Incoterms shall be: |
| **TA 30.1** | Liquidated Damages [*shall/shall not*] apply if the supplier fails to deliver any or all of the Goods, Works and Related Services specified in any call-off order within the response times specified in the Statement of Requirements.  Notwithstanding the provisions of TA 30.1, the amount of liquidated damages shall be calculated as a percentage of the value of the call-off order and shall apply only to the call-off order under which the supplier has failed to deliver the Goods or perform the Services.  The liquidated damage shall be: \_\_\_\_\_\_\_ % of the value of the call-off order per week.  The maximum amount of liquidated damages shall be: ……. % of the value of the call-off order. |
| **TA 31.3** | The period of validity of the Warranty shall be: |
| **TA 31.5** | The period within which the supplier shall repair or replace defective Goods, Works and Related Services shall be: |
| **TA 33.1** | The amount of aggregate liability shall be: |

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| SECTION 10. AGREEMENT FORMS |

**TABLE OF FORMS**

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Call-Off Order 4

Advance Payment Security 7

**AGREEMENT**

**PROCUREMENT REFERENCE NO:**

THIS AGREEMENT made this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter the “Procuring and Disposing Entity”), of the one part, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter the “Provider”), of the other part:

WHEREAS the Procuring and Disposing Entity—

1. invited bids for certain Goods, Works and Services, viz., \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ; and
2. has accepted a Bid by the Provider for the provision of those Goods, Works and Services in the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter the “Agreement 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 Terms of Agreement referred to.

2. In consideration of the payments to be made by the Procuring and Disposing Entity to the Provider as indicated in this Agreement, the Provider hereby covenants with the Procuring and Disposing Entity to provide the Goods, Works, and Services and to remedy defects therein in conformity in all respects with the provisions of the Agreement.

3. The Procuring and Disposing Entity hereby covenants to pay the Provider in consideration of the provision of the Goods, Works and Services and the remedying of defects therein, the Agreement Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner prescribed by the Agreement.

1. The quantities of Goods specified in the Statement of Requirements are estimated quantities only and are not purchased by this Agreement. If the call-off orders under this Agreement do not result in total orders of the quantities described as estimates, that fact shall not constitute the basis for an equitable adjustment.
2. The Procuring and Disposing Entity shall order from the Provider, all the Goods specified in the agreement that are required to be purchased by the Procuring and Disposing Entity during the period stated below, unless any Goods are urgently required in an emergency situation and the Provider is unable to deliver such Goods within the period required by the Procuring and Disposing Entity.
3. The Procuring and Disposing Entity guarantees to order at least the value of Goods specified as the minimum value in the Statement of Requirements.
4. Any Goods to be provided under this agreement shall be ordered by the issue of call-off (orders) which shall be issued by the Procuring and Disposing Entity as Notices in accordance with clause 12 of the Terms of Agreement, using the format attached to this Agreement. The authorised signatory for call-off (orders) shall be the official named in STA Clause 12.

**9.** Call-off (orders) may be issued at any time during a period of one year from the date of agreement indicated hereinabove. Any call-off (order) issued, but not completed, during this period, shall be governed by the Agreement in the same way as if it had been completed during that period.

IN WITNESS whereof, the parties hereto, have caused this Agreement to be executed in accordance with the law specified in the Special Terms of Agreement on the day, month and year hereinabove indicated.

for the Procuring and Disposing Entity

Name ……………………………………………... …in the capacity of ……………………………….

Signature…………………………………………………………………………………………….……

Witness ……………………………………………………..Signature………………………………….

For and on behalf of the Provider

Name ………………………………………..……. .. in the capacity of ……………………………….

Signature……………………………………………………………………………………….…………

Witness …………………………………………………Signature………………………………………

**LOCAL PURCHASE ORDER / CALL-OFF**

**PROCUREMENT NUMBER: ……………………………………………………………..**

To: *[Name and Address of Supplier]*

…………………………………………………………………………………………………….

…………………………………………………………………………………………………….

…………………………………………………………………………………………………….

*Your bid reference [reference number] dated [date of bid] is accepted and you are required to supply the goods or perform the works or services [amend as appropriate] as detailed in the listed attachments against the terms contained in this Purchase Order / Call-Off. This order is placed subject to the attached Terms of Agreement for Framework Agreement, except where modified by the terms stated below.*

1. **SPECIFIC TERMS OF THIS LOCAL PURCHASE ORDER / CALL-OFF:**
2. LOCAL PURCHASE ORDER / CALL-OFF SUM: The Purchase Order / Call-Off Sum is [*state the sum and currency*]…………………………………………………………………………
3. COMPLETION PERIOD: The goods are to be delivered or the works or services performed {*amend as* *appropriate*} within ……………………..…… days/weeks/months from the date of this Purchase Order.
4. WARRANTY: The warranty/guarantee period is: …………………………………months.
5. PERFORMANCE SECURITY: A performance security [*shall be/shall not be applicable*]. Where performance security shall be applicable, it shall be in a form of …………………………………………………………………………………..…[*insert the form of the performance security that shall be acceptable*]
6. DELIVERY POINT / SITE**:** Goods are to be delivered to, or the works or services provided at *[physical address]* …………………………………………………………………………
7. CONTACT PERSON: Enquiries and documentation should be addressed to [*name and position of individual*] at [*address*] ……………………………………..……………………………………………………..…………………….

Telephone Number: ……………..………………………………………………………………..……………

1. PAYMENT TO SUPPLIER:

Payment will be made in full [*or state alternative agreed payment terms*] on completion of satisfactory delivery. The following documentation must be supplied for payments to be made:

1. An original and two copies of an Invoice;
2. A goods received note or completion certificate signed by [*Authority responsible for certifying satisfactory completion of the order*];
3. [*List other documents required e.g. packing lists, certificates, shipping documents*]
4. Please confirm your receipt of this Local Purchase Order / Call-Off in writing.

**LOCAL PURCHASE ORDER / CALL-OFF AUTHORISED BY:**

Signature:………………………………….. Name:………………………………..……………………..…

Position:………………………………………………………………….…. Date: ………….………………

**LIST OF GOODS AND PRICE SCHEDULE**

**PROCUREMENT REFERENCE NO**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Local Purchase Order / Call-Off Reference No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| --- | --- | --- | --- | --- | --- |
| *Item No* | *Description of Goods* | *Quantity* | *Unit of Measure* | *Unit Price* | *Total Price* |
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|  |  | | Other additional costs | |  |
|  |  | | Subtotal | |  |
|  |  | | VAT @ % | |  |
|  |  | | PPDA Levy@ 1% | |  |
|  |  | | Total Price | |  |

*[The Advance Payment Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign documents that are binding on the Financial Institution]*

|  |
| --- |
| **ADVANCE PAYMENT SECURITY** |

Date: *[insert date (as day, month, and year) of Advance Payment Security]*

Procurement Reference No.: *[insert Procurement Reference number]……………..…………*

To: *[insert complete name of Client]*……………………………………………..………………….

………………………………………………………………………………………………………….………………

In accordance with the payment provision included in the Agreement, in relation to advance payments, *[insert complete name of Consultant]*……………………………………………… (hereinafter called the “Consultant”) shall deposit with the Client a security consisting of *[indicate type of security]………………………………………………………..,* to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Agreement, in the amount of *[insert currency and amount of guarantee in words and figures]*……………………………………………………………………………………………………..……….

………………………………………………………………………………………………………………………….

We, the undersigned [*insert complete name of* ………………………………………………, legally domiciled in *[insert full address of Guarantor]*………………………………………….. (hereinafter the “Guarantor”), as instructed by the Consultant, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Client on its first demand without whatsoever right of objection on our part and without its first claim to the Consultant, in the amount not exceeding [*insert currency and amount of guarantee in words and figures].*

…………………………………………………………………………………………………….

…………………………………………………………………………………………………….

This security shall remain valid and in full effect from the date of the advance payment received by the Consultant under the Agreement until *[insert day and month], [insert year].*

………/………/………………………………………………………………………………….

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

Name: *[insert complete name of person signing the Security]*

…………………………………………………………………………….…………………………………………….

………………………………………………………………………………….……………………………………….

In the capacity of *[insert legal capacity of person signing the Security]*

……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

Signed: *[signature of person whose name and capacity are shown above]*

Duly authorised to sign the Security for and on behalf of: *[insert complete name of the Financial Institution]*

Dated on \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ *[insert date of signing]*

1. In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a joint venture, each reference to “Bidder” in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member. [↑](#footnote-ref-2)
2. Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules. [↑](#footnote-ref-3)