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**Republic of Malawi**

**UNIVERSITY OF MALAWI**

**Bidding Document**

**for the**

**Procurement of Minor Works**

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| **Subject of Procurement: Renovation and Expansion of Postgraduate Lecture Room within Law Building and Associated External Works at University of Malawi** |  |
| **Procurement Reference Number W16-11-22** |  |
| **Procurement Method: Minor Works RFQ** |  |
| **Date of Issue of Bidding Document: 24th November, 2022** |  |

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| Section 1: Instructions to Bidders |

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| 1. Scope of Bid |
| * 1. The Procuring Entity indicated in the Bid Data Sheet (BDS), invites bids for the construction of Works, as described in Section 6, Schedule of Requirements. The subject and procurement reference number are provided in the Bid Data Sheet.   2. The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the Bid Data Sheet. |
| 1. Eligible Bidders | |
| * 1. A bidder must:      1. have the legal capacity to enter into a contract;      2. not be insolvent, in receivership, bankrupt or being wound up, not have had their business activities suspended and not be the subject of legal proceedings for any of the foregoing; and      3. have fulfilled all obligations to pay taxes according to the tax laws of Malawi.   2. To demonstrate compliance with the criteria a Bidder shall submit with its Bid copies of :      1. its certificate of Contractor Registration from the National Construction Industry Council;      2. tax clearance certificates or equivalent for the last financial year; and      3. other appropriate documentary evidence demonstrating its compliance.   3. A Bidder that has been debarred from participating in public procurement in accordance with ITB Sub-Clause 17.4, at the date of the deadline for bid submission or thereafter, shall be disqualified. |
| * 1. To qualify for award of the Contract, bidders shall meet the minimum qualifying criteria specified in Section 3, Evaluation and Qualification Criteria.   2. Bidders applying for eligibility for a margin of preference in bid evaluation, if permitted in the Bid Data Sheet, shall supply all information to satisfy the criteria for eligibility as described in Section 3, Evaluation and Qualification Criteria. |
| 1. Documents Comprising the Bid |
| * 1. The Bid submitted by the Bidder shall comprise the following, in the format indicated in Section 4, Bidding Forms, where appropriate:      1. Bid Submission Form;      2. Bid Security;      3. Priced Bill of Quantities or Activity Schedule; |
| * + 1. Qualification Information Form and Documents; and     2. any other document or information required to be completed and submitted by bidders, as specified in the BDS. |
| 1. Bid Prices |
| * 1. The Contract will be an Admeasurement or Lump Sum Contract, as indicated in the Bid Data Sheet.   2. The Contract shall be for the whole Works, based on the:      1. priced Bill of Quantities submitted by the Bidder in the case of an Admeasurement Contract; or      2. priced Activity Schedule submitted by the Bidder in the case of a Lump Sum Contract. |
| * 1. Bids shall cover all costs of labour, materials, equipment, overheads, profits including all associated cost for performing the works. All duties, taxes, and other levies payable by the Contractor under the Contract, shall be included in the rates, prices and total Bid price (or in the case of a lump sum contract, in the total bid price) submitted by the Bidder. |
| 1. Currencies of Bid and Payment |
| * 1. The unit rates and prices (or in the case of a lump sum contract, the lump sum price) shall be quoted by the Bidder and paid entirely in Malawi Kwacha. |
| 1. Bid Validity |
| * 1. Bids shall remain valid for the period specified in the BDS. |
| 1. Bid Security |
| * 1. The Bidder shall furnish, as part of the Bid, a Bid Security in original form in Malawi Kwacha in the amount specified in the BDS. |
| * 1. The Bid Security shall be in the form of a certified cheque or payable order, bank draft, letter of credit, or a bank guarantee from a financial institution operating in Malawi. The format of the Bid Security should be in accordance with the form of Bid Security included in Section 4, Bidding Forms or another form acceptable to the Procuring Entity. Bid Security shall be valid for twenty-eight (28) days beyond the validity of the Bid. |
| 1. Format and Signing of Bid |
| * 1. The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 3 of these Instructions to Bidders, bound with the volume containing the Bid Submission Form, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail. |
| * 1. The original and all copies of the Bid must be typed or written in indelible ink and signed by a person or persons duly authorised to sign on behalf of the Bidder. All pages of the Bid where entries or amendments have been made must be initialled by the person or persons signing the Bid. |
| * 1. The Bid shall contain no alterations or additions, except those as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid. |
| 1. Sealing and Marking of Bids |
| * 1. The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.   2. The inner and outer envelopes shall:      1. be addressed to the Procuring Entity at the address provided in the BDS;      2. bear the name and procurement reference number of the Contract as defined in the BDS and SCC; and      3. provide a warning not to open except in the presence of the Internal Procurement Committee and not to be opened before the specified time and date for Bid opening as defined in the BDS.   3. In addition to the identification required in Sub-Clause 9.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 11. |
| * 1. If the outer envelope is not sealed and marked as above, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Bid. |
| 1. Deadline for Submission of Bids |
| * 1. Bids shall be delivered to the Procuring Entity at the address specified in the BDS no later than the time and date specified in the BDS.   2. The Procuring Entity may extend the deadline for submission of bids by issuing an amendment, in which case all rights and obligations of the Procuring Entity and the bidders previously subject to the original deadline will then be subject to the new deadline. |
| 1. Late Bids |
| * 1. Any Bid received by the Procuring Entity after the deadline prescribed in the BDS will be returned unopened to the Bidder. |
| 1. Bid Opening |
| * 1. The Procuring Entity will open the bids, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the BDS. |
| * 1. The Procuring Entity will prepare minutes of the Bid opening, including the information disclosed to those present. Copies of the minutes will be made available to any Bidder who requests them. |
| * 1. No bid will be rejected at bid opening except for late bids, which will be returned unopened to the bidder. |
| 1. Domestic Preference |
| * 1. If so indicated in the BDS, domestic Bidders or other Bidders using Malawian nationals to carry out the works shall receive a margin of preference in Bid evaluation in accordance with the procedure and criteria specified in Section 3, Evaluation and Qualification criteria. |
| 1. Award Criteria |
| * 1. The Procuring Entity will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be both eligible and qualified in accordance with the provisions of Clause 2. |
| 1. Procuring Entity’s Right to Accept and Bid and to Reject any or all Bids |
| * 1. The Procuring Entity reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Procuring Entity’s action. |
| 1. Notification of Award and Signing of Agreement |
| * 1. The notification of award by the Procuring Entity to the Bidder will constitute the formation of the Contract, subject to the Bidder signing the Contract and furnishing the Performance Security required in the Bid Data Sheet. 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. |
| * 1. The Contract will incorporate all agreements between the Procuring Entity and the successful Bidder. It will be signed by the Procuring Entity and sent to the successful Bidder, within fourteen (14) days following the notification of award. Within fourteen (14) days of receipt, the successful Bidder will sign and date the Contract and deliver it to the Procuring Entity.   2. Upon the furnishing by the successful Bidder of the Performance Security, the Procuring Entity will, within one (1) week, notify the other bidders that their bids have been unsuccessful. |
| 1. Performance Security |
| * 1. Within thirty (30) days after receipt of the Notice of Acceptance, the successful Bidder shall deliver to the Procuring Entity a Performance Security in the form of a Bank Guarantee or other form acceptable to the Procuring Entity, in the amount specified in the Special Conditions of Contract. |
| * 1. Failure of the successful Bidder to comply with the requirements of Sub-Clause 15.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security. |
| 1. Adjudicator |
| * 1. The Procuring Entity proposes the person named in the BDS to be appointed as Adjudicator under the Contract, at an hourly fee specified in the BDS, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Notice of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the SCC at the request of either party. |
| 1. Corrupt or Fraudulent Practices |
| * 1. The Government of the Republic of Malawi (hereinafter called “the Government”) requires that Procuring Entities, as well as Bidders and Contractors under public-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:   2. defines, for the purposes of this provision, the terms set forth below as follows:  "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;"fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;“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“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.  * 1. will reject a recommendation for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question;   2. 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. |

Section 2. Bid Data Sheet

| **Instructions to Bidders (ITB) reference** | Data relevant to ITB |
| --- | --- |
| **ITB 1.1** | The Procuring Entity is: **University of Malawi**  The subject of the Works is: **Renovation and Expansion of Postgraduate Lecture room within Law Building and Associated External Works at University of Malawi**  The procurement reference number is: **W16-11-22** |
| **ITB 1.2** | The Intended Completion Date for the Works shall be: **20 Weeks** |
| **ITB 3.1** | The Bidder shall submit with its bid the following additional documents or information:   1. **a soft copy of the Bills of Quantities in a CD** 2. **a certified valid copy of the Bidder’s NCIC building contractor certificate 500 million kwacha category.** 3. **a certified copy of the Bidder’s Certificate of Business Incorporation or Registration or equivalent;** 4. **a certified valid copy of the Bidders Tax clearance Certificate from Malawi Revenue Authority.** 5. **A copy of SMEs certificate** 6. **Basic prices for materials and labour** 7. **Bid Declaration Form** 8. **Prebid site meeting is compulsory, please find attached form.** |
| **ITB 3.2** | The Procuring Entity **hold a pre-bid meeting and/or site visit**.  If a pre-bid meeting and/or site visit is being held, it shall take place at:  **Location: Department of Law Postgraduate Lecture room**  **Date: 30th November 2022 Time: 10:00am** |
| **ITB 4.1** | The Contract is an **Admeasurement Sum Contract** |
| **ITB 6.1** | Bids shall remain valid for **120** days. |
| **ITB 7.1** | The required bid security shall be **N/A** percent of the total bid price expressed in Malawi Kwacha. |
| **ITB 8.1** | In addition to the original of the bid, the number of copies is: **Three (3)** |
| **ITB 10.1** | The Procuring Entity’s address for bid submission is:  Attention: **IPDC Chair Person**  Street Address: **University of Malawi, Chirunga road**  Floor/Room number:  Town/City: **Zomba**  PO Box No/Postal Code:  Malawi  The deadline for bid submission is:  Date: **6th December 2022** Time: **10:00am** |
| **ITB 11.1** | The pre-bid meeting and site visit shall take place at:  Street Address: **University of Malawi, Chirunga Road**  Floor/Room number: **Department of Law Board room**  Town/City: **Zomba**  Malawi  Date: **30th November 2022** Time: **10:00am** |
| **ITB 13.1** | A margin of preference **Shall** apply.  Where a margin of preference applies, the criteria for eligibility and the application methodology are described in Section 3 Evaluation Methodology and Criteria. |
| **ITB 18.1** | The Adjudicator proposed by the Procuring Entity is: To be appointed  The hourly fee for this proposed Adjudicator shall be: appointed  The biographical data of the proposed Adjudicator is as attached to this Bid Data Sheet. |

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. Qualification Criteria**

To qualify for award of the Contract, in accordance with ITB Sub-Clause 12.1 bidders shall meet the minimum qualifying criteria:

* + 1. Copies of registration certificate
    2. written power of attorney (incase the owner is not signing the bid) of the signatory of the Bid to commit the Bidder;
    3. Total monetary value of construction work performed for at least **two projects** of **MK** **200,000,000** each in the last five (5) years; copy of LPOs or contracts must be attached as documentary evidence.
    4. Experience in works of a similar nature and size for each of the **last five (5) years**, and details of work under way or contractually committed; **and clients who may be contacted for further information on those contracts**; copy of LPOs or contracts must be attached as documentary evidence.
    5. At least two original Reference letters from any of the five listed contracts mention in C or D above.
    6. Proposals for the timely acquisition (own, lease, hire, etc.) of the following essential equipment: **Concrete Mixer (1No) Porker Vibrator (1No.), 7 Ton lorry (1 No.), 2 Sets of scaffolds; evidence of ownership of the equipment is required or arrangement to hire.**
    7. Qualifications and experience of key site management and technical personnel proposed for the Contract as follows;
       1. **Contracts Manager at least 5 Years’ experience; with Architecture, Civil Engineering or Quantity Surveying Degree and Registered with Board of Architects and Quantity Surveyors/ Institute of Engineers,**
       2. **Site Agent at least 5 Years’ experience with Diploma qualifications in Building Construction related field,**
       3. **General Foreman with 5 years’ experience and GRADE 1 qualification in bricklaying, Electrical Domestic registered with MERA and NCIC in K2.5 Million category;**
    8. Evidence of adequacy of working capital exceeding the equivalent of **100,000,000.00 kwacha** for this Contract such as access to line(s) of credit;
    9. Information regarding any litigation, current or during the last **five (5) years**, in which the Bidder is involved, the parties concerned, and disputed amount; and

The requirements for joint ventures in ITB Sub-Clause 4.4 are modified as follows: As stated in ITB Sub-Clause 4.4

To qualify for award of the Contract, in accordance with ITB Sub-Clause 4.5, bidders shall meet the minimum qualifying criteria:

(a) Average annual volume of construction work over the past **3 years** of at least **50 Million Kwacha**;

(b) Experience as prime contractor in the construction of at least **3 works** of a nature and complexity equivalent to the Works over the last **5 years** (to comply with this requirement, works cited should be at least seventy (70) percent complete);

A consistent history of litigation or arbitration awards against the Bidder may result in disqualification.

Subcontractors’ experience and resources will not be considered in determining the Bidder’s compliance with the qualifying criteria.

1. **Evaluation criteria**

As part of evaluation criteria, bidders are supposed to indicateproposed completion duration for the minor works. Price will be the last determinant factor.

**3. Application of Domestic Preference**

If so indicated in the Bid Data Sheet, bidders for works contracts applying for a margin of domestic prefer­ence in bid evaluation shall provide such information, including details of ownership, certificates of registration, and composition of the labour force as are necessary to confirm whether a particular supplier or group of suppliers qualifies for domestic preference.

A margin of domestic preference may be awarded to established domestic contractors who are registered as Malawian contractors by the National Construction Industry Council, and are at least fifty (50) percent owned by Malawian nationals. This margin of domestic preference is also be extended to joint ventures between a foreign and such a qualifying Malawian partner provided that at least seventy-five (75) percent of the labour force to be used in the construction and supervision of the works is of Malawian nationality.

The margin of domestic preference shall be applied as follows:

After bids have been received and re­viewed by the Procuring Entity, responsive bids shall be classified into the follow­ing groups -

Group A, namely, bids offered by domestic contractors and joint ventures eligible for the preference.

Group B, namely, bids offered by other contractors.

For the purpose of evaluation and comparison of bids only, an amount equal to ten (10) percent of the bid amount shall be added to bids received from contractors in Group B.

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

# Bid Submission Form

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 Entity**]

We, the undersigned, declare that:

1. We have examined and have no reservations to the Bidding Documents;
2. We offer to execute the **[insert the name and procurement reference number of the Works]** in conformity with the Bidding Documents for the Contract Price of **[insert amount in numbers and words]** Malawi Kwacha;
3. Our bid shall be valid for a period of **[specify the number of days that the bid is valid for]** calendar days from the date fixed for the bid submission;
4. We have not been debarred from participation in public procurement by the Government of the Republic of Malawi, in accordance with ITB Sub-Clause 17.4;
5. 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.
6. 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** |
|  |  |
|  |  |
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1. We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
2. We accept the appointment of **[insert name of adjudicator proposed in the BDS]** as the Adjudicator. **[or]** We do not accept the appointment of **[insert name of adjudicator proposed in the BDS]** as the Adjudicator, and propose instead that **[insert name]** be appointed as Adjudicator, whose daily fees and biographical data are attached.

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

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

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

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

*Note to Bidders: Bidders shall submit a fully priced Bills of Quantities for Admeasurement Contracts or Activity Schedule for Lump Sum Contracts as provided in Section 6 of the Bidding Documents.*

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

# Priced Schedules

# (Bills of Quantities or Activity Schedule)

*Note to Bidders: This Bid Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign the Bid Security. It should be included by the Bidder in its bid, in accordance with ITB Clause 3.1.*

**Bid Security (Bank Guarantee)**

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 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 no. [**insert procurement reference no]** for the construction of **[insert name of Contract**], hereinafter called “the Bid.”

KNOW ALL PEOPLE by these presents that WE **[insert complete name of bank 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 Bank”),** 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 Bank binds itself, its successors or assignees by these presents.

Sealed with the Common Seal of this bank, this **[insert day in numbers]** day of **[insert month], [insert year].**

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Submission Form, except as provided in 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 34; or

(c) accept the correction of its bid by the Procuring Entity, pursuant to ITB Clause 27.

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 state 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 guarantee shall remain in force up to and including twenty-eight (28) days after the period of bid validity, as stated in the Bid Submission Form or as it may be extended by the Bidder, notice of which extension(s) to the Bank is hereby waived. Any demand in respect thereof should be received by the Bank no later than the above date.

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

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

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 bank**]

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

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

**Qualification Information Form**

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| 1. Constitution or legal status of Bidder: **[attach copy]**  Place of registration: **[insert]**  Principal place of business: **[insert]**  2. Average volume of construction work performed in the previous number of years specified in Section 3: **[insert details below and state average]** |

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

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| --- |
| 3. Work performed on works of a similar nature and volume over the last five (5) years. Also list details of work under way or committed, including expected completion date. |

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

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| --- |
| 4. Major items of Equipment proposed for carrying out the Works. List all information requested below. |

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

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| 5. Qualifications and experience of key personnel for the Contract. |

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

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| 6 Financial reports for the last financial year: balance sheet, profit and loss statement, auditors’ report, etc. Attach copies.  7. Name, address, and telephone of banks that can provide references if contacted. |

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| --- |
| 8. Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents. |
| 9. Bidders should provide any additional information required in Sections 2 or 3 of the Bidding Document or to fulfil the requirements of Clause 2 of the Instructions to Bidders, as applicable.  **Bid Securing Declaration**  **[***The Bidder shall fill this 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 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:    1. have withdrawn our bid during the period of bids validity specified by us in the Bid Data sheet; or    2. 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 Security 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; (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 he 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]*  *[This Price Schedule should be signed by a person with the proper authority to sign documents for the Bidder. It should be included by the Bidder in its bid. The Bidder may reproduce this in landscape format but is responsible for its accurate reproduction].* |

Section 5. Eligible Countries

**Procurement Reference Number: W16-11-22**

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

A country shall not be eligible if:

* 1. (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 is satisfied that such exclusion does not preclude effective competition for the provision of the works 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 procurement of works from that country or any payments to persons or entities in that country.

Section 6. Schedule of Requirements

A. Scope of Works

B. Technical Specifications

C. Drawings

| **List of Drawings** | |
| --- | --- |
| **Drawing Number** | **Drawing Title** |
|  |  |
|  | AS PER ATTACHED |
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|  |  |

Bill of Quantities or Activity Schedule

**AS PER ATTACHED**

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| Section 7: General Conditions of Contract |

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| 1. Definitions |
| * 1. The following words and expressions shall have the meanings hereby assigned to them:   The “Activity Schedule” means the priced Activity Schedule forming part of the Bid for a Lump Sum Contract.  An “Admeasurement Contract” means a contract based on a priced Bill of Quantities or schedule of unit price rates in which payment to the Contractor is subject to measurement of physical quantities of items by the Employer.  The “Adjudicator” is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 13 and 14 hereunder.  “Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid for an Admeasurement contract.  “Compensation Events” are those defined in Clause 27 hereunder.  The “Completion Date” is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 35.1.  The “Contract” is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works.  The “Contract Price” is the price stated in the Notice of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.  “Contractor” means the Supplier appointed under the Contract for the performance of the Works.  “Days” are calendar days; “months” are calendar months.  “Dayworks” are varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.  A “Defect” is any part of the Works not completed in accordance with the Contract.  The “Defects Liability Certificate” is the certificate issued by Project Manager upon correction of defects by the Contractor.  The “Defects Liability Period” is the period named in the Special Conditions of Contract and calculated from the Completion Date.  “Drawings” include calculations and other information provided or approved by the Project Manager for the execution of the Contract.  “Employer” means the Procuring Entity who employs the Contractor to carry out the Works.  “Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.  The “Initial Contract Price” is the Contract Price listed in the Employer’s Notice of Acceptance.  The “Intended Completion Date” is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Special Conditions of Contract. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.  “Materials” are all supplies, including consumables, used by the Contractor for incorporation in the Works.  “Plant” is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.  The “Procuring Entity” is the party who employs the Contractor to carry out the Works.  The “Project Manager” is the person named in the Special Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.  The “Site” is the area defined as such in the Special Conditions of Contract.  “Site Investigation Reports” are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.  “Specification” means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.  The “Start Date” is given in the Special Conditions of Contract. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any Site Possession Dates.  A “Subcontractor” is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.  The “Supplier” is a person or corporate body whose Bid to carry out the Works has been accepted by the Procuring Entity.  The “Contractor’s Bid” is the completed bidding document submitted by the Contractor to the Procuring Entity.  “A “Variation” is an instruction given by the Project Manager which varies the Works.  The “Works” are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Special Conditions of Contract. |
| 1. Language and Law | |
| * 1. The language of the Contract is English and the governing law is that of Republic of Malawi. |
| 1. Project Manager’s Decisions |
| * 1. Except where otherwise specifically stated and subject to any restrictions in the Special Conditions of Contract, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer. |
| 1. Communications |
| * 1. Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered. |
| 1. Subcontracting |
| * 1. The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor’s obligations. |
| 1. Other Suppliers |
| * 1. The Contractor shall cooperate and share the Site with other suppliers, contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Suppliers, as referred to in the Special Conditions of Contract. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Suppliers, and shall notify the Contractor of any such modification. |
| 1. Personnel |
| * 1. The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Special Conditions of Contract, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.   2. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Contract. |
| 1. Contractor’s Risks |
| * 1. From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) are the Contractor’s risks. |
| 1. Insurance |
| * 1. The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Special Conditions of Contract for the following events which are due to the Contractor’s risks:      1. loss of or damage to the Works, Plant, and Materials;      2. loss of or damage to Equipment;      3. loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and      4. personal injury or death and Third Party liability. |
| * 1. Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for approval before the Start Date. All such insurance shall provide for compensation to be payable as required to rectify the loss or damage incurred. If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due. |
| * 1. Alterations to the terms of an insurance shall not be made without the approval of the Project Manager. |
| 1. Contractor to Construct the Works |
| * 1. The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. |
| 1. The Works to Be Completed by the Intended Completion Date |
| * 1. The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date. |
| 1. Safety |
| * 1. The Contractor shall be responsible for the safety of all activities on the Site. |
| 1. Disputes |
| * 1. If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within fourteen (14) days of the notification of the Project Manager’s decision. |
| 1. Procedure for Disputes |
| * 1. The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of a notification of a dispute.   2. The Adjudicator shall be paid by the hour at the rate specified in the Special Conditions of Contract, together with reimbursable expenses of the types specified in the Special Conditions of Contract, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within twenty-eight (28) days of the Adjudicator’s written decision. If neither party refers the dispute to arbitration within the above twenty-eight (28) days, the Adjudicator’s decision will be final and binding.   3. The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and, in the place, shown in the Special Conditions of Contract.   4. Should an Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within thirty (30) days, the Adjudicator shall be designated by the Appointing Authority designated in the Special Conditions of Contract at the request of either party, within fourteen (14) days of receipt of such request. |
| 1. Program |
| * 1. Within the time stated in the Special Conditions of Contract, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. |
| * 1. The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the Special Conditions of Contract.   2. The Project Manager’s approval of the Program shall not alter the Contractor’s obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events. |
| 1. Extension of the Intended Completion Date |
| * 1. The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost. |
| 1. Delays Ordered by the Project Manager |
| * 1. The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works. |
| 1. Early Warning |
| * 1. The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.   2. The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager. |
| 1. Correction of Defects |
| * 1. The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Special Conditions of Contract. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.   2. Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager’s notice. |
| 1. Uncorrected Defects |
| * 1. If the Contractor has not corrected a Defect within the time specified in the Project Manager’s notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will be liable for this amount. The amount will be deducted from current and future payment certificates, or paid by the Contractor if insufficient funds are due under the contract. |
| 1. Bill of Quantities or Activity Schedule |
| * 1. This Contract is:      1. An Admeasurement Contract with a Bill of Quantities, subject to Option 1; or      2. A Lump Sum Contract with an Activity Schedule, subject to Option 2,   as indicated in the Special Conditions of Contract.  **Option 1: Bill of Quantities for Admeasurement Contract**   * 1. The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.   2. The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item. |
| **Option 2: Activity Schedule for Lump Sum Contract**   * 1. The Contractor shall provide updated Activity Schedules within fourteen (14) days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be co-ordinated with the activities on the Program.   2. The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately. |
| 1. Change in the Bill of Quantities or Activity Schedule |
| **Option 1: Changes in the Bill of Quantities for Admeasurement Contracts**   * 1. If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty-five (25) percent, provided the change exceeds one (1) percent of the Initial Contract Price, the Project Manager shall adjust the rate or price to allow for the change.   2. The Project Manager shall not adjust rates or prices from changes in quantities if thereby the Initial Contract Price is exceeded by more than five (5) percent, except with the prior approval of the Employer.   3. If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.   **Option 2: Changes in the Activity Schedule for Lump Sum Contracts**   * 1. The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor’s own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule. |
| 1. Variations |
| * 1. All Variations shall be included in updated Programs (or in the case of Lump Sum Contracts in updated Programs and Activity Schedules) produced by the Contractor. |
| 1. Payment for Variations |
| * 1. The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager.   2. For Admeasurement Contracts only, if the work in the Variation corresponds with an item description in the Bill of Quantities, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work. |
| * 1. If the Contractor’s quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager’s own forecast of the effects of the Variation on the Contractor’s costs. |
| * 1. If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.   2. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning. |
| 1. Payment Certificates |
| * 1. The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed and materials on site less the cumulative amount certified previously.   2. The Project Manager shall check the Contractor’s executed work and materials on site and certify the amount to be paid to the Contractor.   3. The value of work executed and materials on site shall be determined by the Project Manager. |
| 1. Payments |
| * 1. Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within thirty (30) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing and add normal absolute net adjustment of price differences. |
| * 1. Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract. |
| 1. Compensation Events |
| * 1. The following shall be Compensation Events:      1. The Employer does not give access to a part of the Site by the Site Possession Date stated in the Special Conditions of Contract.      2. The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.      3. The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.      4. Other suppliers, contractors, public authorities, utilities, or the Employer cause delay or extra cost to the Contractor.      5. The advance payment is delayed.      6. The Project Manager unreasonably delays issuing a Certificate of Completion. |
| * 1. If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.   2. The Contractor shall not be entitled to compensation to the extent that the Employer’s interests are adversely affected by the Contractor not having given early warning. |
| 1. Currencies |
| * 1. Payments shall only be made in Malawi Kwacha. |
| 1. Retention |
| * 1. The Employer shall retain from each payment due to the Contractor the proportion stated in the Special Conditions of Contract until Completion of the whole of the Works.   2. On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.   3. With the approval of the Employer, the Contractor may substitute retention money with an “on demand” Bank guarantee. |
| 1. Liquidated Damages |
| * 1. The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Special Conditions of Contract for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Special Conditions of Contract. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities. |
| 1. Advance Payment |
| * 1. The Employer shall make advance payment of the amount stated in the Special Conditions of Contract against provision by the Contractor of an Unconditional Bank Guarantee, in a form and by a bank acceptable, to the Employer.   2. The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilisation expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.   3. The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, to be recovered within one half of the completion period. |
| 1. Securities |
| * 1. The Performance Security shall be provided to the Employer no later than twenty-one (21) days after receipt of the Notice of Acceptance and shall be issued in the form of a Guarantee in the format specified in the contract and in an amount specified in the Special Conditions of Contract and by a bank acceptable to the Employer. The Performance Security shall be valid until a date twenty-eight (28) days from the date of issue of the Certificate of Completion. |
| 1. Dayworks |
| * 1. If applicable, the Dayworks rates in the Contractor’s Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.   2. All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two (2) days of the work being done.   3. The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms. |
| 1. Cost of Repairs |
| * 1. Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions. |
| 1. Completion |
| * 1. The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed. |
| 1. Taking Over |
| * 1. The Employer shall take over the Site and the Works within seven (7) days of the Project Manager’s issuing a Certificate of Completion. |
| 1. Final Account |
| * 1. The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within thirty (30) days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within thirty (30) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate. |
| 1. Termination |
| * 1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.   2. Fundamental breaches of Contract shall include, but are not limited to, the following: |
| * + 1. the Contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Program and the stoppage has not been authorised by the Project Manager; |
| * + 1. the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty-eight (28) days;     2. the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;     3. a payment certified by the Project Manager is not paid by the Employer to the Contractor within ninety (90) days of the date of the Project Manager’s certificate; |
| * + 1. the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;     2. the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Special Conditions of Contract; and     3. if the Contractor, in the judgement of the Employer has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract. |
| For the purpose of this paragraph:  "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.  "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract;  “collusive practices” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels; and  “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. |
| * 1. When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 38.2 above, the Project Manager shall decide whether the breach is fundamental or not.   2. Notwithstanding the above, the Employer may terminate the Contract for convenience.   3. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. |
| 1. Payment upon Termination |
| * 1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Special Conditions of Contract. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.   2. If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate. |
| 1. Property |
| * 1. All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default. |
| 1. Force Majeure |
| * 1. For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.   2. If a Force Majeure situation arises, the Contractor shall promptly notify the Employer in writing of such condition and the cause thereof. Unless otherwise directed by the Employer in writing, the Contractor 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.   3. The Contractor shall not be liable for forfeiture of its performance security or retention monies held, 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. |
| 1. Release from Performance |
| * 1. If the Contract is frustrated by an event of Force Majeure or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made. |

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** |
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| **GCC 1.1** | The name and procurement reference number of the Contract is: **Renovation and Expansion of Postgraduate Room at Department of Law and Associated External Works**  Contract No:  The Project Manager is: **Director of Buildings**  The Works consist of: **Demolitions and expansion of Postgraduate Lecture room for Department of Law and Associated External Works**  The Site is located at: **University of Malawi**, **Zomba,** and is defined in Drawing No.  The Start Date shall be: **To be Agreed**  The Intended Completion Date for the Works shall be: **20 Weeks**  The Defects Liability Period shall be: **365 Days** |
| **GCC 3.1** | The Employer’s specific approval is required for:  individual Variations (GCC Clauses 23 and 24) or Compensation Events (GCC Clause 27) or Measurements (GCC Clause 22) which would result in an increase to the Initial Contract Price of more than 5 (five) percent;  any new Variations or Compensation Events or Measurements which together with previously approved Variations and Compensation Events and Measurements, would result in an increase to the Initial Contract Price of more than 15 (fifteen) percent. |
| **GCC 6.1** | The Schedule of Other Suppliers shall not form part of the Contract |
| **GCC 7.1** | The Schedule of Key Personnel **Contract’s Manager, Site agent, Foremen** ispart of the Contract. |
| **GCC 9.1** | The minimum insurance cover and deductibles shall be:  The minimum insurance cover and deductibles shall be:   1. The minimum cover for insurance of the Works, Plant and Materials is **110%**   (b) The maximum deductible for insurance of the Works, Plant and Materials is: **N/A**  (c) The minimum cover for insurance of Equipment is: **100%**  (d) The maximum deductible for insurance of Equipment is **N/A**  (e) The minimum cover for insurance of property is **100%**  The maximum deductible for insurance of property is **N/A**  (g) The minimum cover for personal injury or death insurance is **MK1, 000, 000.00** with no deductible. |
| **GCC 14.2** | The hourly rate to be paid to the Adjudicator is: **To be agreed**  Fees and types of reimbursable expenses to be paid to the Adjudicator are: **Transport, printing and photocopying.** |
| **GCC 14.3** | The institution whose arbitration procedures shall be used is: **NCIC**  Arbitration shall take place at: **National Construction Industry Council of Malawi** |
| **GCC 14.4** | The Appointing Authority for the Adjudicator is: **National Construction Industry Council of Malawi** |
| **GCC 15.1** | The Contractor shall submit a revised Program for the Works within **14 days of delivery of the Notice of Acceptance.** |
| **GCC 15.2** | The period between Program updates is  **14** days. |
| **GCC 19.1** | The Defects Liability Period is: **365 Days** |
| **GCC 21.1** | This Contract is an **Admeasurement Contract** |
| **GCC 26.1** | The rate of interest for late payments is (**Simple Interest on Commercial Bank base rate Excluding Advance Payment)**. |
| **GCC 27.1** | The Site Possession Date shall be: **To be communicated** |
| **GCC 29.1** | The proportion of payments retained is **5%** percent. |
| **GCC 30.1** | The rate per day for liquidated damages is **0.05 percent or part thereof** of the final Contract Price per day.  The maximum amount of liquidated damages for the whole of the Works is **5 percent** of the final Contract Price. |
| **GCC 31.1** | The Advance Payment will be equivalent to **a limit of 20 percent** of the Contract Price. It will be paid to the Contractor no later than **30 days**. |
| **GCC 31.3** | The Advance Payment will be repaid by deducting equal amounts from payments due to the Contractor each month during the period starting **2** months after the Start Date and ending **3 months** after the Start Date. |
| **GCC 32.1** | The Performance Security shall be for **5%** percent of the Contract Price: |
| **GCC 39.1** | The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is:  **20 %** |

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| Section 9. Contract Forms |

# Agreement

**Procurement Reference No:**

THIS AGREEMENT made the … day of, …………., 20..., between …………….…………… of ………………………… (hereinafter called “the Employer”), of the one part, and …………. of ………………………… (hereinafter called “the Contractor”), of the other part:

WHEREAS the Employer is desirous that the Contractor execute ……………………... (hereinafter called “the Works”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein for 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 Schedule of Requirements;

(d) the Bid Submission Form and the priced Activity Schedule or priced Bill of Quantities submitted by the Contractor;

(e) the Employer’s Notification to the Contractor of award of contract; and

(f)

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works 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 thereto have caused this Agreement to be executed in accordance with the law specified in the Special Conditions of Contract on the day, month and year indicated above.

Signed by: (for the Employer)

Name: Position:

Witnessed by:

Name: Address:

Signed by: (for the Contractor)

Name: Position:

Witnessed by:

Name: Address:

Note for Bidders: The Performance Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign documents that are binding on the Financial Institution.

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| Performance Bank Guarantee |

## Performance Bank Guarantee (Unconditional)

Date: **[insert date]**

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

To: **[name and address of Employer]**

WHEREAS **[name and address of Contractor]** (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. **[number]** dated **[date]** to execute **[name of Contract and brief description of Works]** (hereinafter called “the Contract”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE WE hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of **[amount of Guarantee] [amount in words]**, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of **[amount of Guarantee]**as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until a date twenty-eight (28) days from the date of issue of the Certificate of Completion.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

Signature and seal of the Guarantor:

Name of Financial Institution:

Address:

Date:

Note for Bidders: The Advance Payment Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign documents that are binding on the Financial Institution.

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| Advance Payment Security |

## Bank Guarantee for Advance Payment

To: **[name and address of Employer]**

**[name of Contract]**

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Clause 51 (“Advance Payment”) of the above-mentioned Contract, **[name and address of Contractor]** (hereinafter called “the Contractor”) shall deposit with **[name of Employer]** a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of **[amount of Guarantee] [amount in words]**.

We, the **[Bank or Financial Institution]**, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to **[name of Employer]** on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding **[amount of Guarantee] [amount in words]**.

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between **[name of Employer]** and the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until **[name of Employer]** receives full repayment of the same amount from the Contractor.

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

Yours truly,

Signature and seal:

Name of Bank/Financial Institution:

Address:

Date: