



Republic of Malawi

Bidding Document

for the

Procurement of Minor Works

By

National Competitive Bidding

Subject of Procurement

**Rehabilitation of Female Ward at Dowa
District Hospital**

Procurement Reference Number

NLGFC-MoH-Works/10/2022

Procurement Method

**Open Tendering-National competitive
Bidding**

Date of Issue of Bidding Document

3rd September 2022

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Section I. Instructions to Bidders

A. General

1. Scope of Bid

- 1.1 The Procuring Entity indicated in the Special Conditions of Contract (SCC), 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 SCC.
- 1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the SCC.

2. Source of Funds

- 2.1 The Procuring Entity indicated in the SCC has an approved budget from public funds towards the cost of the procurement described in Section 6, Schedule of Requirements and intends to use these funds to cover eligible payments under the Contract. 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. Eligible Bidders

- 3.1 A bidder shall:
 - (a) have the legal capacity to enter into a contract;
 - (b) 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
 - (c) have fulfilled their obligations to pay taxes according to the tax laws of their country of registration.
 - 3.2 In order to demonstrate compliance with the criteria in ITB Sub-Clause 3.1, a Bidder shall submit with its Bid either:
 - (a) its certificate of Contractor Registration from the National Construction Industry Council demonstrating its registered supplier status; or
 - (b) appropriate documentary evidence demonstrating its compliance.
 - 3.3 Bidding is open to all bidders from eligible countries as defined in Section 5, Eligible Countries. All materials, equipment and services to be used in the performance of the Contract shall have their origin in an eligible country, as defined in Section 5, Eligible Countries.
 - 3.4 A bidder shall be required to obtain a certificate of registration from the National Construction Industry Council demonstrating registered supplier status, as a condition of contract award.
 - 3.5 All bidders shall provide in Section 4, Bidding Forms, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the
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Procuring Entity to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.

- 3.6 Government-owned enterprises in the Republic of Malawi may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency to the Procuring Entity.
- 3.7 A Bidder that has been debarred from participating in public procurement in accordance with ITB Sub-Clause 36.1(c), at the date of the deadline for bid submission or thereafter, shall be disqualified.

4. Qualification of the Bidder

- 4.1 All bidders shall provide in the Qualification Information Form in Section 4, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 4.2 In the event that prequalification of potential bidders has been undertaken, only bids from pre-qualified bidders will be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original pre-qualification applications or, alternatively, confirm in their bids that the originally-submitted pre-qualification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in the Qualification Information Form in Section 4, Bidding Forms.
- 4.3 If the Procuring Entity has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids, using the Qualification Information Form in Section 4, Bidding Forms, unless otherwise stated in Section 3, Evaluation and Qualification Criteria:
- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business or a copy of the Bidder's registration certificate where such documents have been provided to obtain registered supplier status; written power of attorney of the signatory of the Bid to commit the Bidder;
 - (b) total monetary value of construction work performed for each of the last five (5) years;
 - (c) 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;
 - (d) major items of construction equipment proposed to carry out the Contract;
 - (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
 - (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five (5) years;
 - (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
 - (h) authority to seek references from the Bidder's bankers;
 - (i) 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
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- (j) proposals for subcontracting components of the Works amounting to more than ten (10) percent of the Contract Price.
- 4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in Section 3, Evaluation and Qualification Criteria:
 - (a) the Bid shall include all the information listed in Sub-Clause 4.3 above for each joint venture partner;
 - (b) the Bid shall be signed so as to be legally binding on all partners;
 - (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (d) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 4.5 To qualify for award of the Contract, bidders shall meet the minimum qualifying criteria specified in Section 3, Evaluation and Qualification Criteria.
- 4.6 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.

5. One Bid per Bidder

- 5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor) will cause all the proposals with the Bidder's participation to be disqualified.

6. Cost of Bidding

- 6.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Procuring Entity will in no case be responsible or liable for those costs.

7. Site Visit

- 7.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.2 Details of any Pre-Bid Meeting or Site Visit to be held by the Procuring Entity are given in the BDS.

B. Bidding Documents

8. Content of Bidding Documents

- 8.1 The set of bidding documents comprises the documents listed in the table below and
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addenda issued in accordance with Clause 10:

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 Schedule of Requirements

- Section 6(A) – Scope of Works
- Section 6(B) – Technical Specifications
- Section 6(C) – Drawings
- Section 6(D) – Bills of Quantities (or Activity Schedule)

PART 3 Contract

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

9. Clarification of Bidding Documents

9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Procuring Entity in writing at the Procuring Entity's address indicated in the BDS. The Procuring Entity will respond to any request for clarification received earlier than fourteen (14) days prior to the deadline for submission of bids. Copies of the Procuring Entity's response will be forwarded to all Bidders, including a description of the inquiry, but without identifying its source.

10. Amendment of Bidding Documents

10.1 Before the deadline for submission of bids, the Procuring Entity may modify the bidding documents by issuing addenda.

10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Procuring Entity.

10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring Entity shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 20.2 below.

C. Preparation of Bids**11. Language of Bid**

11.1 All documents relating to the Bid shall be in English. Any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages in English; in which case, for purposes of interpretation of the Bid, the translation shall govern.

12. Documents Comprising the Bid

12.1 The Bid submitted by the Bidder shall comprise the following, in the format indicated in Section 4, Bidding Forms, where appropriate:

- (a) Bid Submission Form;
- (b) Bid Security;
- (c) Priced Bill of Quantities or Activity Schedule;
- (d) Qualification Information Form and Documents; and
- (e) any other document or information required to be completed and submitted by bidders, as specified in the BDS.

13. Bid Prices

13.1 The Contract will be an Admeasurement or Lump Sum Contract, as indicated in the BDS.

13.2 The Contract shall be for the whole Works, as described in ITB Sub-Clause 1.1, based on the:

- (a) priced Bill of Quantities submitted by the Bidder in the case of an Admeasurement Contract; or
- (b) priced Activity Schedule submitted by the Bidder in the case of a Lump Sum Contract.

13.3 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities (or in the case of a lump sum contract, for all items of the Works described in the drawings and specifications and listed in the Activity Schedule). Items for which no rate or price is entered by the Bidder will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities or Activity Schedule.

13.4 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause 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.

13.5 The rates and prices (or in the case of a lump sum contract, the lump sum price) quoted by the Bidder shall not be subject to adjustment during the performance of the Contract unless provided for in the BDS and SCC and the provisions of Clause 47 of the Conditions of Contract. The Bidder shall submit with the Bid all the information required under the SCC and Clause 47 of the Conditions of Contract.

14. Currencies of Bid and Payment

14.1 The unit rates and prices (or in the case of a lump sum contract, the lump sum price) shall be quoted by the Bidder entirely in Malawi Kwacha.

15. Bid Validity

15.1 Bids shall remain valid for the period specified in the BDS.

15.2 In exceptional circumstances, the Procuring Entity may request that the bidders extend the period of validity for a specified additional period. The request and the bidders'

responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.

16. Bid Security

- 16.1 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.
- 16.2 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.
- 16.3 Any bid not accompanied by an acceptable Bid Security shall be rejected. The Bid Security of a joint venture must define as “bidder” all joint venture partners and list them in the following manner: a joint venture consisting of “_____,” “_____,” and “_____”.
- 16.4 The Bid Security of unsuccessful bidders will be returned within one (1) week after concluding the contract and after a Performance Security has been furnished by the successful Bidder.
- 16.5 The Bid Security of the successful Bidder will be discharged when the Bidder has signed the contract and furnished the required Performance Security.
- 16.6 The Bid Security may be forfeited:
- (a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
 - (b) if the Bidder does not accept the correction of the Bid price, pursuant to Clause 27; or
 - (c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to:
 - (i) sign the contract; or
 - (ii) furnish the required Performance Security.

17. Alternative Proposals by Bidders

- 17.1 Bidders shall submit offers that comply with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered unless specifically allowed in the BDS.

18. Format and Signing of Bid

- 18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 12 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.
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- 18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the Bidder, pursuant to Sub-Clauses 4.3(a) or 4.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialled by the person or persons signing the Bid.
- 18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Procuring Entity, or 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.
- 18.4 The Bidder shall furnish information as described in the Bid Submission Form on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

D. Submission of Bids

19. Sealing and Marking of Bids

- 19.1 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”.
- 19.2 The inner and outer envelopes shall:
- (a) be addressed to the Procuring Entity at the address provided in the BDS;
 - (b) bear the name and procurement reference number of the Contract as defined in the BDS and SCC; and
 - (c) 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.
- 19.3 In addition to the identification required in Sub-Clause 19.2, 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 21.
- 19.4 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.

20. Deadline for Submission of Bids

- 20.1 Bids shall be delivered to the Procuring Entity at the address specified in ITB Sub-Clause 19.2(a) above no later than the time and date specified in the BDS.
- 20.2 The Procuring Entity may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, 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.

21. Late Bids

- 21.1 Any Bid received by the Procuring Entity after the deadline prescribed in Clause 20 will be returned unopened to the Bidder.

22. Withdrawal, Substitution and Modification of Bids

- 22.1 Bidders may withdraw, substitute or modify their bids by giving notice in writing before the deadline prescribed in Clause 20.
- 22.2 Each Bidder's withdrawal, substitution or modification notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 18 and 19, with the outer and inner envelopes additionally marked "WITHDRAWAL", "SUBSTITUTION" or "MODIFICATION" as appropriate. The corresponding substitution or modification of the bid must accompany the written notice.
- 22.3 No Bid may be modified after the deadline for submission of Bids.
- 22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Bid Security pursuant to Clause 16.
- 22.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid substitutions or modifications in accordance with this clause, or included in the original Bid submission.

E. Bid Opening and Evaluation

23. Bid Opening

- 23.1 The Procuring Entity will open the bids, including substitutions and modifications made pursuant to Clause 22, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the BDS.
- 23.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened. 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.
- 23.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, will all be announced by the Procuring Entity at the bid opening. Any such other details as the Procuring Entity may consider appropriate, will also be announced.
- 23.4 Bids, substitutions or modifications that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Bidder which is not read out at bid opening shall not be considered further.
- 23.5 The Procuring Entity will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 23.3. Copies of the minutes
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will be made available to any Bidder who requests them.

- 23.6 No bid will be rejected at bid opening except for late bids, which will be returned unopened to the bidder, pursuant to ITB Clause 21.

24. Process to be Confidential

- 24.1 Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence the Procuring Entity's processing of bids or award decisions may result in the rejection of his Bid.

25. Clarification of Bids and Contacting the Procuring Entity

- 25.1 To assist in the examination, evaluation and comparison of bids, the Procuring Entity may, at the Procuring Entity's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates (or in the case of a lump sum contract, the prices in the Activity Schedule). The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the bids in accordance with Clause 27.
- 25.2 Subject to sub-clause 25.1 no Bidder shall contact the Procuring Entity on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Procuring Entity, it should do so in writing.
- 25.3 Any effort by the Bidder to influence the Procuring Entity in the Procuring Entity's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidder's bid.

26. Examination of Bids and Determination of Responsiveness

- 26.1 Prior to the detailed evaluation of bids, the Procuring Entity will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 3; (b) has been properly signed; (c) is accompanied by the required Bid Security; and (d) is substantially responsive to the requirements of the bidding documents.
- 26.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which 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) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 26.3 If a Bid is not substantially responsive, it will be rejected by the Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

27. Correction of Errors

27.1 Bids determined to be substantially responsive will be checked by the Procuring Entity for any arithmetic errors.

27.2 Errors will be corrected by the Procuring Entity as follows:

- (a) For admeasurement contracts only, 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 Purchaser 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.

27.3 The amount stated in the Bid will be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 16.6(b).

28. Currency for Bid Evaluation

28.1 Bids will be evaluated as quoted in Malawi Kwacha.

29. Evaluation and Comparison of Bids

29.1 The Procuring Entity will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.

29.2 In evaluating the bids, the Procuring Entity will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

- (a) making any correction for errors pursuant to Clause 27;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities or Activity Schedule, but including Daywork, where priced competitively;
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.

29.3 The Procuring Entity reserves the right to accept or reject any variation or deviation. Variations, deviations, and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Procuring Entity will not be taken into account in Bid evaluation.

30. Domestic Preference

- 30.1 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.

F. Award of Contract

31. Award Criteria

- 31.1 Subject to Clause 32, 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 (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.

32. Procuring Entity's Right to Accept and Bid and to Reject any or all Bids

- 32.1 Notwithstanding Clause 31, 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.

33. Notification of Award and Signing of Agreement

- 33.1 The Bidder whose Bid has been accepted will be notified of the award in writing by the Procuring Entity prior to expiration of the Bid validity period. This notification (hereinafter and in the General Conditions of Contract called the "Notice of Acceptance") will state the sum that the Procuring Entity will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price"). 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.
- 33.2 The notification of award will constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with Clause 34 and signing the contract in accordance with Sub-Clause 33.3.
- 33.3 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 twenty-eight (28) days following the notification of award. Within thirty (30) days of receipt, the successful Bidder will sign and date the Contract and deliver it to the Procuring Entity.
- 33.4 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.

34. Performance Security

- 34.1 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 and denominated in the type and proportions of currencies specified in the Special
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Conditions of Contract.

34.2 The Performance Security shall be issued by a financial institution operating in Malawi.

34.3 Failure of the successful Bidder to comply with the requirements of Sub-Clause 34.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

35. Adjudicator

35.1 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.

36. Corrupt or Fraudulent Practices

36.1 The Government of the Republic of Malawi (hereinafter called “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;
 - (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.
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Section 2. Bid Data Sheet

Data relevant to ITB	
A. General	
ITB 1.1	<p>The Procuring Entity is: National Local Government Finance Committee</p> <p>The subject of the works is: Rehabilitation of Female Ward at Dowa District Hospital</p> <p>IMPORTANT NOTES</p> <p>✓ Bidders must quote for all works (100%)</p> <p>The Procurement entity will award the contract to the bidder whose bid has been determined to be substantially responsive to all the requirements including in the bidding document and who has offered the lowest price.</p>
ITB 1.2	The intended Completion date for the works shall be: Not Exceed 16 weeks
ITB 7.2	<p>The Procuring Entity will hold a Mandatory Pre-Bid meeting and a Mandatory Site Visit.</p> <p>The Pre-Bid Meeting and Site Visits will be schedule as follow:</p> <p>Dowa District Hospital - Date: 13th September 2022 Time: 9.00 Hrs.</p> <p>A duly stamped Pre-Bid and Site Visit Certificate is a mandatory requirement. Bids without such certificate will be rejected. Only the original copy of the pre-bid and site visit certificate will be accepted.</p>
B. Bidding Documents	
ITB 9.1	<p>For <u>clarification purposes</u> only, the Procuring Entity's address is:</p> <p>Attention: Procurement Specialist</p> <p>Floor/Room number: National Local Government Finance Committee, Red Cross House.</p> <p>Street Address: NLGFC, Along Presidential Drive in Area 14</p> <p>Town/City: Lilongwe</p> <p>Country: MALAWI</p> <p>Telephone: 01 775 666</p> <p>Electronic Mail Address: guledi@nlgfc.gov.mw</p>

C. Preparation of Bids	
ITB 12.1(e)	<p>The Bidder shall submit with its bid the following additional documents or information:</p> <p>A. General Documents:</p> <ul style="list-style-type: none"> ✓ Joint venture, consortium, or association agreement (if applicable). ✓ Power of Attorney- confirmation authorising the signatory of the Bid to commit the Bidder. NOTE: The Power of Attorney must be elaborated, signed, and stamped by an attorney. Bids will be rejected if not complying with this requirement. <p>B. Eligibility Documents:</p> <ul style="list-style-type: none"> ✓ Certificate of Registration. ✓ Tax Clearance Certificate period (2020-2021). ✓ PPDA Certificate (<i>The certificate is not mandatory for bid submission or at evaluation stage but is mandatory for contract signing</i>). <p>C. Technical Documents:</p> <ul style="list-style-type: none"> ✓ Method Statement ✓ Work Schedule <p>D. Financial Documents:</p> <ul style="list-style-type: none"> ✓ Breakdown of Major Rates, ✓ Basic Prices of Materials <p>E. Qualification Information (Documents):</p> <ul style="list-style-type: none"> ✓ NCIC Registration Certificate (MK 500 Million or above) category. ✓ Copies of Contracts or Certificates of Completion for the average annual volume of construction work over the past five (5) years (2016-2021) of at least MK 500 Million Kwacha. ✓ Copies of Contracts or Certificates of Completion of Three (3) construction works (as prime contractor) of a nature and complexity similar to the works required over the last five (5) years. ✓ List of Equipment. Use form included in Section IV of BD. ✓ CVs of Technical Personnel. ✓ Liquid assets or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than KM 80 Million Kwacha <p>Financial reports for the last three (3) years (2019, 2020, 2021); balance sheets, profit and loss statements, auditors' reports. (<i>Turn over should not be less than MK 500 Million</i>).</p>
ITB 13.1	The Contract is an Admeasurement Contract.
ITB 13.5	Bid Prices will not be subject to adjustment during performance of the contract.
ITB 15.1	Bids shall remain valid for 120 days
ITB 16.1	The amount of the bid security shall be: MK5,000,000.00 Kwacha

	Firms registered and wholly owned by Malawians may submit a Bid Security Declaration .
ITB 17.1	Alternative proposals to the requirements of the bidding documents will not be permitted
ITB 18.1	In addition to the original bid, the number of copies is: 2 (two) hard copies and one (1) soft copy (USB) of the priced complete BoQ.
D. Submission of Bids	
ITB 19.2(a)	For <u>bid submission purpose</u> only, the Procuring Entity's address is: National Local Government Finance Committee, Red Cross House Attention: IPDC Chairperson Floor/Room number: xx - (Tender Box) Street Address: Area 14 Along Presidential Drive, Town/City: Lilongwe Country: MALAWI
ITB 19.2(b)	The Procurement name and Reference Number is: Rehabilitation of Female Ward at Dowa District Hospital : NLGFC-MoH-Works/10/2022
ITB 20.1	The deadline for bid submission is: Date: 30th September, 2022 Time: 15:00 Hours
ITB 23.1	The bid opening shall take place at: National Local Government Finance Committee, Red Cross House Floor/Room number: xx Street Address: Area 14 Along Presidential Drive, Town/City: Lilongwe Country: MALAWI Date: 30th September 2022 Time: 3:00 pm (Local Time)
E. Evaluation of Bids	

ITB 28.1	The currency that shall be used for bid evaluation and comparison purposes is: Malawi Kwacha
ITB 30.1	Where a margin of preference applies, the criteria for eligibility and the application methodology are described in Section 3 Evaluation Methodology and Criteria.
F. Award of Contract	
ITB 35.1	<p>The Adjudicator proposed by the Procuring Entity is: National Construction Industries Council (NCIC)</p> <p>The hourly fee for the proposed Adjudicator shall be: To Be Advised.</p> <p>The biographical data of the proposed Adjudicator is as attached to this Bid Data Sheet. Not Applicable at this Stage</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. Qualification Criteria

To qualify for award of the Contract, in accordance with ITB Sub-Clause 4.5, bidders shall

meet the following minimum qualification criteria (for each lot):

- (a) Registered with the NCIC **MK 500 Million or above category** as Building Contractor
- (b) Average annual volume of construction work over the past **five (5) years (2016-2021)** of at least **MK 500 Million Kwacha**. *This information should be supported with evidence documents such as contracts and certificate of completion.*
- (c) Experience as prime Contractor in the construction of at least **Three (3)** works of a similar nature and complexity equivalent to the Works specified here over the past **five (5) years**. *(all works cited should be supported with evidence documents such as contracts or certificate of completion);*
- (d) Proposals for the timely acquisition (own, lease, hire, etc.) of the following essential equipment.

1. Seven tonne truck	2No.
2. Two tonne pick-up	2No
3. Concrete mixer	2No.
4. Cement sand block making machines	2No
5. Concrete Vibrator Poker	2No.
6. Covid 19 PPE	Set

Bidders are required to provide evidence of ownership of own plant and equipment i.e. blue book. If to be hired or leased evidence of availability of the equipment during the period of executing the works should be provided.

- (e) **Personnel with** the following minimum qualifications and experience with their detailed Curriculum Vitae (CV) and copies of their certificates **attached**. The CVs should be signed by the owners and provide a functional phone number.

- I. **Contracts Manager:** Engineering or Architectural or Quantity Surveying with a BSc Degree of at least 5 years' experience and/or a Diploma at least 10 Years' experience in same or related discipline. **Must** be registered with
-

Malawi Institution of Engineers (MIE), or Malawi Institute of Architects (MIA) or Surveyors Institute of Malawi (SIM). **Attach certificate of Registration.**

- II. **Site Agent /Manager:** Degree in Engineering or Architectural or Quantity Surveying with at least 5 years' experience or a Diploma in any construction related field with at least 10 years' experience.
 - III. **Estimator:** Degree in Quantity Surveying, with at least 3 years' experience or a Diploma in Quantity Surveying with at least 5 years' experience. **Must** be a registered member of SIM and Board of Architects and Quantity Surveyors. **Attach certificates of Registration.**
 - IV. **General Foremen:** Diploma or Foremanship Certificate or Grade 1 Trade Test Certificate in Bricklaying or Carpentry and Joinery with at least 5 years' experience.
 - V. **Electrical domestic sub-contractor:** **Must** be registered with MERA and NCIC in the MK100 Million Category and above;
- (f) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the contract, of no less than **MK 80 Million Kwacha.**
 - (g) Financial reports for the last three (3) years (2019, 2020, 2021); balance sheets, profit and loss statements, auditors' reports. Turn over should not be less than **MK 500 Million Kwacha.**
 - (h) Build-Up of Major rates and basic prices (state source or provide quotations where possible)
 - (i) Programme of works in weeks period

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

Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria.

2. 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 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:

Procurement Reference No.: **Contract No.**..... page of pages

To:

.....

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents;
- (b) We offer to execute the - **Lilongwe**
 in conformity with the Bidding Documents for the Contract Price of
 MK.....

(in words).....(in figures);
 within a period of.....**weeks**.
- (c) Our bid shall be valid for a period of **120** calendar days from the date fixed for the bid submission;
- (d) 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;
- (e) 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.
- (f) 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

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

(h) We accept the appointment of as the Adjudicator. [or] We do not accept the appointment of as the Adjudicator, and propose instead that be appointed as Adjudicator, whose daily fees and biographical data are attached.

Signed:

In the capacity of

Name:

Duly authorised to sign the bid for and on behalf of:

Dated on _____ day of _____, _____ [insert date of signing]

Note to Bidders: Bidders shall submit a fully priced Bills of Quantities for Admeasurement Contract as provided in Section 6 of the Bidding Documents.

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

Priced Schedules

(See Bills of Quantities)

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:

Procurement Reference No.:

Page of pages

To:

.....

Whereas (hereinafter “the Bidder”) has submitted its bid dated for procurement reference no. **Contract No.....** for

..... hereinafter called “the Bid.”

KNOW ALL PEOPLE by these presents that WE, of

..... having our registered office at

.....(hereinafter “the Bank”), are bound unto

..... (hereinafter “the Procuring Entity”) in the sum

of **MK.....**, 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 day of,

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: In the capacity of

Signed:Duly authorised to sign the bid for and on behalf of

Dated on _____ day of _____, _____ [insert date of signing]

For firms owned by local black indigenous Malawians should submit only one Bid Security Declaration for all lots.

Below is the format for the Bid Security Declaration which shall be printed on company letter head or other official company stationery and stamped with the organizations official stamp.

BID SECURING DECLARATION

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

Date: _____ [insert date (as day, month and year) of bid submission]

Procurement Reference No.:

To: [insert complete name of Procuring Entity]

We, the undersigned, declare that

1. We understand that, according to your conditions, bids may be supported by a Bid-Securing Declaration.
 2. We accept that we will be automatically 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 bid validity specified by us in the Bid submission Form; 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 expiration of our 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 above]

in the capacity _____
[insert legal capacity of person signing the Bid Securing Declaration]

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

Duly authorised to sign the bid for and on behalf of

[insert complete name of Bidder]

Dated: on _____ day of _____ [insert date of signing]

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

Signature of Witness

Dated: on _____ day of _____ [insert date of signing]

Provide Corporate Seal where appropriate

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

1. Constitution or legal status of Bidder: **[attach copy]**

Place of registration;

Principal place of business:.....

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:				

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)			

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)			

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)				

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.

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.

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:

- 36.2(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

Preliminaries

B. Technical Specifications

Preambles

C. Drawings

List of Drawings	
Drawing Number	Drawing Title
	Floor Plans
	Sections
	Elevations
	Door and Window Schedules
	Roof Plan

D. Bill of Quantities

Section 7: General Conditions of Contract

1. Definitions

1.1 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.

2. Language and Law

- 2.1 The language of the Contract is English and the governing law is that of Republic of Malawi.

3. Project Manager’s Decisions

- 3.1 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.

4. Communications

- 4.1 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.

5. Subcontracting

- 5.1 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.

6. Other Suppliers

- 6.1 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.

7. Personnel

- 7.1 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.
- 7.2 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.

8. Contractor's Risks

- 8.1 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.

9. Insurance

- 9.1 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:
- (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
 - (d) personal injury or death and Third Party liability.
- 9.2 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 affect 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.
- 9.3 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

10. Contractor to Construct the Works

- 10.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

11. The Works to Be Completed by the Intended Completion Date

- 11.1 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.
-

12. Safety

12.1 The Contractor shall be responsible for the safety of all activities on the Site.

13. Disputes

13.1 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.

14. Procedure for Disputes

14.1 The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of a notification of a dispute.

14.2 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.

14.3 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.

14.4 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.

15. Program

15.1 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.

15.2 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.

15.3 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.

16. Extension of the Intended Completion Date

16.1 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.

16.2

17. Delays Ordered by the Project Manager

17.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

18. Early Warning

18.1 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.

18.2 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.

19. Correction of Defects

19.1 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.

19.2 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.

20. Uncorrected Defects

20.1 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.

21. Bill of Quantities or Activity Schedule

21.1 This Contract is:

- (a) An Admeasurement Contract with a Bill of Quantities, subject to Option 1; or
 - (b) 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

21.2 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

21.3 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

21.4 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.

21.5 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.

22. Change in the Bill of Quantities or Activity Schedule**Option 1: Changes in the Bill of Quantities for Admeasurement Contracts**

- 22.1 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.
- 22.2 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.
- 22.3 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

- 22.4 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.

23. Variations

- 23.1 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.

24. Payment for Variations

- 24.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager.
- 24.2 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.
- 24.3 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.
- 24.4 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.
- 24.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

25. Payment Certificates

- 25.1 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.
- 25.2 The Project Manager shall check the Contractor's executed work and materials on site and certify the amount to be paid to the Contractor.
- 25.3 The value of work executed and materials on site shall be determined by the Project Manager.

26. Payments

- 26.1 Payments shall be adjusted for deductions for advance payments and retention. The
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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.

26.2 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.

27. Compensation Events

27.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Special Conditions of Contract.
- (b) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (c) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (d) Other suppliers, contractors, public authorities, utilities, or the Employer cause delay or extra cost to the Contractor.
- (e) The advance payment is delayed.
- (f) The Project Manager unreasonably delays issuing a Certificate of Completion.

27.2 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.

27.3 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.

28. Currencies

28.1 Payments shall only be made in Malawi Kwacha.

29. Retention

29.1 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.

29.2 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.

29.3 With the approval of the Employer, the Contractor may substitute retention money with an "on demand" Bank guarantee.

30. Liquidated Damages

30.1 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.

31. Advance Payment

- 31.1 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.
- 31.2 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.
- 31.3 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.

32. Securities

- 32.1 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.

33. Dayworks

- 33.1 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.
- 33.2 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.
- 33.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

34. Cost of Repairs

- 34.1 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.

35. Completion

- 35.1 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.

36. Taking Over

- 36.1 The Employer shall take over the Site and the Works within seven (7) days of the Project Manager's issuing a Certificate of Completion.

37. Final Account

- 37.1 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
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after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

38. Termination

38.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

38.2 Fundamental breaches of Contract shall include, but are not limited to, the following:

- (a) 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;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty-eight (28) days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) 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;
- (e) 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;
- (f) 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
- (g) 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.

38.3 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.

38.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

38.5 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.

39. Payment upon Termination

39.1 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.

- 39.2 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.

40. Property

- 40.1 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.

41. Force Majeure

- 41.1 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.
- 41.2 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.
- 41.3 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.

42. Release from Performance

- 42.1 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.
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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
GCC 1.1	<p>The Employer is</p> <p>The Project Manager is: The Director of Planning and Policy Development</p> <p>The name and procurement reference number of the Contract is:</p> <p>Rehabilitation of Female Ward at Dowa District Hospital</p> <p>The Site is located at: Dowa District Hospital in Dowa District and is defined in Drawings Nos.:</p> <p>The Start Date shall be:</p> <p>The Intended Completion Date for the whole of the Works shall be: not more than 16 weeks.</p>
GCC 2.3	<p>The following documents also form part of the Contract:</p> <ul style="list-style-type: none"> (a) The Contract Agreement (b) Minutes of Contract Negotiations (c) the Bid Submission Sheet (d) the Special Conditions of Contract (e) the General Conditions of Contract (f) the Particular Specifications (g) the Standard Specifications (h) the Drawings (i) the priced Bills of Quantities and
GCC 4.1	<p>The Employer's specific approval is required for:</p> <p>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 fifteen (15) percent; and</p> <p>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 five (5) percent.</p>
GCC 7.1	<p>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.</p> <p>The Contractor shall not impose an equitable or onerous conditions on his appointed Sub-contractors and shall pay all subcontractors promptly each month; irrespective of the Contractor himself having received payment for work</p>

GCC Clause Reference	Special Conditions
	performed by the subcontractor
GCC 8.1	The Schedule of Other Suppliers Escom, Nominated Electrical sub-Contractor, Landscape sub – contractors are not part of the Contract
GCC 9.1	The Schedule of Key Personnel: Site Agent, General Foreman, Skilled labourers are part of the Contract
GCC 13.1	<p>The minimum insurance cover and deductibles shall be:</p> <p>(a) The minimum cover for insurance of the Works, Plant and Materials is: MK 100,000.00</p> <p>(b) The maximum deductible for insurance of the Works, Plant and Materials is: MK 20,000.00</p> <p>(c) The minimum cover for insurance of Equipment is: MK 10,000.00</p> <p>(d) The maximum deductible for insurance of Equipment is: MK 20,000.00</p> <p>(e) The minimum cover for insurance of property is: MK 500,000.00</p> <p>(f) The maximum deductible for insurance of property is: MK100,000.00</p> <p>(g) The minimum cover for personal injury or death insurance is: MK1,000,000.00 and a minimum of K500,000.00 as it depends on degree of on incapacitation on annual earnings with no deductible.</p>
GCC 14.2	The Hourly rate to be paid to the adjudicator is: To be agreed at the time of adjudication
GCC 21.1	The Site Possession Date shall be:
GCC 25.2	Fees and types of reimbursable expenses to be paid to the Adjudicator are: Transport
GCC 25.3	<p>The institution whose arbitration procedures shall be used is: The National Construction Industry Council of Malawi base Laws of Malawi</p> <p>Arbitration shall take place at: Lilongwe</p>
GCC 26.1	The Appointing Authority for the Adjudicator is: The National Construction Industry Council of Malawi
GCC 27.1	The Contractor shall submit a revised Programme for the Works within 14 days of delivery of the Notice of Acceptance.
GCC 27.3	The period between Programme updates is 30 days.
GCC 35.1	The Defects Liability Period is: 365 days
GCC 37.1	This Contract is an Ad-measurement Contract.
GCC 43.1	The rate of interest for late payments is 1% above the Commercial Bank Base Lending Rate)

GCC Clause Reference	Special Conditions
GCC 48.1	The proportion of payments retained is 5% from each Interim Payment Certificate
GCC 49.1	The rate per day for liquidated damages is 0.1% of the final Contract Price per day. The maximum amount of liquidated damages for the whole of the Works is 0.5% of the final Contract Price.
GCC 50.1	There amount of advance payment is 20% of the Contract Price less VAT and NCIC Levy.
GCC 51.1	The Performance Security shall be for 5% of the Contract Price.
GCC 57.1	The date by which operating and maintenance manuals are required is: fifteen days after completion date. The date by which “as built” drawings are required is within 30 days of certificate of completion.
GCC 57.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required is: 2.5% of the contract price
GCC 59.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is: 20%

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) Contractor’s Acceptance
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.

Performance Bank Guarantee

Performance Bank Guarantee (Unconditional)

Date:.....Procurement Reference No.: **Contract No.**

To:

.....
.....

WHEREAS (hereinafter called “the Contractor”) has undertaken, in pursuance of **Contract No.**..... dated..... to execute (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

MK.....

.....
.....
[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

MK.....

.....[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.

Advance Payment Security

Bank Guarantee for Advance Payment

To:.....
..... **[name and address of Employer]**
.....**[Contract No.]**

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Clause 51 ("Advance Payment") of the above-mentioned Contract,(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.....
.....

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 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
.....

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:.....