

**GOVERNMENT OF THE REPUBLIC OF MALAWI**



*Accelerating Malawi's Economic Growth*

**R O A D S   A U T H O R I T Y**

---

**Bidding Documents  
for the  
Procurement of a Motor Vehicle**

**Name of Project:** SADC Sub-Regional Transport and Trade Facilitation Project  
**Sector:** Transport  
**Financing Agreement reference:** 2100150043246  
**Project ID No.:** P-Z1-DB0-253

<b>Subject of Procurement</b>	<b>Supply and Delivery of 4x4 Double Cabin Pick-up Motor Vehicle</b>
<b>Procurement Reference Number</b>	<b>RA/DEV/SADC/VEH/2024-25/10</b>
<b>Date of Issue of Bidding Document</b>	<b>29<sup>th</sup> August 2024</b>

# **Table of Contents**

## **Part 1 - Bidding Procedures**

Section 1 – Instructions to Bidders

Section 2 – Bid Data Sheet

Section 3 – Evaluation and Qualification Criteria

Section 4 – Bidding Forms

Section 5 – Eligible Countries

## **Part 2 - Statement of Requirement**

Section 6 – Statement of Requirements

## **Part 3 - Contract**

Section 7 – General Conditions of Contract

Section 8 – Special Conditions of Contract

Section 9 – Contract Forms

---

# **Part 1 – Bidding Procedures**

Section 1 – Instructions to Bidders

Section 2 – Bid Data Sheet

Section 3 – Evaluation Methodology and Criteria

Section 4 – Bidding Forms

Section 5 – Eligible Countries

---

# Section 1: Instructions to Bidders

## Table of Clauses

<b>A.</b>	<b>General .....</b>	<b>2</b>
1.	Scope of Bid .....	2
2.	Source of Funds .....	2
3.	Fraud and Corruption .....	2
4.	Eligible Bidders .....	3
5.	Eligible Goods and Related Services .....	4
<b>B.</b>	<b>Contents of Bidding Document .....</b>	<b>4</b>
6.	Sections of Bidding Document .....	4
7.	Clarification of Bidding Documents .....	5
8.	Amendment of Bidding Documents .....	5
<b>C.</b>	<b>Preparation of Bids .....</b>	<b>5</b>
9.	Cost of Bidding .....	5
10.	Language of Bid .....	5
11.	Documents Comprising the Bid .....	5
12.	Bid Submission Sheet and Price Schedules .....	6
13.	Alternative Bids .....	7
14.	Bid Prices and Discounts .....	7
15.	Currencies of Bid .....	8
16.	Documents Establishing the Eligibility of the Bidder .....	8
17.	Documents Establishing the Eligibility of Goods and Related Services .....	8
18.	Documents Establishing the Conformity of the Goods and Related Services to the Bidding Documents .....	8
19.	Documents Establishing the Qualifications of the Bidder .....	9
20.	Period of Validity of Bids .....	9
21.	Bid Security .....	9
22.	Format and Signing of Bid .....	10
<b>D.</b>	<b>Submission and Opening of Bids .....</b>	<b>10</b>
23.	Sealing and Marking of Bids .....	10
24.	Deadline for Submission of Bids .....	11
25.	Late Bids .....	11
26.	Withdrawal, Substitution, and Modification of Bids .....	11
27.	Bid Opening .....	11
<b>E.</b>	<b>Evaluation and Comparison of Bids .....</b>	<b>12</b>
28.	Confidentiality .....	12
29.	Clarification of Bids .....	12
30.	Responsiveness of Bids .....	12
31.	Nonconformities, Errors, and Omissions .....	13
32.	Preliminary Examination of Bids .....	13
33.	Examination of Terms and Conditions; Technical Evaluation .....	14
34.	Conversion to Single Currency .....	14
35.	Margin of Preference .....	14
36.	Evaluation of Bids .....	14
37.	Comparison of Bids .....	15
38.	Post-qualification of the Bidder .....	15
39.	Procuring Entity's Right to Accept Any Bid, and to Reject Any or All Bids .....	16
<b>F.</b>	<b>Award of Contract .....</b>	<b>16</b>
40.	Award Criteria .....	16
41.	Procuring Entity's Right to Vary Quantities at Time of Award .....	16
42.	Notification of Award .....	16
43.	Signing of Contract .....	16
44.	Performance Security .....	16

---

# Section I. Instructions to Bidders

## A. General

### 1. Scope of Bid

- 1.1 The Procuring Entity indicated in the Bid Data Sheet (BDS), invites bids by the issue of this Bidding Document for the supply of Plant, Vehicles and Equipment and Related Services incidental thereto as specified in Section 6, Statement of Requirements. These Instructions to Bidders shall be read in conjunction with the BDS. The subject of procurement, the procurement reference number, and number of lots of this Bidding Document are provided in the BDS.
- 1.2 The Bidding Document is issued under the procurement method indicated in the BDS.
- 1.3 Throughout these Bidding Documents:
  - (a) the term “in writing” means communicated in written form with proof of receipt;
  - (b) if the context so requires, singular means plural and vice versa; and
  - (c) “day” means calendar day.

### 2. Source of Funds

- 2.1 The Procuring Entity has an approved budget from public funds toward the cost of the procurement described in the BDS. The Procuring Entity intends to use these funds to place a contract for which these Bidding Documents are issued.
- 2.2 Payments will be made directly by the Procuring Entity and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.

### 3. Fraud and Corruption

- 3.1 The Government requires that Procuring Entities, as well as Bidders and Suppliers under government-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
    - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
    - (iii) “collusive practices” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish prices at artificial, noncompetitive levels; and
    - (iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
  - (b) 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; and

- 
- (c) 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.

#### **4. Eligible Bidders**

- 4.1 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB Sub-Clause 4.5 - 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, unless otherwise specified in the BDS, all parties shall be jointly and severally liable.
- 4.2 This Invitation for Bids is open to all suppliers from eligible source countries as defined in Section 5, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors for any part of the Contract including related services.
- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to be in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if they 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 firm that is under a declaration of suspension by the Office of the Director of Public Procurement in accordance with ITB Clause 3.1 (c), 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, operate under commercial law, and are not a dependent agency (directly or indirectly) of the Procuring Entity or the Government of Malawi.
- 4.6 Bidders shall provide such evidence of their eligibility satisfactory to the Procuring Entity, to verify that the bidder:
- (i) has the legal capacity to enter into a contract;
  - (ii) 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
  - (iii) has fulfilled their obligations to pay taxes according to the tax laws of their country of registration.
- 4.7 In order to demonstrate compliance with the criteria in ITB Sub-Clause 4.6, a Bidder shall submit with its Bid:
- (i) a copy of its annual tax clearance certificate;
  - (ii) appropriate documentary evidence demonstrating its compliance; and
  - (iii) such other documentary evidence as may be specified in the BDS.

---

## **5. Eligible Goods and Related Services**

- 5.1 All goods and related services to be supplied under the Contract shall have as their country of origin an eligible country in accordance with Section 5, Eligible Countries.
- 5.2 For purposes of this Clause, the term “goods” includes commodities, raw materials, machinery, equipment, and industrial plants; and “related services” includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term “country of origin” means the country where the goods have been mined, grown, 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.
- 5.4 The nationality of the firm that assembles, distributes, or sells the goods shall not determine their origin.
- 5.5 The 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. Contents of Bidding Document**

### **6. Sections of Bidding Document**

- 6.1 The Bidding Document consists of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB Clause 8.

#### **Part 1 Bidding Procedures**

- Section 1 Instructions to Bidders (ITB)
- Section 2 Bid Data Sheet (BDS)
- Section 3 Evaluation and Qualification Criteria
- Section 4 Bidding Forms
- Section 5 Eligible Countries

#### **Part 2 Supply Requirements**

- Section 6 Statement of Requirements

#### **Part 3 Contract**

- Section 7 General Conditions of Contract (GCC)
- Section 8 Special Conditions of Contract (SCC)
- Section 9 Contract Forms

- 6.2 The Invitation to Bid 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. Bidders who did not obtain the Bidding Document directly from the Procuring Entity may be rejected during evaluation. Where a Bidding Document is obtained from the Procuring Entity on a Bidder’s behalf, the Bidder’s name must be registered with the Procuring 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 Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

---

## **7. Clarification of Bidding Documents**

- 7.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Procuring Entity in writing at the Procuring Entity's address indicated in the BDS. The Procuring 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. The Procuring Entity shall forward copies of its response to all Bidders who have acquired the Bidding Documents directly from it, including a description of the inquiry but without identifying its source. Should the Procuring Entity deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and Sub-Clause 24.2.

## **8. Amendment of Bidding Documents**

- 8.1 At any time prior to the deadline for submission of bids, the Procuring Entity may amend the Bidding Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all Bidders who have obtained the Bidding Documents directly from the Procuring Entity.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB Sub-Clause 24.2

## **C. Preparation of Bids**

### **9. Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

### **10. Language of Bid**

- 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. Supporting documents and printed literature that are part of the Bid may be in another language provided they 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**

- 11.1 The Bid shall comprise the following:
- (a) Bid Submission Sheet and the applicable Price Schedules in accordance with ITB Clauses 12, 14, and 15;
  - (b) Bid Security, in accordance with ITB Clause 21;
  - (c) alternative bids, if permissible, in accordance with ITB Clause 13;
  - (d) written confirmation authorising the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 22;
  - (e) documentary evidence in accordance with ITB Clause 16 establishing the Bidder's eligibility to bid;
  - (f) documentary evidence in accordance with ITB Clause 17, that the Plant, Vehicles & Equipment and Related Services to be supplied by the Bidder are of eligible origin;



- 
- (g) documentary evidence in accordance with ITB Clauses 18 and 30, that the Goods and Related Services conform to the Bidding Documents;
  - (h) documentary evidence in accordance with ITB Clause 19 establishing the Bidder's qualifications to perform the contract if its Bid is accepted; and
  - (i) any other document required in the BDS.

## **12. Bid Submission Sheet and Price Schedules**

12.1 The Bidder shall submit the Bid Submission Sheet using the form furnished in Section 4, Bidding Forms. This 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, which includes:

- (a) the reference of the Bidding Document and the number of each addenda received;
- (b) a brief description of the Plant, Vehicles & Equipment and Related Services offered;
- (c) the total bid price;
- (d) any discounts offered and the methodology for their application;
- (e) the period of validity of the bid;
- (f) a commitment to submit a performance security and the amount;
- (g) a declaration of nationality of the Bidder;
- (h) 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; except for alternative bids in accordance with ITB Clause 13;
- (i) confirmation that the Bidder has not been declared ineligible or suspended by the Office of the Director of Public Procurement;
- (j) a declaration concerning investigations relating to any other public procurement tender exercise or awarded contract,
- (k) a declaration on gratuities and commissions;
- (l) a declaration that a Manufacturer's Inspection Certificate or Works Inspection Certificate will be provided for all items if the Bidder is awarded the contract;
- (m) a statement of the commercial warranty for quality and performance of the plant, vehicles and equipment offered;
- (n) the names and addresses of the Directors of the bidder, and
- (o) an authorised signature.

12.2 The Bidder shall submit the Price Schedules for Plant, Vehicles & Equipment and Related Services, indicating their origin as appropriate, using the forms furnished in Section 4, Bidding Forms. The Price Schedule Forms shall indicate, as appropriate:

- (a) the item number;
- (b) a brief description of the Plant, Vehicles & Equipment or Related Services to be supplied, including model number and power output
- (c) their country of;
- (d) quantity;
- (e) unit prices;
- (f) customs duties and all taxes paid or payable in Malawi;

- 
- (g) total price per item;
  - (h) subtotals and totals per Price Schedule; and
  - (i) authorised signature.

### **13. Alternative Bids**

13.1 Unless otherwise indicated in the BDS, alternative bids shall not be considered.

### **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 below.
- 14.2 All items in the Statement of Requirements must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. 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 ITB Sub-Clause 31.3
- 14.3 The price to be quoted in the Bid Submission Sheet, in accordance with ITB Sub-Clause 12.1(c), shall be the total price of the Bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Bid Submission Sheet, in accordance with ITB Sub-Clause 12.1(d).
- 14.5 The terms EXW(Ex –Works), CIF(Cost, Insurance & Freight), CIP(Carriage & Insurance Paid), and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the BDS.
- 14.6 Prices proposed on the Price Schedule Forms for Plant, Vehicles & Equipment and Related 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 Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered:
- (a) For goods:
    - (i) the price of the plant, vehicles & equipment shall be quoted CIP named port of destination, or as specified in the BDS. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible countries. Similarly, the Bidder may obtain insurance services from any eligible source country;
    - (ii) all Malawian customs duties and sales and other taxes already paid or payable on the plant, vehicles & equipment or on the on the components and raw material used in the manufacture or assembly if the contract is awarded to the Bidder; and
    - (iii) the total price for the item.
  - (b) For related services
    - (i) the price of the related services;
    - (ii) all Malawian customs duties and sales and other taxes already paid or payable on the related services if the contract 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 Contract and not subject to variation on any account, unless otherwise specified in the BDS. A bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITB Clause 30. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.8 If so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB Sub-Clause 14.4, provided the bids for all lots are submitted and opened at the same time.

14.9 If so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Prices quoted shall correspond to one hundred (100) % of the items specified for each lot and to one hundred (100) % of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package or, alternatively, to individual Contracts within the package. Price reductions shall be submitted in accordance with ITB Sub-Clause 14.4, provided the bids for all lots are submitted and opened at the same time.

## **15. Currencies of Bid**

15.1 For Plant, Vehicles & Equipment and Related Services that the Bidder will supply from inside Malawi the prices shall be quoted in Malawi Kwacha, unless otherwise specified in the BDS.

15.2 For Plant, Vehicles & Equipment and Related Services that the Bidder will supply from outside Malawi prices shall be expressed in the currency of any eligible country. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but use no more than three currencies different from the currency of Malawi.

## **16. Documents Establishing the Eligibility of the Bidder**

16.1 To establish their eligibility in accordance with ITB Clause 4, Bidders shall complete the eligibility declarations in the Bid Submission Sheet, included in Section 4, Bidding Forms.

## **17. Documents Establishing the Eligibility of Goods and Related Services**

17.1 To establish the eligibility of the Plant, Vehicles & Equipment and Related Services, in accordance with ITB Clause 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section 4, Bidding Forms.

## **18. Documents Establishing the Conformity of the Plant, Vehicles & Equipment and Related Services to the Bidding Documents**

18.1 To establish the conformity of the Plant, Vehicles & Equipment and Related Services to the Bidding Documents, the Bidder shall furnish as part of its bid the documentary evidence specified in Section 6, Statement of Requirement.

---

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 Plant, Vehicles & Equipment and Related Services, demonstrating substantial responsiveness of the Plant, Vehicles & Equipment and Related Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of the Statement of Requirement.

18.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Statement of Requirements, 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 Entity's satisfaction, that the substitutions are superior to those specified in the Statement of Requirement.

## **19. Documents Establishing the Qualifications of the Bidder**

19.1 To establish its qualifications to perform the Contract, the Bidder shall submit the evidence indicated for each qualification criterion specified in Section 3, Evaluation and Qualification Criteria.

## **20. Period of Validity of Bids**

20.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline prescribed by the Procuring Entity. A bid valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2 In exceptional circumstances, prior to expiry of the bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB Clause 21, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB Sub-Clause 20.3.

20.3 In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial bid validity, the Contract price shall be adjusted by a factor specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

## **21. 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 in any of the following forms:

- (a) a demand guarantee;
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified cheque or payable order;

all from a reputable source in 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, acceptable to the Procuring Entity. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eighty (28) days beyond the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.

- 
- 21.3 Any bid not accompanied by a substantially responsive bid security, if one is required in accordance with ITB Sub-Clause 21.1, shall be rejected by the Procuring Entity as non-responsive.
- 21.4 The bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 44.
- 21.5 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the 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 ITB Sub-Clause 20.2; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB Clause 43;
    - (ii) furnish a performance security in accordance with ITB Clause 44; or
    - (iii) accept the correction of its Bid Price pursuant to ITB Sub-Clause 31.5.

## **22. Format and Signing of Bid**

- 22.1 The Bidder shall prepare one original of the documents comprising the bid as described in 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 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 authorised to sign on behalf of the Bidder. This authorisation 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 authorisation must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be signed or initialled by the person signing the bid.
- 22.3 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

## **D. Submission and Opening of Bids**

### **23. Sealing and Marking of Bids**

- 23.1 The Bidder shall enclose the original and each copy of the bid, including alternative bids, if permitted in accordance with ITB Clause 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 23.2 The inner and outer envelopes shall:
- (a) be addressed to the Procuring Entity in accordance with ITB Sub-Clause 24.1;
  - (b) bear the subject of the procurement or the Project name, and procurement reference number indicated in the BDS;
- 23.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared "late" pursuant to ITB Clause 25.1.

---

23.4 If all envelopes are not sealed and marked as required, the Procuring Entity shall assume no responsibility for the misplacement or premature opening of the bid.

#### **24. Deadline for Submission of Bids**

24.1 Bids must be received by the Procuring Entity at the address and no later than the date and time indicated in the BDS.

24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

#### **25. Late Bids**

25.1 The Procuring Entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 24. Any bid received by the Procuring Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

#### **26. Withdrawal, Substitution, and Modification of Bids**

26.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorised representative, and shall include a copy of the authorisation in accordance with ITB Sub-Clause 22.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) Submitted in accordance with ITB Clauses 22 and 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” or “Modification;” and
- (b) Received by the Procuring Entity prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 24.

26.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 26.1 shall be returned unopened to the Bidders.

26.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and expiry of the period of bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.

#### **27. Bid Opening**

27.1 The Procuring Entity shall conduct the bid opening in the presence of Bidders` designated representatives who choose to attend, and 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. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at bid opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at bid opening. 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.

- 27.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers; the presence of a bid security, if required; and any other details as the Procuring Entity may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB Sub-Clause 25.1.
- 27.4 The Procuring Entity will prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. 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 may be provided to Bidders upon request.

## **E. Evaluation and Comparison of Bids**

### **28. Confidentiality**

- 28.1 Information relating to the examination, evaluation, comparison, and post qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 28.2 Any effort by a Bidder to influence the Procuring Entity in the examination, evaluation, comparison, and post-qualification of the bids or Contract award decisions shall result in the rejection of its bid.
- 28.3 Notwithstanding ITB Sub-Clause 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Procuring 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 Entity may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. 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 Entity in the evaluation of the bids, in accordance with ITB Clause 31.

### **30. Responsiveness of Bids**

- 30.1 The Procuring Entity's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.
- 30.2 A substantially responsive bid is 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 and Related Services specified in the Contract; or

- 
- (b) limits in any substantial way, inconsistent with the Bidding Documents, the Procuring Entity's rights or the Bidder's obligations under the Contract; or
  - (c) if rectified would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

30.3 If a bid is not substantially responsive to the Bidding Documents, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

### **31. Nonconformities, Errors, and Omissions**

31.1 Provided that a bid is substantially responsive, the Procuring Entity may waive any non-conformity or omissions in the bid that does not constitute a material deviation.

31.2 Provided that a bid is substantially responsive, the Procuring 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 Provided that a bid is substantially responsive, the Procuring Entity shall rectify nonmaterial nonconformities or omissions. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component. The adjustment shall be made using the method indicated in the BDS.

31.4 Provided that the bid is substantially responsive, the Procuring Entity shall correct arithmetical 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 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 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

### **32. Preliminary Examination of Bids**

32.1 The Procuring Entity shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 11 have been provided, and to determine the completeness of each document submitted.

32.2 The Procuring Entity shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the bid shall be rejected.



- 
- (a) Bid Submission Sheet, including:
    - (i) a brief description of the Plant, Vehicles & Equipment and Related Services offered; and
    - (ii) the price of the Bid;
    - (iii) the period of validity of the Bid;
  - (b) Price Schedules;
  - (c) Written confirmation of authorisation to commit Bidder; and
  - (d) Bid Security, if applicable.

### **33. Examination of Terms and Conditions; Technical Evaluation**

- 33.1 The Procuring Entity shall examine the bid to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Bidder without any material deviation or reservation.
- 33.2 The Procuring Entity shall evaluate the technical aspects of the bid submitted in accordance with ITB Clause 18, to confirm that all requirements specified in Section 6, Statement of Requirements of the Bidding Documents, have been met without any material deviation or reservation.
- 33.3 If, after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the bid is not substantially responsive in accordance with ITB Clause 30, it shall reject the bid.

### **34. Conversion to Single Currency**

- 34.1 For evaluation and comparison purposes, the Procuring Entity shall convert all bid prices expressed in the amounts in various currencies into a single currency, using the selling exchange rate established by the source and on the date specified in the BDS.

### **35. Margin of Preference**

- 35.1 Unless otherwise specified in the BDS, a margin of preference shall not apply. Where a Margin of Preference applies the details to be applied shall be listed in Section 3 Evaluation Methodology and Criteria.

### **36. Evaluation of Bids**

- 36.1 The Procuring Entity shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 36.2 To evaluate a bid, the Procuring Entity shall only use all the criteria and methodologies defined in this Clause and in Section 3, Evaluation and Qualification Criteria. No other criteria or methodology shall be permitted.
- 36.3 To evaluate a bid, the Procuring Entity shall consider the following:
  - (a) the bid price;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 31.4;
  - (c) price adjustment due to discounts offered in accordance with ITB Sub-Clause 14.3;
  - (d) adjustment for nonconformities and omissions in accordance with ITB Sub-Clause 31.3;

- 
- (e) application of all the evaluation factors indicated in Section 3, Evaluation and Qualification Criteria; and
  - (f) adjustments due to the application of a margin of preference, in accordance with ITB Clause 35.
- 36.4 In the calculation of the evaluated cost of bids, the Procuring Entity shall exclude and not take into account:
- (a) in the case of goods manufactured in the Republic of Malawi or goods of foreign origin already located in the Republic of Malawi, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Bidder;
  - (b) in the case of goods of foreign origin offered from abroad, customs duties and other similar import taxes which will be payable on the goods if the contract is awarded to the Bidder; and
  - (c) any allowance for price adjustment during the period of execution of the Contract, if provided in the bid.
- 36.5 The Procuring Entity's cost evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Plant, Vehicles & Equipment and Related Services. The factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in Section 3, Evaluation and Qualification Criteria. The factors to be used and the methodology of application shall be indicated in Section 3, Evaluation and Qualification Criteria.
- 36.6 If these Bidding Documents allow Bidders to quote separate prices for different lots, and the award to a single Bidder of multiple lots, the methodology of evaluation to determine the lowest evaluated lot combinations, including any discounts offered in the Bid Submission Sheet, is specified in the BDS and detailed in Section 3 Evaluation Methodology and Criteria.

### **37. Comparison of Bids**

- 37.1 The Procuring Entity shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB Sub-Clause 14.6.

### **38. Post-qualification of the Bidder**

- 38.1 The Procuring Entity shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily.
- 38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 19, to clarifications in accordance with ITB Clause 29 and the qualification criteria indicated in Section 3, Evaluation and Qualification Criteria. Factors not included in Section 3 shall not be used in the evaluation of the Bidder's qualification.
- 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Procuring Entity shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

---

### **39. Procuring Entity's Right to Accept Any Bid, and to Reject Any or All Bids**

- 39.1 The Procuring 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 contract award, without thereby incurring any liability to Bidders.

## **F. Award of Contract**

### **40. Award Criteria**

- 40.1 The Procuring Entity shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

### **41. Procuring Entity's Right to Vary Quantities at Time of Award**

- 41.1 At the time the Contract is awarded, the Procuring Entity reserves the right to increase or decrease the quantity of Plant, Vehicles & Equipment and Related Services originally specified in Section 6, 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 Documents.

### **42. Notification of Award**

- 42.1 Prior to expiry of the period of bid validity, the Procuring Entity shall notify the successful Bidder, in writing, that its bid has been accepted. At the same time, the Procuring Entity shall also notify all other Bidders of the results of the bidding.
- 42.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 42.3 The Procuring Entity shall publish in the Malawi Government Gazette the results of the award of contract, as required by the Public Procurement Act 2003.

### **43. Signing of Contract**

- 43.1 Promptly after notification, the Procuring Entity shall send the successful Bidder the contract documents and the Special Conditions of Contract.
- 43.2 Within thirty (30) days of receipt of the contract documents, the successful Bidder shall sign, date, and return it to the Procuring Entity.

### **44. Performance Security**

- 44.1 Within thirty (30) days of receipt of notification of award from the Procuring Entity, the successful Bidder shall furnish the performance security in accordance with the GCC, using for that purpose the Performance Security Form included in Section 9, Contract Forms, or another form acceptable to the Procuring Entity.
- 44.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for annulment of the award and forfeiture of the bid security. In that event, the Procuring Entity may award the Contract to the next lowest evaluated Bidder whose bid is substantially responsive and is determined by the Procuring Entity to be qualified to perform the Contract satisfactorily.

## Section 2. Bid Data Sheet (BDS)

Instructions to Bidders (ITB) reference	Data relevant to ITB
<b>A. Introduction</b>	
<b>ITB 1.1</b>	The Procuring Entity is: <a href="#">Roads Authority</a>
<b>ITB 1.1; 2.1 and 23.2(b)</b>	The Project name or the subject of the procurement is: <a href="#">Supply and Delivery of a 4x4 Double Cabin Pick-up Motor Vehicle</a>
<b>ITB 1.1 and 23.2(b)</b>	The Procurement Reference Number is: <a href="#">RA/DEV/SADC/VEH/2024-25/10</a>
<b>ITB 1.1</b>	The number and identification of Lots in this Bidding Document is: <a href="#">One</a>
<b>ITB 1.2</b>	The Bidding Document is issued under Procurement Method: <a href="#">Open Tendering – National Competitive Bidding</a>
<b>ITB 4.1</b>	The individuals or firms in a joint venture, consortium or association <a href="#">shall be</a> jointly and severally liable.
<b>B. Bidding Documents</b>	
<b>ITB 7.1</b>	For <b><u>clarification purposes</u></b> only, the Procuring Entity’s address is: Attention: <a href="#">Procurement Manager</a> <a href="#">Roads Authority</a> <a href="#">Functional Building,</a> <a href="#">Paul Kagame Road,</a> <a href="#">Private Bag B346</a> <a href="#">Lilongwe 3</a> E mail address: <a href="mailto:ipc@ra.org.mw">ipc@ra.org.mw</a> with a copy to <a href="mailto:mphingam@gmail.com">mphingam@gmail.com</a>
<b>C. Preparation of Bids</b>	
<b>ITB 11.1 (i)</b>	The Bidder shall submit with its bid the following additional documents: a) <a href="#">Power of Attorney</a> b) <a href="#">Copy of Certificate of Registration</a> c) <a href="#">Copy of PPDA Registration Certificate</a> d) <a href="#">Copy of Tax Clearance Certificate</a> e) <a href="#">Manufacturer’s Authorisation</a> f) <a href="#">Technical Brochure</a>

Instructions to Bidders (ITB) reference	Data relevant to ITB
	<p>g) Lines of Credit Issued by a Bank or Audited Accounts for the Past Three Financial Years</p> <p>h) Beneficial Ownership Disclosure Form</p>
<b>ITB 13.1</b>	<p>Alternative bids shall not be considered.</p> <p>The Procuring Entity shall only apply the following criteria for evaluation of alternatives: N/A</p>
<b>ITB 14.5</b>	<p>The Incoterms edition is: 2020</p>
<b>ITB 14.6</b>	<p>For Plant, Vehicles &amp; Equipment and Related Services, the Bidder shall quote prices using the following Incoterms: CIP, Lilongwe</p>
<b>ITB 14.7</b>	<p>The prices quoted by the Bidder shall be: Fixed</p>
<b>ITB 15.1</b>	<p>For Plant, Vehicles &amp; Equipment and Related Services originating in Malawi, the currency of the bid shall be: Malawi Kwacha</p>
<b>ITB 20.1</b>	<p>The bid validity period shall be: 120 days.</p>
<b>ITB 21.1</b>	<p>A bid security shall not be required.</p> <p>If a bid security is required, the amount and currency of the bid security shall be N/A</p> <p>A bid securing declaration shall be required.</p>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 22.1</b>	<p>In addition to the original of the bid, the number of copies required is: 3</p>
<b>ITB 22.2</b>	<p>The written confirmation of authorisation to sign on behalf of the Bidder shall consist of: Power of Attorney</p>
<b>ITB 24.1</b>	<p>For <b>bid submission purposes</b> only, the Purchaser's address is :</p> <p>The Chairperson Internal Procurement and Disposal Committee Roads Authority Functional Building Paul Kagame Road Private Bag B346 Lilongwe 3</p> <p><b>The deadline for bid submission is:</b> Date: 30<sup>th</sup> September 2024    Time: 10:00 hours</p>

Instructions to Bidders (ITB) reference	Data relevant to ITB
<b>ITB 27.1</b>	<p>The <b>bid opening</b> shall take place at:</p> <p>Roads Authority            Functional Building Off            Paul Kagame Road  <b>Conference Room</b></p> <p>Date: 30<sup>th</sup> September 2024    Time: 10:00 hours</p>
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 31.3</b>	The methodology to adjust the price to reflect the price of the missing or nonconforming item or component is : <b>N/A</b>
<b>ITB 34.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <b>N/A</b></p> <p>The source of exchange rate shall be: <b>N/A</b></p> <p>The date for the exchange rate shall be: <b>N/A</b></p>
<b>ITB 35.1</b>	A margin of preference <b>shall not</b> apply.
<b>ITB 36.6</b>	<p>Multiple award to one Bidder is not permitted.</p> <p>The evaluation methodology to determine the lowest-evaluated combination of lots shall be detailed in Section 3 Evaluation Methodology and Criteria.</p>
<b>F. Award of Contract</b>	
<b>ITB 41.1</b>	<p>The percentage by which quantities may be increased is:    <b>N/A</b></p> <p>The percentage by which quantities may be decreased is:    <b>N/A</b></p>

## 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 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 ITB Clause 36.3(e), the Procuring 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.
- (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 be 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) Later 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 1.5 months after the specified delivery period may be rejected at the discretion of the Procuring Entity.
- (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 Contracts**

If in accordance with ITB Sub-Clause 36.6 the Procuring Entity is allowed to award one or multiple lots to more than one Bidder, the following methodology shall be used for award of multiple contracts:

To determine the lowest-evaluated lot combinations, the Procuring Entity shall: [N/A](#)

## **3. Application of Domestic Preference**

The Procuring Entity shall grant a margin of preference to locally manufactured or goods supplied from within Malawi by Malawian suppliers for the purpose of bid comparison, [in accordance with the procedures outlined in subsequent paragraphs]: [N/A](#)

## **4. Qualification Criteria**

After determining the lowest-evaluated bid in accordance with ITB Sub-Clause 37.1, the Procuring Entity shall carry out the post-qualification of the Bidder in accordance with ITB Clause 38, using only the factors, methods and criteria specified below. Factors not included in this Section shall not be used in the evaluation of the Bidder's qualification.

### **Financial Capacity**

[In order to demonstrate the availability of sufficient funds to execute the contract, bidders shall provide Lines of Credit of not less than K100 million. The lines of credit shall be provided by the bank. \*\*Alternatively\*\*, bidders shall provide audited financial statements for the past three \(3\) years for assessment of financial soundness.](#)



# Section 4. Bidding Forms

## Table of Forms

Bid Submission Sheet .....	2
Price Schedule for Plant, Vehicles & Equipment and Related Services.....	5
Bid Security .....	6
Bid Securing Declaration.....	7
Manufacturer's Authorisation.....	9
Beneficial Ownership Disclosure.....	10

# Bid Submission Sheet

## [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]

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:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda No: [insert the number and issuing date of each Addenda];
- (b) 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 Plant, Vehicles & Equipment and Related Services: [insert a brief description of the Plant, Vehicles & Equipment and Related Services];
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is: [insert the total bid price in words and figures, indicating the various amounts and the respective currencies];
- (d) The discounts offered and the methodology for their application are: .....

Unconditional Discounts. If our bid is accepted, the following discounts shall apply. [Specify in detail each discount offered and the specific item of the Statement of Requirements to which it applies.]

Methodology of Application of the Discounts. The discounts shall be applied using the following method: [Specify in detail the method that shall be used to apply the discounts];

Conditional Discounts. If our bid(s) are accepted, the following discounts shall apply. [Specify in detail each discount offered and the specific item of the Statement of Requirements to which it applies.]

Methodology of Application of the Discounts. The discounts shall be applied using the following method: [Specify in detail the method that shall be used to apply the discounts];

- (e) 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;
- (f) We, including any subcontractors for any part of the contract resulting from this procurement process, are eligible to participate in public procurement in accordance with ITB Clause 4.1 and have not been suspended by the Office of the Director of Public Procurement in Malawi from participating in public procurement;
- (g) Our firm, its affiliates or subsidiaries, including subcontractors or suppliers for any part of the contract 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 contract relating to the purchase of goods, works and services by any Procuring Entity.

- (h) We are not participating, as Bidders, in more than one bid in this bidding process, other than alternative bids in accordance with the Bidding Document;
- (i) We do not have any conflict of interest and have not participated in the preparation of the original Statement of Requirements for the Procuring Entity;
- (j) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents, in the amount of **[insert amount and currency in words and figures of the performance security]** for the due performance of the Contract;
- (k) We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries **[insert the nationality of the Bidder, including that of all parties that comprise the Bidder, if the Bidder is a consortium or association, and the nationality each subcontractor and supplier]**;
- (l) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: **[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]**

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate “none.”)

- (m) The names and physical addresses of the Directors of our firm are provided in the table below or we enclose a copy of our latest Audited Accounts (issued within the last twenty-four (24) months):

Name	Address

- (n) We confirm that a Manufacturer's Inspection Certificate or Works Inspection Certificate will be provided for all items if we are awarded the contract;
- (o) The commercial warranty for quality and performance of the plant, vehicles and equipment offered will be **[insert details of the warranty offered]**;
- (p) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (q) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name **[insert complete name of person signing the Bid]** In the capacity of **[insert legal capacity of person signing the bid]**.

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

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

Dated on ..... day of ....., 20....**[insert date of signing]**

# Price Schedule for Plant, Vehicles & Equipment and Related Services

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

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

Procurement Reference Number: [insert number of bidding process]

Alternative No: [insert identification No if this is a Bid for an alternative]

Name of the Bidder: ...[Insert full name of Bidder]

1	2	3	4	5	6	7
Item No.	Plant, Vehicles & Equipment or Related Service	Country of origin	Quantity (No. of units)	Unit price <sup>1</sup>	Import Duties, Sales Taxes and other Taxes, per unit <sup>1</sup>	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]

Notes:

<sup>1</sup> In accordance with ITB Clauses 14 and 15.

Name [insert complete name of person signing the Bid] In the capacity of [insert legal capacity of person signing the bid]

Signed insert signature of person whose name and capacity are shown above]

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

Dated on ..... day of ....., 20 ... [insert date of signing]

# **Bid Security**

## **[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]**

Alternative No: **[insert identification No if this is a Bid for an alternative]**

To: **[insert complete name of Procuring 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 supply of **[insert brief description of the Goods and Related Services]**, 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 Entity]** (hereinafter “the Procuring 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 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 Sheet, except as provided in ITB Sub-Clause 20.2; or
2. If the Bidder, having been notified of the acceptance of its bid by the Procuring Entity, during the period of bid validity, fails or refuses to:
  - (a) execute the Contract; or
  - (b) furnish the Performance Security, in accordance with the ITB Clause 44; or
  - (c) accept the correction of its bid by the Procuring Entity, pursuant to ITB Clause 31.

We undertake to pay the Procuring Entity up to the above amount upon receipt of its first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity 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.

Name: **[insert complete name of person signing the Bid]** In the capacity of **[insert legal capacity of person signing the bid]**

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

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

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

## **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 must be supported by a Bid-Securing Declaration.
  
- 2 We accept that we will automatically be suspended from being eligible for bidding in any contract with the Procuring Entity and/or any other government entity for a period of **24 months** starting on the date as may be determined by the Government of Malawi if we are in breach of our obligation(s) under the bid conditions, because we:
  - (a) have withdrawn our bid during the period of bids validity specifies by us in the Bid Data Sheet; or
  - (b) having been notified of the acceptance of our bid by the Procuring Entity during the period of bid validity, (i) fail or refuse to execute the contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with 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 must 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.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of  
*[insert legal capacity of person signing the Bid Securing Declaration]*

Name: *[insert complete name of person signing the Bid Securing Declaration]*

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

Date: on ..... day of....., .....*[insert date of signing]*

Witnessed By *[insert name of witness]* in capacity of *[insert designation of witness]*

Date: on ..... day of....., .....*[insert date of signing]*



# **Manufacturer's Authorisation**

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

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

Procurement Reference Number: **[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]**

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 Plant, Vehicles or Equipment, manufactured by us **[insert name and or brief description of the Plant, Vehicles or Equipment]**, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Plant, Vehicles & Equipment offered by the above firm in reply to this Invitation for Bids.

Name: **[insert complete name of person signing the Bid]**      In the capacity of **[insert legal capacity of person signing the bid]**

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

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

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

*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.*

## **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 a joint venture, the Bidder must submit a separate Form for each member of the Joint Venture. The beneficial ownership information to be submitted in this Form shall be current as at 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 the invitation for bid dated **[insert date of invitation for bid]** we hereby submit beneficial ownership information: **[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

<b>Identity of Beneficial Owner</b>	<b>Directly or indirectly holding 5% or more of the shares (Yes / No)</b>	<b>Directly or indirectly holding 5 % or more of the Voting Rights (Yes / No)</b>	<b>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)</b>
[include full name (last, middle, first), nationality, country of residence, telephone number(s), email address, postal and physical addresses]			

OR

(ii) We declare that there is no Beneficial Owner who has not been disclosed 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.

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]

7. directly or indirectly holding 5% or more of the shares
8. directly or indirectly holding 5% or more of the voting rights
9. directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder]"
10. 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;
11. has a significant stake in a company and on whose behalf activity of a company is conducted; or
12. 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**]<sup>1</sup>

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*]<sup>2</sup>

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**]

\_\_\_\_\_

<sup>1</sup> 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.

<sup>2</sup> 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.

## **Section 5. Eligible Countries**

**Procurement Reference Number:**

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

A country shall not be eligible if:

- (a) as a matter of law or official regulation, the Government of the Republic of Malawi prohibits commercial relations with that country, provided that the Government of the Republic of Malawi is satisfied that such exclusion does not preclude effective competition for the provision of goods or related services required; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government of the Republic of Malawi prohibits any import of Goods from that country or any payments to persons or entities in that country.

# **Section 6. Statement of Requirements**

## **Contents**

<b>1.</b>	<b>List of Plant, Vehicles &amp; Equipment and Related Services .....</b>	<b>2</b>
<b>2.</b>	<b>Delivery and Completion Schedule .....</b>	<b>3</b>
<b>3.</b>	<b>Technical Specifications and Compliance Sheet .....</b>	<b>4</b>
<b>4.</b>	<b>Drawings.....</b>	<b>7</b>

**1. List of Plant, Vehicles & Equipment and Related Services**

**Procurement Reference Number:**

<b>Item Number</b>	<b>Description of Plant, Vehicles &amp; Equipment or Related Service</b>	<b>Quantity</b>	<b>Unit of Measure</b>
1	4x4 Double Cabin Pick-up	<u>1</u>	<u>Each</u>
2			
3			
4			
5			
6			
7			
8			
9			
10			

A Manufacturer’s Inspection Certificate or Works Test Certificate will be required for all items of Plant, Vehicles and Equipment.  
 Any item specific conditions are attached and will form an integral part of any resulting contract.

## 2. Delivery and Completion Schedule

The delivery or completion period shall commence from the date of contract award. Refer to Incoterms specified in the ITB or BDS 14.6(a)(i) for the interpretation of the delivery period.

Item Number	Description of Plant, Vehicles & Equipment or Related Service	Delivery Completion period (days/wks/mths)	Delivery Point/Site
1	4x4 Double Cabin Pick-up	8-12 weeks	<a href="#">Roads Authority Headquarters</a>
2			
3			
4			
5			
6			
7			
8			
9			
10			



### 3. Technical Specifications and Compliance Sheet

Procurement Reference Number: [RA/DEV/SADC/VEH/2024-25/10](#)

Column b states the minimum technical specification of the item(s) required.

The Bidder is to complete column c with the technical specification of the item(s) offered and to state whether the offered items “comply” or do “not comply” giving details of the areas of non-compliance.

Item No.	Technical Specification of items required including applicable standards	Mandatory	Compliance of specification offered
<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>
1	<b>General</b> <ul style="list-style-type: none"> <li>The vehicle must be factory new, 4x4 double cabin pickup and of recent model</li> <li>Must conform to all road conditions and tropical environment – all terrain drive, should have pre-fitted alarm system</li> </ul>	M	
2	<b>Chassis</b> Rigid steel chassis with rust protection	M	
3	<b>Cab</b> <ul style="list-style-type: none"> <li>Seating capacity 5</li> <li>4 door type</li> <li>Pre-fitted with FM &amp; Shortwave radio and CD with 2 speakers</li> <li>Manual windows</li> <li>Air conditioner, heater (non-CFC)</li> <li>Three sets of keys</li> </ul>	M	
4	<b>Colour</b> White		
5	<b>Engine Size</b> <ul style="list-style-type: none"> <li>6 cylinder Diesel powered</li> <li>Engine capacity between 3000 - 4500cc</li> <li>Power 96kW@3800rpm</li> <li>Torque 285Nm@2200rpm</li> </ul>	M	
6	<b>Transmission</b> <ul style="list-style-type: none"> <li>Manual transmission, floor mounted, 5 speed forward gears plus reverse</li> </ul>	M	

Item No.	Technical Specification of items required including applicable standards	Mandatory	Compliance of specification offered
	<ul style="list-style-type: none"> <li>• 4x4 wheel drive</li> </ul>		
7	<b>Brakes</b> Hydraulic front disk and rear drum brakes with ABS		
8	<b>Ground Clearance</b> 235 - 300mm	M	
9	<b>Wheelbase</b> 3100 - 3200mm	M	
10	<b>Gross Weight</b> 3000 -3200Kgs		
11	<b>Tank Capacity</b> Not less than 100 Litres	M	
12	<b>Suspension</b> <ul style="list-style-type: none"> <li>• Front – coil rigid axle with stabilizer bars</li> <li>• Rear – leaf rigid axle</li> </ul>	M	
13	<b>Tyres</b> <ul style="list-style-type: none"> <li>• Tubeless with specified size of 225/95R16</li> <li>• Lockable spare tyre arrangement</li> </ul>		
14	<b>Steering</b> Right hand drive (RHD) with power steering having tilt or adjustable steering Wheel	M	
15	<b>Exterior</b> <ul style="list-style-type: none"> <li>• One full size spare wheel and tyre secured by lockable device</li> <li>• Front and rear towing eye</li> <li>• Adjustable headlights with high and low beam</li> <li>• Parking lights</li> <li>• Stop and tail lights</li> <li>• Reverse lights</li> <li>• Indicators (amber)</li> </ul>	M	
16	<b>Miscellaneous Equipment</b>	M	

Item No.	Technical Specification of items required including applicable standards	Mandatory	Compliance of specification offered
	<ul style="list-style-type: none"> <li>• Manufacturers approved Jack and tool kit</li> <li>• Air bags</li> <li>• Two reflecting red warning triangles</li> <li>• Owner's manual</li> </ul>		
17	<b>Pre-Delivery</b> PDI shall be undertaken by the inspection of the manufacturers authorized dealer or representative in Malawi. This shall include the provision of all indication marks, reflectors etc, required under the Laws of Malawi	M	
18	<b>Local Backup Service</b> Must be available in Malawi	M	
19	<b>Warranty</b> 36 months or 100,000Kms warranty whichever comes first	M	

The detailed technical evaluation will examine the technical specification of the items offered in column d and determine or verify whether this meets the minimum specification required in column b. Bidders must complete column d or the bid will be rejected. Column c indicates whether the item is a "Mandatory" requirement by use of the letter "M". Any item without an "M" in column c is considered non-mandatory and subject to a reasonable variation in specification or performance to be assessed during evaluation in accordance with Section 3. **Note that Bidders are required to include technical literature to support the details provided in column d.**



---

# Section 7. General Conditions of Contract

## Table of Clauses

1.	Definitions .....	2
2.	Contract Documents .....	2
3.	Fraud and Corruption.....	2
4.	Interpretation .....	3
5.	Language .....	3
6.	Joint Venture, Consortium or Association .....	3
7.	Eligibility.....	4
8.	Notices.....	4
9.	Governing Law .....	4
10.	Settlement of Disputes.....	4
11.	Scope of Supply.....	4
12.	Delivery .....	4
13.	Supplier's Responsibilities .....	5
14.	Procuring Entity's Responsibilities.....	5
15.	Contract Price .....	5
16.	Terms of Payment.....	5
17.	Taxes and Duties .....	5
18.	Performance Security .....	6
19.	Copyright.....	6
20.	Confidential Information .....	6
21.	Subcontracting .....	7
22.	Specifications and Standards .....	7
23.	Packing and Documents .....	7
24.	Insurance .....	7
25.	Transportation.....	7
26.	Inspections and Tests.....	7
27.	Liquidated Damages .....	8
28.	Warranty.....	8
29.	Patent Indemnity.....	9
30.	Limitation of Liability .....	9
31.	Change in Laws and Regulations.....	9
32.	Force Majeure.....	10
33.	Change Orders and Contract Amendments.....	10
34.	Extensions of Time .....	10
35.	Termination .....	10
36.	Assignment.....	11

---

# Section 7 General Conditions of Contract

## 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) "Contract" means the Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) "Contract Documents" means the documents listed in the Agreement, including any amendments thereto.
- (c) "Contract 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 Contract.
- (d) "Day" means calendar day.
- (e) "Delivery" means the transfer of the Goods from the Supplier to the Procuring Entity in accordance with the terms and conditions set forth in the Contract.
- (f) "Completion" means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) "Eligible Countries" means the countries and territories eligible as listed in Section 3 of the Bidding Document.
- (h) "GCC" means the General Conditions of Contract.
- (i) "Goods" means all of the commodities, raw materials, machinery and equipment, and/or other materials that the Supplier is required to supply to the Procuring Entity under the Contract.
- (j) "Procuring Entity" means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (k) "Related Services" means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.
- (l) "SCC" means the Special Conditions of Contract.
- (m) "Subcontractor" 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 to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (n) "Supplier" means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Procuring Entity and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.
- (o) "The Site," where applicable, means the place named in the SCC.

## 2. Contract Documents

2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

## 3. Fraud and Corruption

3.1 The Government requires that Procuring Entities, as well as Bidders and Suppliers under public financed contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
  - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
  - (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish prices at artificial, noncompetitive levels; and

- 
- (iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
- (b) 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.

#### **4. Interpretation**

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

- (a) Unless otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Procuring 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 Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party thereto.

4.5 Nonwaiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party’s rights, powers, or remedies under the Contract 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.

4.6 Severability

If any provision or condition of the Contract 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 Contract.

#### **5. Language**

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Procuring Entity, shall be written in English unless otherwise specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

#### **6. Joint Venture, Consortium or Association**

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract 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 Entity.

---

## **7. Eligibility**

- 7.1 All Goods and Services supplied under the Contract shall have their origin in the countries and territories eligible under the rules and regulations of the Government of Malawi.
- 7.2 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.

## **8. Notices**

- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.
- 8.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

## **9. Governing Law**

- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Republic of Malawi, unless otherwise specified in the SCC.

## **10. Settlement of Disputes**

- 10.1 The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

## **11. Scope of Supply**

- 11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in the Statement of Requirements.
- 11.2 Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.
- 11.3 If the Contract so provides, the Supplier shall include with the goods supplied a quantity of spare parts, drawn up in accordance with the Statement of Requirements and the Special Conditions of Contract, and in the light of his professional experience taking into account the place of use and including those items that require replacing more frequently (e.g. fast moving, exposed to heavy use, etc.)
- 11.4 Unless otherwise provided for the spare parts shall be delivered with the goods.
- 11.5 The Supplier shall guarantee the availability and replenishment of spare parts for a period of at least 10 years following the date of final acceptance of the goods.
- 11.6 In the event of a decision to cease manufacture of spare parts the Supplier shall notify the Procuring Entity in sufficient time to permit him to procure adequate quantities for future needs.
- 11.7 Upon cessation of manufacture of spare parts the Supplier shall furnish the Procuring Entity, free of charge and if so requested, with any manufacturing, tooling, specifications and drawings of the spare parts used in the construction and maintenance of the goods.

## **12. Delivery and Acceptance**

- 12.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the 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 SCC.
- 12.2 Delivery of the goods shall be subject to provisional and final acceptance. If there is no warranty for the goods provisional acceptance shall be deemed to constitute final acceptance.
- 12.3 The Goods shall be taken over on provisional acceptance when they have been delivered to their place(s) of destination in accordance with the Contract and are ready for use.
- 12.4 Provisional acceptance shall take place at the earliest possible opportunity, and at the latest within two weeks of presentation of the goods for acceptance at the place(s) of destination. The Supplier must give notice thereof to the organisation responsible for acceptance.



- 
- 12.5 If the goods are found to be damaged or defective, or not in conformity with the Contract, a report shall be drawn up forthwith and forwarded to the Supplier, who shall be requested to verify the facts and to notify his findings within fifteen (15) days. Goods which do not comply with the conditions laid down in the Contract shall be either repaired or replaced by the Supplier, at the option of the Procuring Entity, and at the expense of the Supplier. If the replacement or repair is not performed satisfactorily the Procuring Entity shall have the right to reject the goods, which shall be returned to the Supplier at his expense.
- 12.6 A certificate of provisional acceptance shall be drawn up recording acceptance or rejection together with any reservations or observations made. This certificate shall state the date of provisional acceptance and shall entitle the Supplier to the relevant payments under the Contract.
- 12.7 The certificate is deemed to have been issued if provisional acceptance or rejection has not been pronounced within a period of thirty (30) days from the date at which the responsible organisation has received the Supplier's notice or from any other date that may have been arranged between them.
- 12.8 Final acceptance shall be pronounced at the earliest possible opportunity after the expiry of the warranty period and on the condition that the goods are found to be in full working order and in compliance with the Contract specifications. A certificate of final acceptance shall be drawn up and provided to the Supplier.

### **13. Supplier's Responsibilities**

- 13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.

### **14. Procuring Entity's Responsibilities**

- 14.1 Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Procuring 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
- 14.2 The Procuring Entity shall pay all costs involved in the performance of its responsibilities, in accordance with GCC Sub-Clause 14.1.

### **15. Contract Price**

- 15.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 15.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorised in the SCC.

### **16. Terms of Payment**

- 16.1 The Contract Price shall be paid as specified in the SCC.
- 16.2 The Supplier's request for payment shall be made to the Procuring Entity in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfilment of all the obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Procuring Entity, no later than forty-five (45) days after submission of an invoice or request for payment by the Supplier, and the Procuring Entity has accepted it.
- 16.4 The currency in which payments shall be made to the Supplier under this Contract shall be specified in SCC.

### **17. Taxes and Duties**

- 17.1 For goods supplied from outside the Republic of Malawi, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Republic of Malawi.
- 17.2 For goods supplied from within the Republic of Malawi, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Procuring Entity.

---

17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Republic of Malawi, the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

17.4 For the purpose of the Contract, it is agreed that the Contract Price specified in the Agreement is based on the taxes, duties, levies, and charges (called "tax" in this sub-clause) prevailing at the date twenty-eight (28) days prior to the date of bid submission in the Republic of Malawi. 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 Contract, which was or will be assessed on the Supplier, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

#### **18. Performance Security**

18.1 The Supplier shall, within thirty (30) days of the notification of contract award, provide a performance security for the due performance of the Contract in the amount and currency specified in the SCC.

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

18.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring Entity, and shall be in one of the forms stipulated by the Procuring Entity in the SCC, or in another form acceptable to the Procuring Entity.

18.4 The performance security shall be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

#### **19. Copyright**

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Procuring 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

#### **20. Confidential Information**

20.1 The Procuring 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 Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 The Procuring Entity shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- (a) the Procuring Entity or Supplier need to share with any other institutions participating in the financing of the Contract;
- (b) now or hereafter 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.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

---

## **21. Subcontracting**

- 21.1 The Supplier shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## **22. Specifications and Standards**

- 22.1 Technical Specifications and Drawings
  - (a) The Supplier shall ensure that the Goods and Related Services comply with technical specifications and other provisions of the Contract.
  - (b) The Supplier shall be entitled to 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 Entity, by giving a notice of such disclaimer to the Procuring Entity.
  - (c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in the Statement of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.
- 22.2 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Statement of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 33.

## **23. Packing and Documents**

- 23.1 The Supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. 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 goods' final destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Procuring Entity.

## **24. Insurance**

- 24.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.

## **25. Transportation**

- 25.1 Unless otherwise specified in the SCC, responsibility for transportation of the Goods shall be in accordance with the Incoterms specified in the Statement of Requirements.

## **26. Inspections and Tests**

- 26.1 The Supplier shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Statement of Requirements.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Republic of Malawi as specified in the SCC. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 26.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

- 
- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.
- 26.5 The Procuring Entity may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Procuring Entity with a report of the results of any such test and/or inspection.
- 26.7 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

## **27. Liquidated Damages**

- 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.

## **28. Warranty**

- 28.1 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 Contract.
- 28.2 Subject to GCC Sub-Clause 22.1, 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.
- 28.3 Unless otherwise specified in the SCC, 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 SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.
- 28.4 The Procuring 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 Entity shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.
- 28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Procuring 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 Entity may have against the Supplier under the Contract.

---

## **29. Patent Indemnity**

29.1 The Supplier shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring 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 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 Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in Malawi; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, vehicles or materials not supplied by the Supplier, pursuant to the Contract.

29.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

29.3 If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.

29.4 The Procuring 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.

29.5 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors 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 Contract 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 Entity.

## **30. Limitation of Liability**

30.1 Except in cases of criminal negligence or wilful misconduct,

- (a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, 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 Entity and
- (b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, 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 Entity with respect to patent infringement

## **31. Change in Laws and Regulations**

31.1 Unless otherwise specified in the Contract, if after the date of the Invitation to Bid, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Republic of Malawi 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 and/or the Contract Price, then such Delivery Date and/or Contract 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 Contract. Notwithstanding the foregoing, 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 GCC Clause 15.

---

### **32. Force Majeure**

- 32.1 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 Contract is the result of an event of Force Majeure.
- 32.2 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, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

### **33. Change Orders and Contract Amendments**

- 33.1 The Procuring Entity may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
  - (b) the method of shipment or packing;
  - (c) the place of delivery; and
  - (d) the Related Services to be provided by the Supplier.
- 33.2 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 Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract 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 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 Contract 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.

### **34. Extensions of Time**

- 34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Procuring 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 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 Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, 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 GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

### **35. Termination**

- 35.1 Termination for Default
- (a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by notice of default sent to the Supplier, may terminate the Contract in whole or in part:
    - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34; or
    - (ii) if the Supplier fails to perform any other obligation under the Contract.

- 
- (b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
  - (c) if the Supplier, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

35.2 Termination for Insolvency

- (a) The Procuring Entity may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity.

35.3 Termination for Convenience

- (a) The Procuring Entity, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) 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 Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

**36. Assignment**

- 36.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## Section 8. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC

GCC clause reference	Special Conditions
<b>GCC 1.1(j)</b>	The Procuring Entity is: <a href="#">Roads Authority</a>
<b>GCC 1.1 (o)</b>	The Site is: <a href="#">Roads Authority Head Office</a>
<b>GCC 4.2 (a)</b>	The meaning of the trade terms shall be as prescribed by: <a href="#">INCOTERMS</a>
<b>GCC 4.2 (b)</b>	The version of Incoterms shall be: <a href="#">2020</a>
<b>GCC 5.1</b>	The language shall be: <a href="#">English</a>
<b>GCC 8.1</b>	<p>For <b>notices</b>, the Procuring Entity's address shall be:</p> <p><a href="#">The Chief Executive Officer</a>  <a href="#">Roads Authority</a>  <a href="#">Functional Building,</a>  <a href="#">Paul Kagame Road,</a>  <a href="#">Private Bag B346</a>  <a href="#">Lilongwe 3</a></p> <p>Email address: <a href="mailto:ra@ra.org.mw">ra@ra.org.mw</a></p> <p>For <b>notices</b>, the Supplier's address shall be:</p> <p>Attention:  Street Address:  Floor/ Room number:  City:  Post Code:  Country:  Telephone:                      Facsimile number:  Email address:</p>
<b>GCC 9.1</b>	The governing law shall be: <a href="#">Laws of Malawi</a>
<b>GCC 10.2</b>	The formal mechanism for the resolution of disputes shall be: <a href="#">Arbitration</a>
<b>GCC 11.1</b>	The scope of supply is defined in: <a href="#">Statement of Requirements</a>
<b>GCC 11.3</b>	Spare Parts to be supplied under the Contract are: <a href="#">N/A</a>
<b>GCC 12.1</b>	The shipping and other documents to be furnished by the Supplier are:



GCC clause reference	Special Conditions
	One original and three copies of non-negotiable clean on board bill of lading marked “freight prepaid”
GCC 15.2	The price adjustment shall be: <b>Fixed</b>
GCC 16.1	The terms of payment shall be: <b>Within 45 days after acceptance and receipt of the invoice</b>
GCC 16.4	The currency for payments shall be: <b>Malawi Kwacha</b>
GCC 17.1	The Supplier shall be responsible for all import duties and taxes except for the following: <b>N/A</b>
GCC 17.2	The Supplier shall be responsible for all import duties and taxes imposed by law in Malawi on the Goods except for the following: <b>N/A</b>
GCC 18.1	The amount of the Performance Security shall be: <b>10%</b> The currency shall be: <b>Malawi Kwacha</b>
GCC 18.3	The types of acceptable Performance Securities are: <b>Bank Guarantee</b>
GCC 18.4	Discharge of Performance Security shall take place: <b>Within 30 days of acceptance</b>
GCC 23.2	The packing, marking and documentation within and outside the packages shall be: <b>N/A</b>
GCC 24.1	The insurance coverage shall be: <b>N/A</b>
GCC 25.1	Responsibility for transportation of the Goods shall be: <b>Supplier</b>
GCC 26.2	Inspections and tests will be conducted at: <b>PVHES, Lilongwe</b>
GCC 27.1	The liquidated damages shall be: <b>0.5%</b> per week
GCC 27.1	The maximum total percentage for liquidated damages shall be: <b>2.5%</b>
GCC 28.3	The period of validity and conditions of the Warranty shall be: <b>3 Years</b>
GCC 28.5	The repair or replace period will be: <b>8 weeks</b>

# Section 9. Contract Forms

## Table of Forms

<b>Agreement .....</b>	<b>2</b>
<b>Performance Security .....</b>	<b>3</b>
<b>Advance Payment Security .....</b>	<b>4</b>

# Agreement

THIS AGREEMENT made the      day of                      , 20    , between .....  
..... of ..... (hereinafter called “the Procuring  
Entity) the one part, and ..... of ..... (hereinafter  
called “the Supplier”), of the other part:

WHEREAS the Procuring Entity invited bids for certain Goods and Related Services, viz.,  
..... and has accepted a Bid by the Supplier  
for the supply of those Goods and Related Services in the sum of .....  
..... (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1.      In this Agreement words and expressions shall have the same meanings as are  
          respectively assigned to them in the Contract referred to.
2.      The following documents shall be deemed to form and be read and construed as part  
          of this Agreement, viz.:
  - (a)    the General Conditions of Contract;
  - (b)    the Special Conditions of Contract;
  - (c)    the Statement of Requirements;
  - (e)    the Bid Submission Sheet and the Price Schedules submitted by the Supplier;
  - (f)    the Procuring Entity’s Notification to the Supplier of award of Contract; and
  - (g)
3.      In consideration of the payments to be made by the Procuring Entity to the Supplier  
          as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to  
          provide the Goods and Related Services and to remedy defects therein in conformity  
          in all respects with the provisions of the Contract.
4.      The Procuring Entity hereby covenants to pay the Supplier in consideration of the  
          provision of the Goods and Related Services and the remedying of defects therein,  
          the Contract Price or such other sum as may become payable under the provisions of  
          the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in  
accordance with the laws of ..... on the day, month and year indicated  
above.

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

Signed by ..... for the Procuring Entity

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

Signed by ..... for the Supplier

# Performance Security

Date: .....

Procurement Reference Number: .....

To: .....

WHEREAS..... (hereinafter called “the Supplier”) has undertaken, pursuant to Contract No. .... dated ....., ..... 20 to supply.....(hereinafter called “the Contract”).

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

AND WHEREAS the undersigned ....., legally domiciled in....., (hereinafter called “the Guarantor”), have agreed to give the Supplier a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of .....and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, without cavil or argument, any sum or sums within the limits of ..... as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This security is valid until the ..... day of ....., 20....

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No 458.

Name ..... In the capacity of .....

Signed .....

Duly authorised to sign the authorisation for and on behalf of .....

Dated on ..... day of ....., 20.....

# Advance Payment Security

Date: .....

Procurement Reference Number: .....

To: .....

In accordance with the payment provision included in the Contract, in relation to advance payments, ..... (hereinafter called “the Supplier”) shall deposit with the Purchaser a security consisting of ....., to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of .....

We, the undersigned ....., legally domiciled in ..... (hereinafter “the Guarantor”), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding .....

This security shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until ....., ..... 20 ...

Name ..... In the capacity of .....

Signed .....

Duly authorised to sign the authorisation for and on behalf of .....

.....

Dated on ..... day of .....; 20.....