Invitation to Bid

REFURBISHMENT OF MALAWI COUNTRY OFFICE OF THE AFRICAN DEVELOPMENT BANK - MALAWI

REF:
ADB/ITB/COMW/2019/0032
SUMMARY DESCRIPTION

PART I – SELECTION PROCEDURES AND REQUIREMENTS

Section 1: Letter of Invitation
This Section is a letter from the Bank addressed to potential bidders inviting them to submit a proposal for the assignment. The letter includes references to the selection method and applicable guidelines or policies of the Bank that govern the selection and award process.

Section 2: Instructions to Bidders
This Section provides information to help potential bidders prepare their proposals. Information is also provided on the submission, opening and evaluation of proposals, contract negotiation and award of contract.

Section 3: ITB Data Sheet
"ITB Data" contains information Particular to the current selection and corresponds to the clauses in "Instructions to Bidders" that call for selection-Particular information to be added.

Section 4: Statement of Work / Technical Specification / Drawings
This Section describes the scope of services, objectives, goals, Particular tasks required to implement the assignment, and relevant background information; provides details on the required qualifications of the key experts.

Section 5: Technical Proposal Questionnaire
This Section includes the forms for technical proposal and finical proposal forms that are to be completed by potential bidders and submitted in accordance with the requirements of Section 2.

Section 6: Eligibility Requirements
This Section contains information on the Bank’s eligibility criteria and list of member countries.

PART II – CONDITIONS OF CONTRACT

Section 7: This Section includes the General Conditions of the Bank that shall not be modified and the Special Contract Conditions.
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Dear Sir/Madam,

1. The African Development Bank (the “Bank”) has identified your company as a contractor fit to refurbish the offices as per attached drawings and therefore this bid invites you to respond within time for the provision of refurbishment of Malawi Office works and related services as described in this Invitation to Bid (ITB). These refurbishment works will include civil works, partitioning works, mechanical, electrical, IT, Safety and Security installations, as well as dismantling, movement and re-installation of furniture, equipment and accessories. To qualify for the award, your company shall meet the qualification criteria set out in the Section 3.

2. The Contractor country of origin shall be specified by the Contractor. All works, goods and related services to be supplied under this ITB shall have their origin in eligible member countries of the African Development Bank. A list of the eligible member countries is given in Annexure IV. The Bank may, at its discretion, require the bidder to produce documentary evidence in respect of the country of origin mentioned.

3. The site visit and pre-bid meeting are on Friday 8th March 2019 from 10.00 hrs, as specified on this bid. Your ITB response shall be received by the Bank on or before 1st April 2019 at 10.00 hrs as the date and time in the manner specified in Section 2, through postal, or hand delivery at the address given on this bid.

4. Bid response must be submitted in a sealed double envelope and must be in Five (5) Copies, one Original and four copies. The internal envelope must carry the name and address of the bidder and the ITB reference number. The external envelope must only carry the ITB Reference number.

5. The Bank is an ‘AAA’ rated regional multilateral development finance institution, established in 1963, with a mandate to further economic development and social progress of African countries, individually and collectively. 80 member countries including all the 54 African countries and 26 non-African countries in the Americas, Europe and Asia own the Bank.

6. The Bank’s principal functions include: (i) using its resources for the financing of investment projects and programs relating to the economic and social development of its Regional Member Countries (RMCs); (ii) the provision of technical assistance for the preparation and execution of development projects and programs; (iii) promoting investment in Africa of public and private capital for development purposes; and (iv) to respond to requests for assistance in coordinating development policies and plans of RMCs. In its operations, the Bank is also required to give special attention to projects and programs that promote regional integration.

7. The Bank began its operations from its headquarters, in Abidjan, Côte d’Ivoire on July 1, 1966. For purposes of its operations the Bank also maintains field offices in certain of its RMCs.

8. The information contained in the ITB is designed to enable bidders complete and submit bids. Bidders shall read the ITB carefully and ensure bids comply with the instructions provided in the ITB. Bidders are required to complete and submit the Bid Questionnaire (Section 5) in accordance with
the Instructions to Bidders (Section 2), Bid Data Sheet (Section 3), Statement of Work/Technical Specification/Drawings (Section 4), Eligibility criteria (Section 6) and General and Particular Conditions (Section 7). The Bank is not bound by any other terms and conditions unless agreed in writing by the Bank.

9. Any eligible bidder interested in doing business with the Bank shall register at:

https://eprocurement.afdb.org/sap/bc/webdynpro/sap/zsup_reg_submit#

10. A copy of all documents referred to in the ITB can be found on the Bank’s website:

We look forward to receiving your bid and thank you for your interest in doing business with the Bank.

Kapil KAPOOR
Director General, RDGS
SECTION 2 - INSTRUCTIONS TO BIDDERS

GENERAL

1. Eligibility of Bidders, Goods, Services and Works - Goods, services and works procured by the Bank shall be produced in a member country of the Bank and supplied by bidders from a member country of the Bank as defined in the Presidential Directive concerning the Rules for Corporate Procurement activities of the Bank. The Bank’s eligibility criteria as defined in the Presidential Directive are set out in the ITB.

2. Procurement Ethics, Integrity, Anti-corruption and Fairness
   2.1. It is the Bank’s policy that bidders/suppliers to the Bank observe the highest standard of ethics during the procurement process and execution of such contracts. In pursuance of this policy, the Bank shall reject a bid if it determines that the bidder, or any of its personnel, agent, consultant, subcontractor or service provider, has, directly or indirectly, engaged in “Corrupt”, “Fraudulent”, “Collusive”, “Coercive” or “Obstructive” practices in competing for the contract in question. These terms are defined in the General and Particular Conditions. The Bank may also declare the bidder ineligible for participation in future procurement and award of contracts, either indefinitely or for a stated period of time.
   2.2. A bidderupplier who offers any gift of any value to Bank staff will be considered to be influencing the procurement process. The Bank shall reject a bid if it determines that any such gift has been offered.
   2.3. All bidders/suppliers are required to comply with the Code of Conduct for Suppliers in the General and Particular Conditions.

3. Conflict of Interest - A bidder shall not have a conflict of interest that would call into question its participation in the procurement process and award of contract. Bidders shall disclose any potential or actual conflict of interest in the disclosure form and during execution of any contract. All bidders found to have a conflict of interest may be disqualified.

4. Joint Venture
   4.1. Where a joint venture or any other form of partnership (JV) approach is proposed, bidders are required to provide full details of the JV and nature of relationship with other members. Bidders forming a JV shall nominate an authorized representative of the JV (duly evidenced by submitting a power of attorney signed by a legally authorized representative of the JV) who shall have the authority to conduct all business for and on behalf of all members and enter into the contract. Each member shall meet the eligibility criteria as defined in the Presidential Directive.
   4.2. A JV shall comprise no more than four partners. At least one member shall provide 40% of the contract sum and each of the other members shall provide at least 20% of the contract sum.
   4.3. All members shall be jointly and severally liable for the performance of any resulting contract.

CLARIFICATION OF THE PROCUREMENT PROCESS

5. Bidders are solely responsible, at their own cost and risk, for obtaining information that may be necessary for preparing bids and entering into the contract.

6. Amendment of ITB – The Bank reserves the right to modify any content of the ITB without incurring any liability to any bidder. Any such amendment shall be posted on the Bank’s website.
7. **Clarification of ITB**
   7.1. A bidder requiring any clarification shall notify the Bank in writing at the details provided in the **Bid Data Sheet** and within the period for clarification in the **Bid Data Sheet**. Written copies of the Bank’s response (including the questions raised without identifying the source) shall be posted on the Bank’s website.
   7.2. If a bidder feels that any provision in the ITB will be unacceptable, such issue and any request for change shall be raised at the earliest opportunity in writing at the details provided in the **Bid Data Sheet** and in any event no later than the deadline in the **Bid Data Sheet**.
   The Bank shall not consider any request to change the General Conditions.
   7.3. The Bank shall determine, in its sole discretion, to accept or reject any query or request for change. Any response from the Bank shall be binding on bidders.
   7.4. A bidder who contacts any member of Bank staff directly or indirectly in relation to the procurement (except staff specified in the ITB) shall be disqualified.
   7.5. The Bank shall not respond to any query or request received after the deadline in the **Bid Data Sheet**.

8. **Site Visit / Pre-Bid meeting**
   8.1. If provided in the **Bid Data Sheet**, bidders are invited to attend a site visit and pre-bid meeting. The purpose of the meeting will be to clarify issues and answer questions on any matter relating to the Bank’s requirements. The cost of the site visit and pre-bid meeting shall be at the bidder’s own expense.
   8.2. Bidders are requested to submit any questions in writing to the address in the **Bid Data Sheet**, to reach the Bank no later than one week before the meeting.
   8.3. If provided in the **Bid Data Sheet** that attendance at the site visit and pre-bid meeting is mandatory, any bidder wishing to submit a bid shall attend the site visit and pre-bid meeting. The Bank shall not consider a bid from a bidder who does not attend the mandatory site visit and pre-bid meeting.
   8.4. Minutes of the meeting (including the text of the questions raised without identifying the source together with the Bank’s response) shall be posted on the Bank’s website.

**PREPARATION OF BIDS**

9. **Cost of Bidding** - Bidders shall bear all costs associated with the preparation and submission of bids. The Bank shall not be responsible or liable for any costs regardless of the conduct or outcome of the procurement process.

10. **Language of Bid**
    10.1. The bid and all correspondence and documents relating to the bid exchanged by the bidder and the Bank shall be written in the language specified in the **Bid Data Sheet**. A bid submitted in a language not specified in the **Bid Data Sheet** shall be rejected.
    Any printed literature furnished by the bidder written in another language other than the language specified in the **Bid Data Sheet** shall be accompanied by a certified translation in the language in the **Bid Data Sheet** of its pertinent passages in which case, for the purpose of interpretation of the bid, the translation shall govern.

11. **Subcontractors and services providers** – Bidders shall identify any sub-contractors that will play a significant role in the bidder’s performance of the contract. The Bank reserves the right to obtain the same level of information from subcontractors as from bidders.

12. **Documents comprising the Bid** – Bids shall comprise the Bid Questionnaire, completed in full and supported with evidence and information requested by the Bank.
13. Statement of Conformity and Bill of Quantity/Price Schedule – Bidders shall sign the Statement of Conformity and complete the bill of quantity/price schedule using the forms provided. The forms shall be completed without alterations to its format and content. No other substitutes shall be accepted.

14. Publicity Material – Unless expressly permitted in the ITB, bidders shall not submit brochures, general marketing or promotional material with bids. Publicity brochures shall not be accepted as answers to questions. Bidders shall respond fully to the questions in the ITB.

15. Meeting the Bank’s requirements
15.1. Unless otherwise provided, bidders shall meet the Bank’s requirements by the deadline for submission of bids.
15.2. Bidders shall respond in sufficient detail and provide evidence and supporting documentation to enable the Bank determine whether the bidder has the required capability, experience, knowledge and expertise to satisfactorily perform the contract.

16. Mandatory Requirements – The ITB may include mandatory requirements. The classification of a requirement as mandatory gives an indication of its significance to the Bank. A bid that does not meet any mandatory requirement shall be rejected as non-responsive.

17. Samples and Inspection
17.1. The Bank may request samples at any time during the procurement process. If requested, bidders shall provide samples free of charge. A bidder who fails to provide the required samples shall be disqualified. The Bank makes no guarantee that the samples will be returned or the condition of samples upon completion of evaluation. Samples shall be returned at the bidders own cost.
17.2. If provided in the ITB, the Bank shall conduct an inspection of the goods, services and works during the procurement process either at the bidder’s premises or at the Bank’s offices. Such inspection shall not relieve the bidder from any of its obligations under the contract. The Bank shall notify bidders in writing of the details of any inspection. The Bank shall not be responsible for the expenses incurred by the bidder for such inspection.

18. Demonstration – If provided in the ITB, the Bank shall require bidders to provide a live demonstration of the proposed solution. The bidder shall provide the demonstration free of charge and the Bank shall not accept any liability for any damage to or loss of bidders’ property in connection with such demonstration.

19. Sustainable Procurement (SP) – the Bank is committed to managing its business and executing contracts in an environmentally and socially responsible manner. Bidders should set out how they will deliver the contract in a sustainable manner. The Bank’s SP guideline is available on its website.

20. Alternative Bids - The Bank shall not consider any variation to its requirements (“Alternative Bid”) unless expressly permitted in the Bid Data Sheet. If an Alternative Bid is permitted, the Alternative Bid shall be accompanied by a fully compliant bid, i.e. one that meets the minimum technical requirements. The bidder shall quote the price for the fully compliant bid and then separately provide the technical Specification, methodology and adjustment in price that can be offered if the Alternative Bid is accepted. The nearest functional equivalent or closest standard shall be offered as an alternative. Only the Alternative Bid of the successful bidder shall be considered.
21. **Acceptance of the General and Particular Conditions** - It shall be clearly understood that by submitting a bid in response to the ITB, a bidder shall be deemed to have accepted the General and Particular Conditions. A bid that does not accept the General and Particular Conditions shall be rejected as non-responsive.

22. **Taxes** - The prices quoted shall be net free and clear of all applicable taxes including withholding tax duties, fees, levies or indirect taxes, such as customs duties, as the Bank, by virtue of its status as an international organization, is exempt from paying any direct or indirect taxes, by virtue of Article 57 of the Agreement establishing the Bank. If the bidder is unable to quote or invoice exclusive of all applicable taxes, such taxes shall be separately set forth on the quote or invoices.

23. **Bid Prices**
   23.1. The bidder shall fill in rates and prices for all items described in the Bill of Quantity/Price schedule. The rates and prices quoted by the bidder shall be separately indicated. Items for which no rate or price is entered by the bidder shall not be paid for by the Bank and shall be deemed covered by the other rates and prices in the Bill of Quantity/Price Schedule.
   23.2. The rates and prices submitted by bidders shall, except insofar as it is otherwise provided in the contract, include all constructional plant, labour, supervision, materials, erection, maintenance, transportation, insurance, profit, general risks, liabilities and obligations set out or implied in the contract.
   23.3. The Bank shall award the contract based on value for money that takes into account the whole life costing (i.e., life-cycle costs of the goods, services and works; maintenance; spare parts; warranty; training; disposal; shipment; insurance) of the requirement.

24. **Currency of Bid** – The prices shall be expressed in the currency in the Bid Data Sheet. A bidder shall express all prices in the same currency.

25. **Lots** – If the Bank’s requirement is sub-divided into separate units (“lots”), bidders can submit a bid for one or multiple lots unless otherwise stated in the Bid Data Sheet.

26. **Period of Validity of Bids** – Bids shall remain valid for a period not less than the period stated in the Bid Data Sheet. Bids valid for a shorter period shall be rejected as non-responsive. The Bank may require bidders to extend the period of validity of bids. If the bidder does not extend the period of validity of bids, the bid may be rejected. A bidder granting the request shall not be required or permitted to modify its bid.

27. **Bid Security**
   27.1. If provided in the Bid Data Sheet, the bidder shall furnish, as part of its bid, the signed Bid-Securing Declaration form or bid security in the amount, form and valid for the period stated in the Bid Data Sheet.
   27.2. The bid security shall be in the form of a certified cheque or a bank guarantee from a bank located in a member country of the Bank and acceptable to the Bank. Any proposal not accompanied by a substantially responsive bid security shall be rejected.
   27.3. The Bank may require bidders to extend the period of validity of a bid security. If the bidder does not extend the validity of the bid security, the bid shall be rejected unless the bidder submits a new bid security acceptable to the Bank before the expiration of the bid security.
   27.4. The bid security of a joint venture shall be issued in the name of the joint venture submitting the bid and shall list all members of the joint venture.
   27.5. The bid security shall be returned to bidders in the circumstances specified in the Bid Data Sheet.
SUBMISSION AND OPENING OF BIDS

28. Deadline for Submission of Bids
28.1. The Bank shall receive bids no later than the deadline in the Bid Data Sheet. It is the sole responsibility of bidders to ensure timely receipt of bids by the Bank.

28.2. The Bank may extend the deadline for submission of bids at any time without incurring any liability to bidders.

29. Late Bids – The Bank shall not consider any bid received after the deadline for submission of bids. Any bid received by the Bank after the deadline for submission shall be declared late and rejected by the Bank.

30. Bids rejected by the Bank – Bids rejected by the Bank shall be destroyed or returned to bidders, at its own cost, if so requested.

31. Bids submitted electronically via AfDB e-Procurement portal
31.1. If provided in the Bid Data Sheet, bids shall be submitted electronically via AfDB e-Procurement portal.
31.2. Bidders can obtain guidance on submitting bids electronically in the user manual in AfDB e-Procurement portal.
31.3. The Bank reserves the right to request the original of any form, document or authorization submitted electronically by any bidder.

32. Bids submitted by mail, courier or hand-delivery
32.1. If provided in the Bid Data Sheet, bids shall be submitted by mail, courier or hand delivery.
32.2. Bids shall be submitted in a sealed envelope (one original and four copies and any attachments, appendix and annex thereto must also be submitted in one original and four copies) and delivered to the address in the Bid Data Sheet. The original bid shall clearly mark “Original” and each of the four copies must clearly mark “Copy”.
32.3. Each bidder shall seal the original and copies of the bid in an envelope (the “internal envelope”). The internal envelope shall carry the name and address of the bidder and the ITB reference. The internal envelope shall be placed in a large single envelope (the “external envelope”). The external envelope shall be anonymous and carry the label in the Bid Data Sheet that should be photocopied and placed on the external envelope.
32.4. Any alternative bid shall be prepared, sealed, marked and dispatched as per the instructions in this paragraph and clearly be identified as “Alternative”.
32.5. All pages of the bid shall be numbered. Each copy of the bid shall be bound in a single volume where practical. All documentation submitted with the bid shall be bound in a single volume.
32.6. The person or persons signing the bid shall initial all pages of the bid where correction has been made.
32.7. When delivered by hand, the bid shall be delivered at the address during the working hours of the Bank from 8.00 hrs. to 12.00 hrs. and from 14.00 hrs. to 17.00 hrs., Monday through Friday except for holidays observed by the Bank. Delivery to any other office of the Bank shall be at the risk of the bidder and shall not constitute timely delivery.

33. Modification / Withdrawal of Bids - Bidders may modify or withdraw bids prior to the deadline for submission. Bidders shall not be permitted to modify or withdraw bids after the deadline for submission.
33.1. **Bids submitted electronically via AfDB e-Procurement portal** - Bidders can obtain guidance on modifying or withdrawing bids in the user manual.

33.2. **Bids submitted by mail, courier or hand-delivery** - The bidder’s modification or withdrawal shall be prepared, sealed, marked and dispatched as per the instructions set out in this section and accompanied by a written notice duly signed by an authorized representative. Any modification or withdrawal shall clearly be identified as “Modification” or “Withdrawal”.

34. **Bid Opening** - Bids shall be opened as soon as possible after the deadline for submission. The record of the bid opening shall be made available on the Bank’s website.

**EXAMINATION OF BIDS**

35. **Confidentiality and Disclosure of Information** - the Bank is committed to make public all information in its possession unless there is a compelling reason for confidentiality in accordance with its policy on Disclosure and Access to Information. Bidders shall notify the Bank if the information provided is confidential and shall not be disclosed to the public. The Bank shall endeavor to maintain confidentiality of confidential information and evaluation of bids. The Bank reserves the right to disclose information in accordance with its policy on Disclosure and Access to Information.

36. **Clarification of Bids**

36.1. To assist in the examination and evaluation of bids and qualification of bidders, the Bank may, at its discretion:

36.1.1. Require any bidder to clarify any part of its bid;
36.1.2. Require any bidder to provide further information or documentation;
36.1.3. Undertake site visit to any bidder; or
36.1.4. Contact referees provided by any bidder.

36.2. Any clarification submitted by a bidder that is not in response to a request by the Bank shall not be considered. No change in the price or substance of the bid shall be sought, offered or permitted. Where a bidder does not provide the information requested the bid shall be evaluated as presented.

37. **Determination of Responsiveness**

37.1. The Bank’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in the ITB. A substantially responsive bid is one that meets the requirements of the ITB without material deviation, reservation or omissions.

37.1.1. “Deviation” is a departure from the requirements specified in the ITB;
37.1.2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the ITB; and
37.1.3. “Omission” is the failure to submit part or all of the information or documentation required in the ITB.

37.2. A material deviation, reservation or omission is one that, if accepted, would:

37.2.1. a) affect in any substantial way the scope, quality or performance of the requirements as specified in the ITB;
37.2.1. b) limit in any substantial way, inconsistent with the ITB, the Bank’s rights or the bidder’s obligations under the proposed contract; or
37.2.1. c) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

37.3. The Bank shall examine bids to determine whether bids are substantially responsive with the requirements. If a bid is not substantially responsive to the requirements of the ITB,
it shall be rejected by the Bank and may not subsequently be made responsive by correction of the material deviation, reservation or omission.

**BID EVALUATION**

38. **Conversion to Single Currency** - For the purpose of evaluation, the Bank shall convert all prices into the Bank’s Units of Accounts (UA) by using the Bank’s monthly moving average rate for the applicable month (deadline for submission of bids).

39. **Acceptance or Rejection of Bids** - The Bank reserves the right to accept or reject any or all bids, cancel the procurement process and/or reject all bids at any time prior to contract award, without incurring any liability to bidders.

**AWARD OF CONTRACT**

40. **Award Methodology**

40.1. The Bank shall award the contract to the bidder whose bid meets the qualification criteria, is substantially responsive to the requirements and offers the lowest evaluated bid price.

40.2. Unless otherwise provided, the Bank shall evaluate bids in the following successive stages:

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<th>Evaluation methodology</th>
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<td>Stage 1</td>
<td>Examination of Bids</td>
<td>The Bank shall examine bids to determine compliance with the requirements of the ITB – this includes checking the validity of bids and completeness of the required documents. The Bank shall reject bids that do not meet the requirements of the ITB. Bids that meet the requirements of the ITB shall be considered for stage 2.</td>
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<tr>
<td>Stage 2</td>
<td>Qualification (Section 5)</td>
<td><strong>Pass/Fail</strong> Bidders must pass each eligibility and qualification criterion to be considered for stage 3. Failure to satisfy any criterion shall result in disqualification of the bidder.</td>
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<tr>
<td>Stage 3</td>
<td>Technical Evaluation (Section 5)</td>
<td>The Bank shall examine the technical bids. Bids that are substantially responsive to the technical requirements and conditions shall be considered for stage 4. Bids that are not substantially responsive to the technical requirements and conditions shall be rejected.</td>
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<td>Stage 4</td>
<td>Correction of arithmetic errors</td>
<td>The financial offer shall be checked for completeness and corrected for computational errors.</td>
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<td>Stage 5</td>
<td>Price Schedule (Section 5)</td>
<td>Bidders shall be ranked according to price.</td>
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The bidder offering the lowest evaluated price shall be ranked first.

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<td>The contract shall be awarded to the qualified bidder whose bid is substantially responsive to the requirements and with whom satisfactory price, terms and conditions have been agreed.</td>
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41. **Contract Award**

41.1. By issuing this ITB, the Bank is not committed to award a contract for all or part of the requirements.

41.2. The Bank reserves the right to award a contract for part of the requirements. Bidders shall indicate if they would not accept a contract for part of the requirements.

41.3. If the requirement is divided into lots, the Bank reserves the right to award a contract to a bidder to satisfy the entire requirement.

41.4. The Bank reserves the right to increase or decrease the volume of goods, services or works, usually not to exceed 20%, without any change in unit price or other terms and conditions.

42. **Best and Final Offer** – Following evaluation of bids, the Bank may decide to obtain Best and Final Offers from qualified bidders whose bids are substantially responsive with the requirements. If such a decision is made, the Bank shall notify bidders in writing of the process. The Bank may use e-Auction for this process.

43. **Notification of Award** – Following a recommendation to award the contract, the Bank shall issue a notice of consideration for award to the successful bidder and regret letters to unsuccessful bidders.

44. **Debriefing** – Unsuccessful bidders may request debrief within seven (7) days from receipt of the regret letter.

45. **Award Protest Procedure** – The Bank has a complaint procedure as set out in the Presidential Directive. An unsuccessful bidder wishing to make a complaint must inform the Bank within seven (7) days of notification of the Bank’s contract award decision.

46. **Contractual Relationship** - The contractual relationship shall be governed by the General and Particular Conditions and shall include the statement of work, technical Specification, drawings, successful bidder’s technical and financial bid. No other terms and conditions put forward at any time by the bidder shall form part of the contract.

47. **Performance Security**

47.1. If provided in the **Bid Data Sheet**, the successful bidder shall furnish the performance security within the period, amount and form stipulated in the **Bid Data Sheet**. The performance security shall be in the form of a bank guarantee from a bank located in a member country of the Bank and acceptable to the Bank.

47.2. The performance security shall be returned to the bidder as set out in the General and Particular Conditions.

47.3. Failure of the successful bidder to comply with the requirements of performance security shall constitute sufficient grounds for cancellation of the award to the bidder without any right of action against the Bank.

47.4. In lieu of bank guarantee, the Bank may retain 10% of the contract sum that shall be returned to the bidder as set out in the General and Particular Conditions.
48. Advance Payment

48.1. If provided in the Bid Data Sheet, the Bank shall provide advance payment to the successful bidder, subject to a maximum amount not to exceed 30% of the contract sum. The advance payment request shall be accompanied by an advance payment guarantee from an insurance company or bank located in a member country of the Bank and acceptable to the Bank. The advance payment guarantee shall be in the form specified in the Bid Data Sheet.

48.2. For the purpose of receiving the advance payment, the bidder shall make an estimate of, and include in its bid, the expenses that will be incurred during the first month beginning with the date of the Bank’s notice to proceed or contract signature, whichever is earliest.

48.3. The advance payment shall be repaid by deducting proportionate amounts from payments due to the bidder as set out in the General and Specified Conditions.

48.4. The advance payment guarantee shall be returned to the bidder as set out in the General and Particular Conditions.

49. Defects Liability Period and Retention Fee – If provided in the Bid Data Sheet, the Bank shall retain 10% of the contract sum until the end of the defects liability period. This is the pre-determined period after practical completion of the project when the successful bidder is responsible for making good any faults which appear and which are due to defective materials or work. The defects liability period is set out in the General and Particular Conditions. The Bank shall pay the successful bidder the retention fee as set out in the Bid Data Sheet.

50. Method of Pricing is Lumpsum: The Contract will be in a form of “a Lump-Sum Fixed Prices Contract”. Unless otherwise provided in the Specification, the prices quoted by the Bidder shall be fixed.

51. Number of Copies: five

FURTHER ASSISTANCE

52. Authorized Representative – Bidders shall provide the Bank with up to two authorized representatives. The Bank shall contact bidders through the authorized representative. The Bank shall assume that the representative is authorized to act on behalf of the bidder and bind the bidder to any response.

53. Assistance – For assistance on using AfDB e-Procurement portal, bidders shall refer to the user manual. Alternatively, bidders can contact RDGS_Tender@afdb.org quoting the tender reference.
SECTION 3 – ITB DATA SHEET

The numbering below refers to the appropriate numbering of the introduction

§ 1 The goods, services and works to be provided partitioning and Refurbishment works for Malawi, Khartoum Regional Office and as outlined in Section 4.

§ 1 To qualify for award, bidders (including each partner in a joint venture or partnership, subcontractors) shall meet the following pass/fail qualification criteria:

Construction Class and Category: The invitation is for a contractor registered as a building contractor in the MK500,000,000 category or above of The National Construction Industry Council (NCIC) of Malawi

Eligibility of Bidders, Goods, Services and Works: Goods, services and works procured by the Bank shall be produced in a member country of the Bank and supplied by bidders from a member country of the Bank.

Eligibility Criteria: a bidder shall not normally be eligible if any of the situations in the Presidential Directive concerning the rules for corporate procurement activities of the Bank apply.

Financial Standing: An average turnover of at least US$ 400,000 per annum for the last three years [2015, 2016, 2017 or latest]. A bidder shall demonstrate current soundness of financial position and long-term profitability.

General and Particular Experience: a bidder shall have a minimum of [5 years] experience and successfully or substantially implemented as a prime contractor at least three projects of a similar nature and complexity (the contracts cited should be at least 70% complete) in the last [3 years].

Historical Contract Performance and Pending Litigation: a bidder shall demonstrate the ability to successfully complete previous contracts and has no pending litigation to impede its ability to perform the contract.

A Project Manager (Engineer) with a minimum five (5) years’ experience in a works contract of an equivalent size and nature and registered with Malawi Board of Engineers/Malawi Institution of Engineers or equivalent professional body

Registration with Malawi Board of Engineers/Malawi Institution of Engineers or equivalent professional body

Site visit is Mandatory to be held on 7th March 2019 10:00am will be at African Development Bank, 2nd Flooor Kang’ombe House, City Centre, Lilongwe, Malawi. Tel +265 1 77 44 60/62/64 Fax: +265 1 77 44 69, P.O. Box 30732, Lilongwe, Malawi.

Conflict of Interest: a bidder shall have no actual or potential conflict of interest that would call into question its participation in the procurement process and award of contract.

The numbering below refers to the appropriate numbering of the instructions to bidders
<p>| § 7 | Request for clarification and/or request for any change to the ITB shall be sent in writing: (i) by telefax (at the fax number [N/A]), (ii) by electronic mail: <a href="mailto:tenders_rdgs@afdb.org">tenders_rdgs@afdb.org</a> or (iii) to the question and answer section in the AfDB e-Procurement portal. The request shall be received by the Bank no later than: 12 March 2019. |
| § 8 | The Bank shall organize a site visit and pre-bid meeting: [YES]. 8 March 2019 at 10.00 am at the African Development Bank, 2nd Floor Kang’ombe House, City Centre, Lilongwe. Questions for the site visit and pre-bid meeting shall be submitted to <a href="mailto:Tenders_rdgs@afdb.org">Tenders_rdgs@afdb.org</a> citing the tender number. The site visit and pre-bid meeting is a mandatory requirement: [YES]. |
| § 10 | The language of bids and all correspondence is: [English language(s)]. |
| § 20 | Alternative bids are accepted: [NO]. |
| § 24 | The prices shall be expressed in [ USD ]. |
| § 25 | The Bank’s requirement is divided into lots [NO]. Bidders can submit a bid for one or multiple lots [N/A]. |
| § 26 | The minimum period of validity of bids is ninety (90) days from the deadline for submission of bids. |
| § 27 | Bid security is required [NO]. The bidder shall furnish bid security in the amount of [N/A]. Bid security shall be valid for [Ninety (90) days] beyond the period of validity of bids. If the bid security is in the form of a bank guarantee, the format shall be in accordance with the form of bid security in Section 5. The bid security shall be returned if: a) the bid security has expired, unless it has been extended; b) the entry into force of a contract with the successful bidder; c) the cancellation of the procurement process, unless the cancellation is a result of failure by the successful bidder to enter into the contract or provide performance security or other documents required by the Bank, the bid security of that bidder shall be drawn; d) the withdrawal of a proposal prior to the deadline for proposals. The bid security shall be forfeited if: a) a bidder withdraws its bid between the deadline for submissions and the expiration of the period of validity; b) the successful bidder fails to sign the contract or furnish a performance security in accordance with the ITB. |
| § 27.1 | Bid-Securing declaration form is required: YES. However, bidders are required to complete the bid-securing declaration form to secure their proposal. Any proposal not supported by a bid-securing declaration will be automatically disqualified. Bidders should use the bid-securing declaration form in Section 5. |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 28</td>
<td>The deadline for submission of bids is [1 April 2019 at 10.00 hrs. Malawi local time]</td>
</tr>
<tr>
<td>§ 31</td>
<td>Bids shall be submitted electronically via the AfDB e-Procurement portal at [insert website]: [NO]</td>
</tr>
</tbody>
</table>
| § 32 | Bids shall be submitted by mail, courier or hand delivery: [YES]  
Bids shall be sent to the following address and the external envelope shall bear the following information:  
African Development Bank,  
2nd Floor Kang’ombe House  
P. Box 30732  
City Centre Lilongwe, Malawi  
Tel: +265 1 77 44 60/62/64  
Fax: +265 1 77 44 69 |
| § 47 | Performance security is required: [YES]  
The bidder shall furnish the performance security within [ten (10) days] from the date of the notice to proceed or contract signature whichever is the earliest and in the amount of [10% of the contract amount in designated currency]  
If the performance security is in the form of bank guarantee, the format shall be in accordance with the form of performance security in Section 5.  
The performance security will be returned to the bidder as set out in the General and Particular Conditions.  
If the bidder wants the Bank to retain 10% of the contract sum, the amount will be returned to the bidder as set out in the General and Particular Conditions. |
| § 48 | Advance payment will be provided to the successful bidder: [YES]  
Payment will be made as set out in the General and Particular Conditions.  
The successful bidder will be required to provide advance payment guarantee in the format set out in Section 5. |
| § 49 | The Bank shall retain 10% of the contract sum until the end of the defects liability period: [YES]. The amount will be returned to the bidder as set out in the General and Particular Conditions. |
| § 50 | Method of Pricing is Lump sum: The Contract will be in a form of “a Lump-Sum Fixed Prices Contract”. Unless otherwise provided in the Specification, the prices quoted by the Bidder shall be fixed |
SECTION 4 – STATEMENT OF WORK / TECHNICAL SPECIFICATION / DRAWINGS

The African Development Bank is desirous to engage a contractor for works, to enclose the offices in the open space at the Bank’s offices located at Africa 2nd Floor, Kang’ombe House, City Centre Lilongwe, Malawi. For more details, the Specification, Drawings, Bill of Quantities are herewith attached as Volumes 2, 3, and 4 for Bidder’s perusal.

EXPECTED COMMENCEMENT DATE
Provide details on the expected commencement date of the project.

The expected commencement date of this project is 24th May 2019.

DURATION OF PROJECT
Provide details of the duration of the project.

The project is expected to be completed within 90 days or less. Less than 90 days duration will be considered as a high score; therefore, a bidder that demonstrates the achievement in less than 90 days will earn high score under this criterion. It is to be noted that the project will be executed while the office operations are in progress, hence the need for proper planning to avoid disrupting normal Bank business in the office.

TECHNICAL SPECIFICATION
Describe the range of goods to be provided, works and services to be undertaken, including performance characteristics, standard of materials and workmanship required, tests required functional guarantees etc.

The Technical Specification for this bid is herewith attached as Volume 2.

DRAWINGS
Attach drawings of the relevant works to be undertaken. State whether bidders can view the original drawings. If so, where will the original drawings be displayed.

See Volume 3 of the volumes attached.

SERVICE STANDARDS OR OTHER STANDARDS
Provide information on the level of performance that the successful bidder should meet.

The successful bidder is expected to work extra-time in order to ensure that the works are completed by end of August 2019. Please note that the work will be done while the offices is fully operational. Any incidences that may affect the progress of works shall be communicated timely, so that the team can come up with a solution in a timely manner. The bidder shall provide weekly report, indicating the achieved work plan and the remaining items.
SUSTAINABLE PROCUREMENT

The Bank encourages use of materials that are environmentally friendly and are contributing to sustainable development. Therefore the bidder should demonstrate how the contract can be delivered in an environmentally and socially responsible manner as indicated in the criteria attached in the evaluation matrix.

BILL OF QUANTITIES

See appendix H for format and Volume 3 of this bid for a list of items required. Bidders are to complete the Bill of quantities and present both a hard copy and flash drive when submitting the bid. Bidders who want the soft copy of this bid for ease of response should indicate so to Tenders_rdgs@afdb.org However, the authenticated bid is the signed one on the website.

SUPPLEMENTARY INFORMATION

N/A
STATEMENT OF CONFORMITY

African Development Bank,  
2nd Floor, Kang’ombe House, 
City Centre Lilongwe, 
Malawi

Dear Sir/Madam,

We, the undersigned, declare that:

(a) We have examined the Invitation to Bid (ITB) No ADB/ITB/COMW/2019/0032 and have no reservation to the ITB including addendum issued;
(b) We have read and understood the general and Particular conditions and accept to be bound by the general and Particular conditions;
(c) We offer to provide the goods, services and works in conformity with the ITB and in the rates and prices indicated in the Bill of Quantity/Price Schedule form included in our bid;
(d) We agree that any other terms or conditions or any general reservation that may be provided on any correspondence emanating from us in connection with the ITB shall not be applicable to any resulting contract;
(e) If provided in the ITB, the prices quoted will remain fixed for the duration of the contract;
(f) Our bid shall be valid for the period indicated in the ITB and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
(g) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest which will call into question our participation in the procurement process and award of contract;
(h) We understand that the Bank’s policy requires bidders and suppliers to observe the highest standard of ethics, as such we have not offered any gift to Bank staff;
(i) We understand that if we withdraw our bid after the deadline for submission, the Bank may decide to exclude us from future procurements;
(j) We, including our subcontractors or suppliers for any part of the contract, have nationalities from member countries of the Bank;
(k) Our firm, its affiliates or subsidiaries (including any subcontractors or suppliers for any part of the contract) has not been declared ineligible by the Bank;
(l) We are not under sanction by the World Bank, Asian Development Bank, Inter-American Development Bank or European Bank for Reconstruction and Development.

We undertake that, in competing for (and, if the award is made to us, in executing) the contract, we will strictly observe the laws in force in our country of registration and the country where the contract is performed.

We understand that you are not bound to accept the bid with the lowest evaluated quoted price or any other bid that you may receive.

We confirm that the undersigned are authorized to commit the bidder(s) to the obligations contained in the ITB and the contract.

Name __________________________
In the capacity of _____________________

Signature _______________________
Email ____________________________

Duly authorized to sign this proposal for and on behalf of: __________________________

Dated on ___________________________      Official Stamp
## BIDDER INFORMATION SHEET

(Bidders shall complete and sign this form)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bidder’s Legal Name:</td>
</tr>
<tr>
<td>2.</td>
<td>In case of joint venture or any other form of partnership (JV), legal name of each party:</td>
</tr>
<tr>
<td>3.</td>
<td>Bidder’s actual or intended Country of Registration, Constitution or Incorporation:</td>
</tr>
<tr>
<td>4.</td>
<td>Bidder’s actual or intended Year of Registration, Constitution or Incorporation:</td>
</tr>
<tr>
<td>5.</td>
<td>Bidder’s legal address in Country of Registration, Constitution or Incorporation:</td>
</tr>
</tbody>
</table>
| 6. | Bidder’s Authorized Representative Information:  
   Name:  
   Address:  
   Telephone/Fax numbers:  
   Email Address: |
| 7. | Attached are copies of original documents of:  
   - Articles of Incorporation or Registration of firm named and information on the capital structure.  
   - In case of JV, letter of intent to form a legally enforceable JV including a draft agreement, or JV agreement  
   - In case of government owned entity from the Bank’s member country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.  
   - Organizational chart of the company and list of current staff |
## PARTY TO JOINT VENTURE INFORMATION SHEET

(Bidders shall complete and sign this form)

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1. Bidder’s Legal Name:</td>
<td></td>
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<tr>
<td>2. JV’s Party legal name:</td>
<td></td>
</tr>
<tr>
<td>3. JV’s Party Country of Registration, Constitution or Incorporation:</td>
<td></td>
</tr>
<tr>
<td>4. JV’s Party Year of constitution or registration into a legally enforceable JV:</td>
<td></td>
</tr>
<tr>
<td>5. JV’s Party Legal address in Country of Registration, Constitution or Incorporation:</td>
<td></td>
</tr>
<tr>
<td>6. JV’s Party Authorized Representative Information: Name:</td>
<td></td>
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<tr>
<td></td>
<td>Address:</td>
</tr>
<tr>
<td></td>
<td>Telephone/Fax numbers:</td>
</tr>
<tr>
<td></td>
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</tr>
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</table>

7. Attached are copies of original documents of:

- Articles of Registration, Constitution or Incorporation of firm named and information on the capital structure.
- A letter of intent to form a legally enforceable JV including a draft agreement, or JV agreement and power of attorney nominating an authorized representative of the JV.
- In case of government owned entity from the Bank’s member country, documents establishing legal and financial autonomy and compliance with the principles of commercial law
- Organizational chart of the company and list of current staff
## QUALIFICATION (PASS/FAIL) ASSESSMENT

Bidders shall complete all sections in the questionnaire in sufficient detail and provide evidence and supporting documentation to demonstrate compliance. Bidders shall meet each criterion by the deadline for submission of bids.

<table>
<thead>
<tr>
<th>PASS/FAIL CRITERIA</th>
<th>Bidders Compliance Requirements</th>
<th>Bidders Response</th>
<th>Comments / Evidence provided</th>
</tr>
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<tr>
<td>Single Entity</td>
<td>Joint venture or any other form of partnership (JV)</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>All partners combined</td>
<td></td>
<td>No</td>
<td></td>
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<tr>
<td>Each partner</td>
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<tr>
<td>At least one partner</td>
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</table>

### STATEMENT OF CONFORMITY

- Must meet requirement
- Existing or intended JV must meet requirement
- Must meet requirement
- N/A

A person or persons duly authorized to bind the bidder to the price and contract has completed and signed the statement of conformity in the format provided.

A power of attorney shall be attached, if applicable.

The bidder shall sign and return the document in the format provided for a PASS.

### ELIGIBILITY CRITERIA

- Must meet requirement
- Existing or intended JV must meet requirement
- Must meet requirement
- N/A

The bidder is from a member country of the Bank.
### PASS/FAIL CRITERIA

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</table>

If yes, provide evidence, such as, articles of incorporation or registration of firm, memorandum of association (if available), information on the capital structure and legal status of the bidder.

The goods, services and works offered are produced in a member country of the Bank.

If yes, provide evidence, such as, operating license, information on origin of goods, services and works.

**The bidder, goods, services and works offered shall meet the eligibility criteria on the basis of nationality for a PASS.**

The bidder has become bankrupt, is insolvent or is in the process of winding-up; is being administered by an administrator appointed by a competent court of law that has entered into an arrangement with creditors; has suspended business activities; or is in any analogous situation arising from a similar procedure provided for in the relevant...
### PASS/FAIL CRITERIA

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<td><strong>Each partner</strong></td>
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<tr>
<td><strong>At least one partner</strong></td>
</tr>
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</table>

- **Bidders Response**: Yes / No
- **Comments / Evidence provided**

**national legislation or regulation.**

The bidder has not fulfilled obligations relating to the payment of social security contributions, pension fund premiums, payment of taxes or similar legal statutory payments under the law of the country in which the bidder is established or where the contract is to be performed.

The bidder has been convicted of a criminal offence relating to the conduct of its business or profession in the last ten (10) years?

The bidder has been subject of a judgment for professional misconduct, fraud, corruption, involvement in a criminal organization or any other illegal activity.

The bidder has been debarred or cross-debarred by the Bank on the basis of corrupt, fraudulent, collusive, coercive and obstructive practices.

The bidder has been evaluated as having provided unsatisfactory performance under a previous contract.

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### PASS/FAIL CRITERIA

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<tr>
<td>contract with the Bank within the last 3 years.</td>
<td></td>
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<tr>
<td>The bidder, or any of its affiliates, has been engaged to provide consulting services for the preparation or implementation of the procurement.</td>
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</table>

**The bidder shall not be subject to any of the situations above for a PASS**

<table>
<thead>
<tr>
<th>JV (if applicable)</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>N/A</td>
<td>Existing or intended JV must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
<tr>
<td>The bidder has included a JV agreement, or letter of intent to form a legally enforceable JV, including a draft agreement.</td>
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<tr>
<td>The bidder has nominated an authorized representative of the JV who has the authority to conduct all business for and on behalf of all partners and enter into the contract.</td>
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<tr>
<td>Provide contact details of authorized representative of the JV and power of attorney signed by a legally authorized representative of the JV.</td>
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The bidder shall provide a JV agreement or letter of intent to form a legally enforceable JV and draft agreement, contact details of the authorized representative of the JV and power attorney for a PASS.

## FINANCIAL STANDING

The bidder has a minimum turnover of at least **[USD 400,000]** for the last three years [2015, 2016, 2017 or latest].

The bidder can demonstrate sound financial performance?

- Must meet requirement
- Existing or intended JV must meet requirement
- Must meet at least 20% of the requirement
- Must meet 40% of the requirement

If yes, provide evidence, such as audited balance sheets (including notes and income statements), copies of financial statements or other documents to demonstrate financial performance for the past three years [2015, 2016, 2017 or the latest].

If the laws of the bidders’ country of establishment do not require audits, bidders may submit their balance sheets certified by a registered...
### PASS/FAIL CRITERIA

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<td>accountant and supported by copies of tax returns for the past three years [2015, 2016, 2017 or the latest].</td>
<td></td>
<td></td>
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<tr>
<td>The bidder can demonstrate access to and availability of financial resources to meet the overall cash flow requirements for the contract and its current work commitments?</td>
<td></td>
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</tr>
<tr>
<td>If yes, provide evidence, such as, liquid assets, unencumbered real assets, lines of credit and other financial means, other than contractual advance payments or other documents to demonstrate financial resources.</td>
<td></td>
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<tr>
<td><strong>The bidder shall demonstrate current soundness of financial position and long-term profitability for a PASS.</strong></td>
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</tbody>
</table>

### GENERAL AND PARTICULAR EXPERIENCE

See below

<table>
<thead>
<tr>
<th><strong>The bidder has been in business for the past [three (3) years]?</strong></th>
<th><strong>Must meet requirement</strong></th>
<th><strong>Existing or intended JV must meet requirement</strong></th>
<th><strong>Must meet requirement</strong></th>
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<td></td>
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<td>At least one partner</td>
<td></td>
</tr>
<tr>
<td>If yes, provide evidence, such as, information on the bidder’s company (description, including a short history, business plan, services offered, organizational chart, and number of staff and list of current staff, number of years in business).</td>
<td>Must meet requirement</td>
<td>Existing or intended JV must meet requirement</td>
<td>Must meet requirement for one specialism</td>
<td></td>
</tr>
<tr>
<td>The bidder has experience in at least [five (3)] similar contracts as a prime contractor within the last [three (3)] years, which have been successfully or substantially complete (the contract shall be at least 70% completed). The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in the ITB.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>If yes, provide description of similar contracts undertaken as a prime contractor (including name of customer) in the last five years.</td>
<td>Must meet requirement</td>
<td>Existing or intended JV must meet requirement</td>
<td>Must meet requirement for one specialism</td>
<td></td>
</tr>
</tbody>
</table>

The bidder shall have been in business for the last three (3) years and has the experience and capability to provide the goods, services and works required for a PASS.
<table>
<thead>
<tr>
<th>PASS/FAIL CRITERIA</th>
<th>Bidders Compliance Requirements</th>
<th>Bidders Response</th>
<th>Comments / Evidence provided</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bidders Compliance Requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Single Entity</td>
<td>Joint venture or any other form of partnership (JV)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>All partners combined</td>
<td>Each partner</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HISTORICAL CONTRACT PERFORMANCE AND PENDING LITIGATION</td>
<td>Must meet requirement</td>
<td>Existing or intended JV must meet requirement</td>
<td>Must meet requirement</td>
</tr>
<tr>
<td></td>
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<td></td>
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<tr>
<td>The bidder has had a contract(s) terminated in the last [three (3) years] for unsatisfactory performance or default.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bidders shall complete the litigation history form.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The bidder is involved in litigation that represents more than [50% up to 100%] percent of the bidder’s net worth.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bidders shall complete the litigation history form.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The bidder shall demonstrate ability to successfully complete previous contracts and has no pending litigation to impede its ability to perform the contract for a PASS.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROJECT MANAGER</td>
<td>Must meet requirement</td>
<td>Existing or intended JV must meet requirement</td>
<td>N/A</td>
</tr>
<tr>
<td>The bidder has a project manager</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Pass/Fail Criteria:

- **Single Entity**
- **Joint venture or any other form of partnership (JV)**
  - All partners combined
  - Each partner
  - At least one partner

Historical Contract Performance and Pending Litigation:

- Must meet requirement
- Existing or intended JV must meet requirement
- Must meet requirement
- N/A

The bidder has had a contract(s) terminated in the last [three (3) years] for unsatisfactory performance or default.

Bidders shall complete the litigation history form.

The bidder is involved in litigation that represents more than [50% up to 100%] percent of the bidder’s net worth.

Bidders shall complete the litigation history form.

The bidder shall demonstrate ability to successfully complete previous contracts and has no pending litigation to impede its ability to perform the contract for a PASS.

Project Manager:

- Must meet requirement
- Existing or intended JV must meet requirement
- N/A
- N/A

The bidder has a project manager.
<table>
<thead>
<tr>
<th>Bidders Compliance Requirements</th>
<th>Bidders Response</th>
<th>Comments / Evidence provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Entity</td>
<td>Joint venture or any other form of partnership (JV)</td>
<td>Yes No</td>
</tr>
<tr>
<td></td>
<td>All partners combined</td>
<td>Each partner</td>
</tr>
<tr>
<td>(engineer) with a minimum of five (5) years’ experience in similar contracts. If yes, provide details of the qualification and experience of the project manager in undertaking similar contracts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Project Manager is a qualified member registered with Malawi Board of Engineers/Malawi Institution of Engineers or equivalent professional body</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provide certification / evidence that the individual is a qualified member registered with Malawi Board of Engineers/Malawi Institution of Engineers or equivalent professional body</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State the length of time the project manager has been registered with the institute.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The bidder shall have a project manager, registered with the relevant institute, possessing the relevant qualification, with a minimum of five years’ experience in similar contracts for a PASS.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### PASS/FAIL CRITERIA

<table>
<thead>
<tr>
<th>Bidders Compliance Requirements</th>
<th>Bidders Response</th>
<th>Comments / Evidence provided</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Single Entity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Joint venture or any other form of partnership (JV)</strong></td>
<td></td>
<td></td>
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<tr>
<td>All partners combined</td>
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<td></td>
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<tr>
<td>Each partner</td>
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<td></td>
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<tr>
<td>At least one partner</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>REGISTRATION WITH MINISTRY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Must meet requirement</td>
<td>Existing or intended JV must meet requirement</td>
<td>N/A</td>
</tr>
</tbody>
</table>

The bidder must be registered with National Construction Industry Council of Malawi

If yes, provide certificate or other evidence of current registration.

The bidder must be registered with the relevant local registration body for the performance of the contract for a PASS.

### SITE VISIT / PRE-BID MEETING

| Must meet requirement | Existing or intended JV must meet requirement | N/A | N/A |

The bidder attended the site visit and pre-bid meeting.

The bidder shall attend the site visit and pre-bid meeting for a PASS.

### CONFLICT OF INTEREST

| Must meet requirement | Existing or intended JV must meet requirement | Must meet requirement | N/A |

The bidder has declared any actual or potential conflict of interest in the conflict of interest declaration form.

The bidder shall declare any actual or potential conflict of interest in the conflict of interest declaration form.
## PASS/FAIL CRITERIA

<table>
<thead>
<tr>
<th>Bidders Compliance Requirements</th>
<th>Bidders Response</th>
<th>Comments / Evidence provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Entity</td>
<td>Joint venture or any other form of partnership (JV)</td>
<td>Yes</td>
</tr>
<tr>
<td>All partners combined</td>
<td>Each partner</td>
<td>At least one partner</td>
</tr>
</tbody>
</table>

The bidder shall have no actual or potential conflict of interest to call into question its participation in the procurement process and award of contract for a PASS.

The bidder shall PASS all above criteria to be considered for the next stage.

**Remarks (Accept/Reject for the next stage)**
The following questions categorized into social, environment and Economy will be assessed. Given that this is being introduced in the process for the first time in Malawi, failure to comply will not eliminate the bidders from the process but we will take note of that and ask bidders to consider these requirements in their future engagement with the Bank.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Please indicated yes/ No and demonstration where possible</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social aspects</strong></td>
<td></td>
</tr>
<tr>
<td>Does the bidder observe the minimum wage requirement?</td>
<td></td>
</tr>
<tr>
<td>Are the workers accorded the right working gears and working environment?</td>
<td></td>
</tr>
<tr>
<td>Are the workers treated fairly during implementation of the project?</td>
<td></td>
</tr>
<tr>
<td><strong>Environment</strong></td>
<td></td>
</tr>
<tr>
<td>Do you use environmental friendly equipment during implementation of construction project?</td>
<td></td>
</tr>
<tr>
<td>Do you use water efficiently?</td>
<td></td>
</tr>
<tr>
<td>Do you minimize waste and exercise recycling?</td>
<td></td>
</tr>
<tr>
<td>Do you ensure that hazardous materials are not used during implementation of your projects?</td>
<td></td>
</tr>
<tr>
<td>Exercise use of energy serving means and environmental friendly methods during construction</td>
<td></td>
</tr>
<tr>
<td>Transport of the material to the site, is it done in an environmental friendly way?</td>
<td></td>
</tr>
<tr>
<td>Are the equipment to be installed environmental friendly?</td>
<td></td>
</tr>
<tr>
<td><strong>Economy</strong></td>
<td></td>
</tr>
<tr>
<td>Is the quality of the material to be used durable?</td>
<td></td>
</tr>
<tr>
<td>Have you considered maintenance of the equipment and ease in finding spares locally?</td>
<td></td>
</tr>
<tr>
<td>Is the equipment to be installed energy efficient?</td>
<td></td>
</tr>
</tbody>
</table>
### LITIGATION HISTORY
(Bidders must complete and sign this form)

**Name of Bidder:**

**ITB Reference:**

Bidders shall provide information on any history of litigation or arbitration resulting from contracts executed in the last [three years] or currently under execution. A separate sheet shall be used for each partner of a joint venture.

<table>
<thead>
<tr>
<th>Non-Performing Contracts – contracts terminated in the past three (3) years for unsatisfactory performance or default</th>
<th>Contract non-performance during the stipulated period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year</strong></td>
<td><strong>Outcome as Percent of Total Assets</strong></td>
</tr>
<tr>
<td></td>
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</tbody>
</table>

#### Pending Litigation

- ☐ ☐ ☐ No pending litigation
- ☐ Pending litigation

<table>
<thead>
<tr>
<th>Year</th>
<th>Outcome as Percent of Total Assets</th>
<th>Contract Identification</th>
<th>Total Contract Amount (current value, US$ equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ ☐ ☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
<td>Name of Purchaser:</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
<td>Address of Purchaser:</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
<td>Contract description:</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
<td>Contract award date:</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
<td>Termination date:</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
<td>Reason for termination:</td>
<td></td>
</tr>
<tr>
<td>☐ ☐ ☐</td>
<td>☐ ☐ ☐</td>
<td>☐ ☐ ☐</td>
<td>☐ ☐ ☐</td>
</tr>
</tbody>
</table>
Name of Purchaser:  
Contract description:  
Address of Purchaser:  
Contract award date:  
Matter in dispute:  

<table>
<thead>
<tr>
<th>Appendix 5F</th>
</tr>
</thead>
</table>

**CONFLICT OF INTEREST DISCLOSURE FORM**

*(Bidders must complete and sign this form)*

<table>
<thead>
<tr>
<th>Name of Bidder:</th>
<th>ITB Reference:</th>
</tr>
</thead>
</table>

It is the Bank’s policy to ensure fairness and integrity in its procurement process. All bidders (including affiliates, partners in joint venture, suppliers and subcontractors) are required to disclose any actual or potential conflict of interest. Bidders shall respond to the questions below and provide further information pertaining to any relationship/connection with the Bank.

<table>
<thead>
<tr>
<th>Bidders Response</th>
<th>Comments /Information provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

- **Are you connected to a person employed by the Bank who is involved in the procurement process?** This could be a personal or business relationship.
- **Have you been engaged in providing consulting services for the preparation or implementation of an assignment relating to the procurement?**
- **Are you an employee or stakeholder of the Bank?**
- **Has the Bank offered you a contract of employment in the last 12 months?**
- **Are you participating in more than one bid in the procurement process?**
- **Have you hired any Bank staff involved in the preparation or implementation of the assignment relating to the procurement in the last 12 months?**
- **Have you held a position in government in the last 3 years?** For example, a ministerial position.
Has a member of your family held a position in government in the last three years? This includes your spouse, parent, brother, sister or child.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
</table>

We hereby certify that: a) we have read and understood the contents of this disclosure form; and b) we have disclosed all actual or potential conflict of interest.

We understand that the Bank shall determine, in its sole discretion, whether any conflict of interest disclosed shall result in rejection of our bid from the procurement process.

<table>
<thead>
<tr>
<th>Name:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>In the capacity of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signed:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duly authorized to sign this proposal for and on behalf of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dated on:</td>
<td></td>
<td></td>
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</tbody>
</table>
TECHNICAL EVALUATION

Bidders (including each partner of a JV, affiliates and suppliers) shall provide the information required in sufficient detail and provide supporting documentation in support of bidders’ response. The Bank shall carry out a detailed examination of the bids to determine compliance with the technical requirements and conditions.

The evaluation of the bidder’s technical bid shall include an assessment of the bidder’s technical capacity to mobilize key equipment and personnel for the contract, consistent with its proposal regarding work methods, scheduling and material sourcing, in sufficient detail, and fully in accordance with the requirements.

1. Bidders shall provide information on their current commitments on all contract that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which a full completion certificate has yet to be issued.

<table>
<thead>
<tr>
<th>Contact details of client – address /telephone/fax</th>
<th>Value of outstanding work (current US$ equivalent)</th>
<th>Estimated completion date</th>
<th>Average monthly invoicing over last six months (US$/month equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

2. Bidders shall provide a comprehensive description of the proposed major items of equipment for carrying out the works.

<table>
<thead>
<tr>
<th>Type of equipment and characteristics</th>
<th>Description, make, model, year of manufacture</th>
<th>Condition (new, good, poor) and number available</th>
<th>Owned, leased (from whom) or to be purchased (from whom). Include lease agreements, where relevant</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>
3. Bidders shall provide details of work performed as a prime contractor on works of a similar nature and volume over the **last three years**. Bidders shall complete one table per contract.

<table>
<thead>
<tr>
<th>Contract Number/Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract description:</td>
<td></td>
</tr>
<tr>
<td>Country of contract performance:</td>
<td></td>
</tr>
<tr>
<td>Award date:</td>
<td></td>
</tr>
<tr>
<td>Completion date:</td>
<td></td>
</tr>
<tr>
<td>Bidder’s role in Contract:</td>
<td>Contractor  Subcontractor</td>
</tr>
<tr>
<td>Value of contract:</td>
<td>US$_______________  US$_______________</td>
</tr>
<tr>
<td>If partner in a JV or subcontractor, specify participation in total contract amount:</td>
<td></td>
</tr>
<tr>
<td>If the contract is not completed, what percentage and total contract value has been completed:</td>
<td></td>
</tr>
<tr>
<td>Provide details of work undertaken by subcontractor, if any, and percentage of total contract value</td>
<td></td>
</tr>
<tr>
<td>Client’s Name:</td>
<td></td>
</tr>
<tr>
<td>Address of Client:</td>
<td></td>
</tr>
<tr>
<td>Telephone:</td>
<td></td>
</tr>
<tr>
<td>Fax number:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
<tr>
<td>Description of the similarity of work undertaken to the Bank’s requirements:</td>
<td></td>
</tr>
<tr>
<td>- Special contractual / technical requirements:</td>
<td></td>
</tr>
<tr>
<td>- Type of contract:</td>
<td></td>
</tr>
<tr>
<td>- Award of contract:</td>
<td></td>
</tr>
<tr>
<td>- Physical size:</td>
<td></td>
</tr>
<tr>
<td>- Complexity:</td>
<td></td>
</tr>
<tr>
<td>- Methods/technology</td>
<td></td>
</tr>
<tr>
<td>- Other characteristics</td>
<td></td>
</tr>
</tbody>
</table>
4. Bidders shall provide a list of the proposed subcontractors and suppliers to be involved in the contract, setting out the subcontractors and suppliers experience in the **last three years** relating to the part of the contract they will be performing.

<table>
<thead>
<tr>
<th>Section(s) of work to be performed by subcontractor</th>
<th>Value of subcontract</th>
<th>Name and address of subcontractor</th>
<th>Subcontractors experience in similar contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

5. Bidders shall provide a comprehensive work programme and technical information, including drawings, charts, as necessary, to comply with the requirements. The work programme should not exceed the period for completion of all works.

6. Bidders shall provide a comprehensive method statement showing how it intends to carry out the works to conform to the requirements.

7. Bidders shall provide a comprehensive mobilization schedule detailing the action plan for the period between the award of contract and commencement of work, to include mobilization timetable, risk registers, mobilization and deployment of equipment and personnel.

8. Bidders shall provide a comprehensive construction schedule detailing the series of events or plan of actions to complete the project. The response shall identify the critical path.

9. Bidders shall provide a detailed site organization plan detailing how it intends to organize a safe and healthy construction site, including traffic management, materials storage and waste management, meeting local administrative and legal requirements, if relevant.
10. Bidders shall provide details on the qualification and experience of key personnel proposed for the administration and execution of the contract, including the proposed Project Manager. Bidders shall complete one table per individual.

**QUALIFICATIONS AND EXPERIENCE OF PROPOSED KEY PERSONNEL**

<table>
<thead>
<tr>
<th>Proposed Position:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Firm:</td>
<td></td>
</tr>
<tr>
<td>Name of Staff:</td>
<td></td>
</tr>
<tr>
<td>Profession:</td>
<td></td>
</tr>
<tr>
<td>Years with Firm in proposed position:</td>
<td></td>
</tr>
<tr>
<td>Nationality:</td>
<td></td>
</tr>
<tr>
<td>Membership in Professional Society/Organization (if appropriate):</td>
<td></td>
</tr>
<tr>
<td>Detailed tasks to be assigned under the Contract:</td>
<td></td>
</tr>
<tr>
<td>Key Qualifications - Give an outline of key staff member’s experience and training most pertinent to tasks of the assignment. Describe degree of responsibility held on relevant previous assignments and give dates and locations. Use up to half a page.</td>
<td></td>
</tr>
<tr>
<td>Education - Summarize college/university and other specialized education, including, names of schools, dates attended and degrees obtained. Use up to a quarter page.</td>
<td></td>
</tr>
<tr>
<td>Employment Record - Starting with the present position, list in reverse order every employment held. List all positions held since graduation, including, dates, names of employing organization, title of positions held and location of assignments. For experience in the last ten years, provide types of activities performed and client references, where appropriate. Use up to three-quarters of a page.</td>
<td></td>
</tr>
<tr>
<td>Languages - Indicate proficiency in speaking, reading and writing of each language: i.e excellent, good, fair, or poor.</td>
<td></td>
</tr>
</tbody>
</table>
Appendix H

BILL OF QUANTITY/PRICE SCHEDULE
Volume 4 and provide flash drive

Procurement Practitioners shall set out the bill of quantities for the items required for the works. Notes on preparing the bill of quantity is set out in the practitioner’s guide.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Qty</th>
<th>Unit</th>
<th>Rate (US$ equivalent)</th>
<th>Amount (US$ equivalent)</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

Procurement Practitioners shall set out the payment schedule for the contract. This will give bidders an idea when to expect payment.

**Description of Event** (this is the milestone event which triggers amount due to the supplier. Following the milestone event, the supplier will need to submit an invoice including the evidence required to be paid)

<table>
<thead>
<tr>
<th>Description of Event (this is the milestone event which triggers amount due to the supplier. Following the milestone event, the supplier will need to submit an invoice including the evidence required to be paid)</th>
<th>Contract Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>For example:</td>
<td>This can be expressed as a percentage of the contract sum or a set amount.</td>
</tr>
<tr>
<td>- Delivery of equipment to the Bank</td>
<td></td>
</tr>
<tr>
<td>- Testing/acceptance of equipment;</td>
<td></td>
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<tr>
<td>- Training provided to [x] number of staff;</td>
<td></td>
</tr>
<tr>
<td>- Year 1 maintenance</td>
<td></td>
</tr>
</tbody>
</table>
SPECIFICATION – VOLUME I

In line with the Bank’s quest for the provision of modern working environment for its staff, a need has arisen to carry out internal partitioning of the Malawi Country Office to ensure that the office fully meets Bank standards and international best practice for office space. Now therefore, the Bidder has to do the following:

1. Execute fit out works necessary to ensure optimization of office space, as detailed in the drawings and BoQ.

2. Install IT, AC, Security and Electrical services as shown on the detailed drawings.
Technical Proposal Forms

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Contractor’s Equipment

Personnel

Others
Method Statement
Mobilization Schedule
The following questions categorized into social, environment and Economy will be assessed. Given that this is being introduced in the process for the first time in Malawi, failure to comply will not eliminate the bidders from the process but we will take note of the information to be provided by the bidders.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Please indicated yes/ No and demonstration where possible</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social aspects</strong></td>
<td></td>
</tr>
<tr>
<td>Does the bidder observe the minimum wage requirement?</td>
<td></td>
</tr>
<tr>
<td>Are the workers accorded the right working gears and working environment?</td>
<td></td>
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<tr>
<td>Are the workers treated fairly during implementation of the project?</td>
<td></td>
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<tr>
<td><strong>Environment</strong></td>
<td></td>
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<tr>
<td>Do you use environmental friendly equipment during implementation of construction project?</td>
<td></td>
</tr>
<tr>
<td>Do you use water efficiently?</td>
<td></td>
</tr>
<tr>
<td>Do you minimize waste and exercise recycling?</td>
<td></td>
</tr>
<tr>
<td>Do you ensure that hazardous materials are not used during implementation of your projects?</td>
<td></td>
</tr>
<tr>
<td>Exercise use of energy serving means and environmental friendly methods during construction</td>
<td></td>
</tr>
<tr>
<td>Transport of the material to the site, is it done in an environmental friendly way?</td>
<td></td>
</tr>
<tr>
<td>Are the equipment to be installed environmental friendly?</td>
<td></td>
</tr>
<tr>
<td><strong>Economy</strong></td>
<td></td>
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<tr>
<td>Is the quality of the material to be used durable?</td>
<td></td>
</tr>
<tr>
<td>Have you considered maintenance of the equipment and ease in finding spares locally?</td>
<td></td>
</tr>
<tr>
<td>Is the equipment to be installed energy efficient?</td>
<td></td>
</tr>
</tbody>
</table>
SECTION 6 – PRESIDENTIAL DIRECTIVE CONCERNING THE RULES FOR CORPORATE PROCUREMENT ACTIVITIES OF THE BANK

ARTICLE 3: ELIGIBILITY

3.1 Goods, Services, Real Estate and Works procured by the Bank shall be produced in a Member Country and supplied by Contractors from a Member Country, as described in paragraphs 3.2 and 3.3, unless a waiver of Article 17(1)(d) of the Agreement establishing the Bank is granted by the Board of Directors.

3.2 The eligibility of a Bidder or Contractor on the basis of nationality shall be determined in accordance with the following rules:

a) Natural Person: a Natural Person is eligible if he or she is a national of a Member Country of the Bank. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her submission is that of a Member Country of the Bank.

b) Business: a Business is eligible if it satisfies the following criteria:

- it has its registered office or has its principal place of business in a country that is a member of the Bank;
- its legal existence is recognized and is in accordance with the laws of a country that is a member of the Bank; and
- the majority of its capital is held by nationals from a Member Country of the Bank or, if the Business has no capital, more than half of the value of the members’ contributions to the Business has been contributed by nationals from a Member Country of the Bank.

3.3 In order to be eligible:

a) Goods to be procured must have a value of which more than half is attributable to production or to originating materials and inputs from one or more eligible Member Countries of the Bank;

b) Works must be performed where more than half of the value of the labour is supplied from one or more eligible Member Country of the Bank, and where the equipment and materials needed for carrying out the Works have a value of which more than half is attributable to production or to originating materials and inputs from one or more Member Countries of the Bank.

3.4 A Natural Person or Business shall not normally be eligible at any stage of a competitive procurement process and contract execution if any of the following situations apply and have been declared or should have been declared by the Bidder:
a) The Natural Person or Business has become bankrupt, is insolvent or, in the case of a Business, is in the process of winding-up; is being administered by an administrator appointed by a competent court of law that has entered into an arrangement with creditors; has suspended business activities; or is in any analogous situation arising from a similar procedure provided for in the relevant national legislation or regulation;

b) The Natural Person or Business has not fulfilled obligations relating to the payment of social security contributions, pension fund premiums, payment of taxes or similar legal statutory payments under the law of the country in which the Natural Person or Business is established or where the contract is to be performed;

c) The Natural Person or Business has been convicted of a criminal offence relating to the conduct of its business or profession in the last 10 years;

d) The Natural Person or Business has been the subject of a judgment for professional misconduct, fraud, corruption, involvement in a criminal organization or any other illegal activity;

e) The Natural Person or Business has been debarred or cross-debarred by the Bank on the basis of corrupt, fraudulent, collusive, coercive and obstructive practices;

f) The Natural Person or Business has been evaluated as having provided unsatisfactory performance under a previous contract with the Bank within the last 3 years.

3.5 A Natural Person or Business, or any of its affiliates, that has been engaged to provide Consulting Services for the preparation or implementation of an assignment shall be disqualified from subsequently providing Goods, Services, Real Estate or Works (other than a continuation of earlier Consulting Services) for the same assignment.

3.6 In addition to the foregoing paragraphs, Vendors of a particular country or Goods and Work materials manufactured in a particular country may be declared ineligible if:

a) as a matter of law or official regulation, the country where the contract is to be performed prohibits commercial relations with that particular country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of Goods, Services, Real Estate and Works, 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 country where the contract is to be performed prohibits any import of Goods from, or payments to, that particular country or Vendor.

DEFINITIONS

Bank means the African Development Bank, the African Development Fund and the Nigerian Trust Fund collectively, or any of them individually, as the case may be.

Bidder means a Vendor that has responded to a solicitation document issued by the Bank.
Business means any incorporated or unincorporated organization recognized by the laws of a Member Country of the Bank that has the capacity of entering into contracts and of offering Goods, Services, Real Estate and Works.

Contractor means a Vendor who has entered into a contract with the Bank for the provision of Goods, Services, Real Estate or Works.

Goods means tangible items, including assets and expendable items that are purchased, hired, leased or rented by the Bank, A ‘Good’ may include related Services, such as transportation, insurance, installation, commissioning, training and initial maintenance, provided that the value of those Services is less than the value of the Goods acquired.

Natural Person means an individual authorized by the laws of a Member Country of the Bank to offer Goods, Services, Real Estate and Works.

Real Estate, also known as real property, means land, buildings and premises that are purchased, built or leased by the Bank.

Services means all services except consulting services. For the purposes of this Directive “Consulting Services” refers to expert intellectual or advisory services.

Vendor means any Natural Person or Business that is in the business of selling or otherwise providing Goods, Services, Real Estate or Works.

Works means the construction, reconstruction, demolition, Refurbishment, repair or renovation of premises or related infrastructures. Such contracts may include related Services where the value of those Services does not exceed the value of the Works.
### LIST OF MEMBER COUNTRIES OF THE BANK

#### REGIONAL COUNTRIES

<table>
<thead>
<tr>
<th>#</th>
<th>Country</th>
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<td>2</td>
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<td>Congo</td>
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<td>Democratic Rep of Congo</td>
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<td>Nigeria</td>
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#### NON REGIONAL COUNTRIES

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<td>Austria</td>
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<td>Brazil</td>
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<td>24</td>
<td>Turkey</td>
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<tr>
<td>25</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>26</td>
<td>United States of America</td>
</tr>
</tbody>
</table>
PART II – GENERAL AND PARTICULAR CONDITIONS

[Name of Bank] _______
[Name of Contract] _______

These General Conditions (GC), read in conjunction with the Particular Conditions (PC) and other documents listed therein, constitute a complete document expressing the rights and obligations of the parties.

These GC can be used for both smaller admeasurement contracts and lump sum contracts.


1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include Particular Conditions, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 “Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Bid, these Conditions, the Specification, the Volumes, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 “Contract Agreement” means the contract agreement referred to in GC Clause 1.6 [Contract Agreement].

1.1.1.3 “Letter of Acceptance” means the letter of formal acceptance, signed by the Bank, of the Letter of Bid, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

1.1.1.4 “Letter of Bid” means the document entitled letter of bid, which was completed by the Contractor and includes the signed offer to the Bank for the Works.

1.1.1.5 “Specification” means the document entitled Specification, as included in the Contract, and any additions and modifications to the Specification in accordance with the Contract. Such document specifies the Works.

1.1.1.6 “Drawings” means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Bank in accordance with the Contract.

1.1.1.7 “Volumes” means the document(s) entitled Volumes, completed by the Contractor and submitted with the Letter of Bid, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and Volumes of rates and/or prices.
1.1.1.8 The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.

1.1.1.10 “Bid” means the Letter of Bid and all other documents which the Contractor submitted with the Letter of Bid, as included in the Contract.

1.1.1.11 PC means Particular Conditions

1.1.2 Parties and Persons

1.1.2.1 “Party” means the Bank or the Contractor, as the context requires.

1.1.2.2 “Bank” means the person named as Bank in the Particular Conditions and the legal successors in title to this person.

1.1.2.3 “Contractor” means the person(s) named as contractor in the Letter of Bid accepted by the Bank and the legal successors in title to this person(s).

1.1.2.4 “Project Manager” is the person named in the PC (or any other competent person appointed by the Bank 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.

1.1.2.5 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

1.1.2.6 “Bank” means the financing institution (if any) named in the PC.

1.1.2.7 “Borrower” means the person (if any) named as the borrower in the PC.

1.1.2.8 The “Adjudicator” is the person appointed jointly by the Bank and the Contractor to resolve disputes in the first instance, as provided for in GC Clause 1.32.

1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Bid.

1.1.3.2 “Commencement Date” means the date notified under the PC.

1.1.3.3 “Completion Date” means the date for completion of the Works, or a Section (as the case may be) as certified by the Project Manager, in accordance with GC Clause 7.1.1, and as stipulated in the PC.

1.1.3.4 “Test on Completion” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification for the purpose of issuing the “Certificate of Completion of the Works”.

1.1.3.5 “Taking-Over Certificate” or “Certificate of Completion of the Works” means a certificate issued under GC Clause 7.1 [Completion].

1.1.3.6 “day” means a calendar day and “year” means 365 days.

1.1.3.7 “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.

1.1.4 Money and Payments
1.1.4.1 “Initial Contract Amount” means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

1.1.4.2 “Contract Price” means the price defined in GC Clause 4.1 [Contract Price], and includes adjustments in accordance with the Contract.

1.1.4.3 “Compensation Events” are those defined in GC Clause 4.7 [Compensation Events] hereunder.

1.1.5 Works and Goods

1.1.5.1 “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Bank’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2 “Goods” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 “Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

1.1.5.4 “Permanent Works” means the permanent works to be executed by the Contractor under the Contract.

1.1.5.5 “Plant” means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Bank and relating to the construction or operation of the Works.

1.1.5.6 “Section” means a part of the Works specified in the PC as a Section (if any).

1.1.5.7 “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 “Works” mean the Permanent Works and the Temporary Works, or either of them as appropriate, and as described in the PC.

1.1.6 Other Definitions

1.1.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

1.1.6.2 “Country” means the country in which the Site (or most of it) is located.

1.1.6.3 “Force Majeure” is defined in GC Clause 6.1 [Force Majeure].

1.1.6.4 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

1.1.6.5 “Performance Security” means the security (or securities, if any) under GC Clause 4.15 [Securities].
1.1.6.6 “Site” means the places where the Permanent Works are to be executed including storage and working areas and to which Plant and Materials are to be delivered, and any other places as may be specified in the PC as forming part of the Site.

1.1.6.8 “Unforeseeable” or “Unforeseen” means not reasonably foreseeable by an experienced Contractor by the Base Date.

1.1.6.9 “Variation” means any change to the Works, which is instructed or approved as a variation under GC Clause 4.3 [Variations].

1.2 Interpretation
1.2.1 Interpretation In the Contract, except where the context requires otherwise:
   (a) words indicating one gender include all genders;
   (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
   (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
   (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
   (e) the word “tender” is synonymous with “bid” and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.

1.2.2 The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.2.3 If sectional completion is specified in the PC, references in the GC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

1.3 Communications
1.3.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:
   (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the PC; and
   (b) delivered, sent or transmitted to the address for the recipient’s communications as stated in the PC. However:
      (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
      (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

1.3.2 Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.
1.3.3 When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

1.4 Law and Language

1.4.1 The Contract shall be governed by the law of the country or other jurisdiction stated in the PC.

The ruling language of the Contract shall be that stated in the PC.

The language for communications shall be that stated in the PC. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.4.2 Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

1.5 Priority of Documents

1.5.1 The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

(a) the Contract Agreement (if any),
(b) the Letter of Acceptance,
(c) the Bid,
(d) the Particular Conditions
(e) these General Conditions,
(f) the Specification,
(g) the Drawings, and
(h) the Volumes and any other documents forming part of the Contract.

1.5.2 If an ambiguity or discrepancy is found in the documents, the Project Manager shall issue any necessary clarification or instruction.

1.6 Contract Agreement

1.6.1 The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise.

The Contract Agreement shall be based upon the relevant form provided in Section IX, Contract Forms. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Bank.

1.7 Assignment

1.7.1 Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

(a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
1.8 Care and Supply of Documents

1.8.1 The Specification and Drawings shall be in the custody and care of the Bank. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

1.8.2 Each of the Contractor’s Documents shall be in the custody and care of the Contractor, unless and until taken over by the Bank. Unless otherwise stated in the Contract, the Contractor shall supply to the Project Manager six copies of each of the Contractor’s Documents.

1.8.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor’s Documents (if any), the Drawings and Variations and other communications given under the Contract. The Bank’s Personnel shall have the right of access to all these documents at all reasonable times.

1.8.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9 Confidential Details

1.9.1 The Contractor’s and the Bank’s Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

1.9.2 Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Bank to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

1.10 Compliance with Laws

1.10.1 The Contractor shall, in performing the Contract, comply with applicable Laws.

1.10.2 Unless otherwise stated in the Particular Conditions:
(a) the Bank shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Bank’s Country, which (i) such authorities or undertakings require the Bank to obtain in the Bank’s name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Bank of their respective obligations under the Contract;

(b) the Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Bank’s Country, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor’s and Subcontractor’s personnel and entry permits for all imported Contractor’s Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Bank under GC Clause 1.10.2(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Bank from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Bank or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Clause 1.10.1 hereof.

1.11 Joint and Several Liability

1.11.1 If the Contractor is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally bound to the Bank for the fulfilment of the provisions of the Contract, unless otherwise specified in the PC, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Bank.

1.12 Inspections and Audit by the Bank

1.12.1 The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Contractor’s accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

1.12.2 The Contractor shall maintain all documents and records related to the Contract for a period of three (3) years after completion of the Works. The Contractor shall provide any documents necessary for the investigation of allegations of fraud, collusion, coercion, or corruption and require its employees or agents with knowledge of the Contract to respond to questions from the Bank.

1.13 Project Manager’s Decisions

1.13.1 Except where otherwise Particularly stated, the Project Manager shall decide contractual matters between the Bank and the Contractor in the role representing the Bank.

1.14 Delegation

1.14.1 The Project Manager may delegate any of his duties and responsibilities and may cancel any delegation after notifying the Contractor.
1.15 **Subcontracting**

1.15.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Bank in writing. Subcontracting shall not alter the Contractor’s obligations.

1.16 **Personnel and Equipment**

1.16.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.

1.16.2 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 days and has no further connection with the work in the Contract.

1.17 **Other Contractors**

1.17.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Bank between the dates given in the Schedule of Other Contractors, as referred to in the PC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Bank may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

1.18 **Bank’s and Contractor’s Risks**

1.18.1 The Bank carries the risks which this Contract states are Bank’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks.

1.19 **Bank’s Risks**

1.19.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Bank’s risks:

(a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or

(ii) negligence, breach of statutory duty, or interference with any legal right by the Bank or by any person employed by or contracted to him except the Contractor.

(b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Bank or in the Bank’s design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
1.19.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Bank’s risk except loss or damage due to

(a) a Defect which existed on the Completion Date,
(b) an event occurring before the Completion Date, which was not itself an Bank’s risk, or
(c) the activities of the Contractor on the Site after the Completion Date.

1.20 Contractor’s Risks

1.20.1 From the Starting Date until the Defects Liability 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) which are not Bank’s risks are Contractor’s risks.

1.21 Insurance

1.21.1 The Contractor shall provide, in the joint names of the Bank and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the PC 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.

1.21.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Commencement Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

1.21.3 If the Contractor does not provide any of the policies and certificates required, the Bank may effect the insurance which the Contractor should have provided and recover the premiums the Bank has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

1.21.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.

1.21.5 Both parties shall comply with any conditions of the insurance policies.

1.22 Site Investigation Reports

1.22.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the PC, supplemented by any information available to the Bidder.

1.23 Contractors to Construct the Works
1.23.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

1.24 The Works to Be Completed by the Intended Completion Date

1.24.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

1.25 Approval by the Project Manager

1.25.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.

1.25.2 The Contractor shall be responsible for design of Temporary Works.

1.25.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works.

1.25.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

1.25.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

1.26 Safety

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

1.27 Discoveries

1.27.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Bank. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager’s instructions for dealing with them.

1.28 Possession of the Site

1.28.1 The Bank shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the PC, the Bank shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

1.29 Access to the Site

1.29.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

1.30 Instructions

1.30.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
1.31 Appointment of the Adjudicator

1.31.1 The Adjudicator shall be appointed jointly by the Bank and the Contractor, at the time of the Bank’s issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Bank does not agree on the appointment of the Adjudicator, the Bank will request the Appointing Authority designated in the PC, to appoint the Adjudicator within 14 days of receipt of such request.

1.31.2 Should the Adjudicator resign or die, or should the Bank and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Bank and the Contractor. In case of disagreement between the Bank and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the PC at the request of either party, within 14 days of receipt of such request.

1.32 Procedure for Disputes

1.32.1 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 14 days of the notification of the Project Manager’s decision.

1.32.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

1.32.3 The Adjudicator shall be paid by the hour at the rate specified in the PC, together with reimbursable expenses of the types specified in the PC, and the cost shall be divided equally between the Bank and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator’s written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator’s decision shall be final and binding.

1.32.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the PC.

2. Time Control

2.1 Programme

2.1.1 Within the time stated in the PC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Programme shall be consistent with those in the Activity Schedule.

2.1.2 An update of the Programme shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

2.1.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the PC. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the PC from the next payment certificate and continue to withhold this amount until the
next payment after the date on which the overdue Programme has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

2.1.4 The Project Manager’s approval of the Programme shall not alter the Contractor’s obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events.

2.2 **Extension of the Intended Completion Date**

2.2.1 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.

2.2.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

2.3 **Acceleration**

2.3.1 When the Bank wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Bank accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Bank and the Contractor.

2.3.2 If the Contractor’s priced proposals for acceleration are accepted by the Bank, they are incorporated in the Contract Price and treated as a Variation.

2.4 **Delays Ordered by the Project Manager**

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

2.5 **Management Meetings**

2.5.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

2.5.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Bank. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

2.6 **Early Warning**
2.6.1 The Contractor shall warn the Project Manager at the earliest opportunity of Particular likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

2.6.2 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.

3. Quality Control

3.1 Identifying Defects

3.1.1 The Project Manager shall check the Contractor’s work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor’s responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

3.2 Tests

3.2.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

3.3 Correction of Defects

3.3.1 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 PC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

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.

3.4 Uncorrected Defects

3.4.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager’s notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

4. Cost Control

4.1 Contract Price

4.1.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
4.1.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

4.2 Changes in the Contract Price

4.2.1 In the case of an admeasurement contract:

(a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.

(b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Bank.

(c) 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.

4.2.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Programme 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.

4.3 Variations

4.3.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

4.3.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

4.3.3 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.

4.3.4 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.

4.3.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
4.3.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GC Clause 4.2.1 or the timing of its execution do not cause the cost per unit of quantity to change, 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.

4.4 Cash Flow Forecasts

4.4.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

4.5 Payment Certificates

4.5.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

4.5.2 The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor.

4.5.3 The value of work executed shall be determined by the Project Manager.

4.5.4 The value of work executed shall comprise:

(a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or

(b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

4.5.5 The value of work executed shall include the valuation of Variations and Compensation Events.

4.5.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

4.6 Payments

4.6.1 Payments shall be adjusted for deductions for advance payments and retention. The Bank shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Bank 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 for each of the currencies in which payments are made.
4.6.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

4.6.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

4.6.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Bank and shall be deemed covered by other rates and prices in the Contract.

4.7 Compensation Events

4.7.1 The following shall be Compensation Events:

(a) The Bank does not give access to a part of the Site by the Site Possession Date pursuant to GC Clause 1.29.

(b) The Bank modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.

(c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.

(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.

(e) The Project Manager unreasonably does not approve a subcontract to be let.

(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Bank, or additional work required for safety or other reasons.

(h) Other contractors, public authorities, utilities, or the Bank does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

(i) The advance payment is delayed.

(j) The effects on the Contractor of any of the Bank’s Risks.

(k) The Project Manager unreasonably delays issuing a Certificate of Completion.

4.7.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. 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.
4.7.3  As soon as information demonstrating the effect of each Compensation Event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

4.7.4  The Contractor shall not be entitled to compensation to the extent that the Bank’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Project Manager.

4.8  Tax

4.8.1  The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GC Clause 4.10.

4.9  Currencies

4.9.1  Where payments are made in currencies other than the currency of the Bank’s country specified in the PC, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Bid.

4.10  Price Adjustment

4.10.1  Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

\[ P_c = A_c + B_c \frac{I_{mc}}{I_{oc}} \]

where:

- \( P_c \) is the adjustment factor for the portion of the Contract Price payable in a Particular currency “c.”
- \( A_c \) and \( B_c \) are coefficients specified in the PC, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that Particular currency “c;” and
- \( I_{mc} \) is the index prevailing at the end of the month being invoiced and \( I_{oc} \) is the index prevailing 28 days before Bid opening for inputs payable; both in the Particular currency

1 The sum of the two coefficients \( A_c \) and \( B_c \) should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient \( A_c \) for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency is added to the Contract Price.
4.10.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

4.11 Retention

4.11.1 The Bank shall retain from each payment due to the Contractor the proportion stated in the PC until Completion of the whole of the Works.

4.11.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GC Clause 7.1.1, 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. The Contractor may substitute retention money with an “on demand” Bank guarantee.

4.12 Liquidated Damages

4.12.1 The Contractor shall pay liquidated damages to the Bank at the rate per day stated in the PC 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 PC. The Bank may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

4.12.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GC Clause 4.6.1.

4.13 Bonus

4.13.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the PC for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

4.14 Advance Payment

4.14.1 The Bank shall make advance payment to the Contractor of the amounts stated in the PC by the date stated in the PC, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Bank in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

4.14.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required Particularly 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.
4.14.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

4.15 Securities

4.15.1 The Performance Security shall be provided to the Bank no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the PC, by a bank or surety acceptable to the Bank, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

4.16 Dayworks

4.16.1 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.

4.16.2 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 days of the work being done.

4.16.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

4.17 Cost of Repairs

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.

5. Staff and Labour

5.1 Forced Labour

5.1.1 The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.
5.2 Child Labour
5.2.1 The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

5.3 Workers’ Organizations
5.3.1 In countries where the relevant labour laws recognize workers’ rights to form and to join workers’ organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers’ organisations, the Contractor shall enable alternative means for Contractor’s Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage Contractor’s Personnel from forming or joining workers’ organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor’s Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organisations are expected to fairly represent the workers in the workforce.

5.4 Non-Discrimination and Equal Opportunity
5.4.1 The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Clause’s requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on inherent requirements of the job shall not be deemed discrimination.
6. Force Majeure

6.1 Definition of Force Majeure

6.1.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:

(a) which is beyond a Party's control,
(b) which such Party could not reasonably have provided against before entering into the Contract,
(c) which, having arisen, such Party could not reasonably have avoided or overcome, and
(d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
(ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel,
(iii) revolution, insurrection, military or usurped power, or civil war,
(iv) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
(v) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
(vi) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

6.2 Notice of Force Majeure

6.2.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

6.2.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

6.2.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

6.3 Duty to Minimise Delay

6.3.1 Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

6.3.2 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.
If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GC Clause 6.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to GC Clause 1.32.1 [Procedure for Disputes] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under GC Clause 2.2 [Extension of the Intended Completion Date], and

(b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of GC Clause 6.1 [Definition of Force Majeure] and, in the case of GC Clause 6.1.1(d)(ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destructed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GC Clause 1.21 [Insurance].

After receiving this notice, the Project Manager shall proceed in accordance with GC Clause 1.13 [Project Manager’s Decisions] to agree or determine these matters.

**6.5 Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor’s non-performance or entitle him to relief under this Clause.

**6.6 Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under GC Clause 6.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with GC Clause 7.5.5.

Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include:

(a) the amounts payable for any work carried out for which a price is stated in the Contract;

(b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Bank when paid for by the Bank, and the Contractor shall place the same at the Bank’s disposal;

(c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;

(d) the Cost of removal of Temporary Works and Contractor’s Equipment from the Site and the return of these items to the Contractor’s works in his country (or to any other...
destination at no greater cost); and

(e) the Cost of repatriation of the Contractor’s staff and labour employed wholly in connection with the Works at the date of termination.

6.7 Release from Performance

6.7.1 Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

(a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

(b) the sum payable by the Bank to the Contractor shall be the same as would have been payable under GC Clause 6.6 [Optional Termination, Payment and Release] if the Contract had been terminated under GC Clause 6.6.

7. Finishing the Contract

7.1 Completion

7.1.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

7.2 Taking Over

7.2.1 The Bank shall take over the Site and the Works within seven days of the Project Manager’s issuing a certificate of Completion.

7.3 Final Account

7.3.1 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 56 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

7.4 Operating and Maintenance Manuals

7.4.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the PC.

7.4.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the PC pursuant to GC Clause 7.4.1, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the PC from payments due to the Contractor.

7.5 Termination
7.5.1 The Bank or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

7.5.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

(a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized 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 28 days;

(c) the Bank 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 Bank to the Contractor within 84 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 does not maintain a Security, which is required;

(g) 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 PC; or

(h) if the Contractor, as determined by the Bank, based on reasonable evidence, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GC Clause 7.6 [Fraud and Corruption].

7.5.3 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 GC Clause 7.5.2 above, the Project Manager shall decide whether the breach is fundamental or not.

7.5.4 Notwithstanding the above, the Bank may terminate the Contract for convenience.

7.5.5 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.

7.6 Fraud and Corruption

7.6.1 If the Bank determines that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Bank may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of GC Clause 7.5 [Termination] shall apply as if such expulsion had been made under GC Clause 7.5.2.

7.6.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with GC Clause 1.16.2.

7.6.3 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank Financing), as well as bidders, suppliers, and contractors, and their subcontractors, under Bank-financed contracts, observe the highest standard of ethics during the procurement and
execution of such contracts. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) “Corrupt Practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) “Fraudulent Practice” is any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

(iii) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party; and

(iv) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(b) will reject a proposal 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 cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of such Financing engaged in Corrupt, Fraudulent, Collusive, or Coercive Practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur;

(d) will sanction a firm or individual, including declaring such firm or individual ineligible to bid for, or to be awarded Bank-financed contracts either indefinitely or for a stated period of time, if it at any time determines that the firm or individual has, directly or through an agent, engaged in Corrupt, Fraudulent, Collusive, or Coercive Practices in competing for, or in executing, a Bank-financed contract; and

(e) will have the right to require that a provision be included in bidding documents and in contracts financed by the Bank, requiring bidders, suppliers and contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

7.7 Payment upon Termination

7.7.1 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 PC. Additional Liquidated Damages shall not apply. If the total amount due to the Bank exceeds any payment due to the Contractor, the difference shall be a debt payable to the Bank.

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2 See the Bank’s “Rules and Procedures for Whistleblowing and Complaints Handling in the Bank”; and the “Guidelines for Preventing & Combating Corruption & Fraud in Bank Group Operations"
7.7.2 If the Contract is terminated for the Bank’s convenience or because of a fundamental breach of Contract by the Bank, 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.

7.8 Property

7.8.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Bank if the Contract is terminated because of the Contractor’s default.

7.9 Release from Performance

7.9.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Bank 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.

7.10 Suspension of Bank Financing

7.11 Eligibility

7.11.1 The Contractor shall have the nationality from an eligible country of the Bank in accordance with the Bank’s Rules and Procedures for Procurement of Goods and Works, as listed in Section V, Eligible Countries. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

7.11.2 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Bank’s request, the Contractor may be required to provide evidence of the origin of materials, equipment and services.

7.11.3 For purposes of GC Clause 7.11.1, “origin” means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

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3 For the purposes of Eligibility, the provisions of the Bank’s Rules and Procedures for Procurement of Goods and Works have been presented in detail at Section V, Eligible Countries.
## Section 7. Particular Conditions

Except where otherwise indicated, all **PC** should be filled in by the Bank prior to issuance of the Bidding Documents. Volumes and reports to be provided by the Bank should be annexed.

### 1. General Provisions

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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</thead>
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<tr>
<td>GC 1.1.2.2</td>
<td>The Bank is: <strong>The African Development Bank</strong></td>
</tr>
<tr>
<td>GC 1.1.2.4</td>
<td>The Project Manager is: The Bank’s Project Manager is <strong>STUDIO 3piu1</strong> (in association with <strong>RUO Consultants Ltd</strong>), recruited by the Bank to oversee the construction works.</td>
</tr>
<tr>
<td>GC 1.1.2.6</td>
<td>N A</td>
</tr>
<tr>
<td>GC 1.1.2.7</td>
<td>N A</td>
</tr>
<tr>
<td>GC 1.1.3.2</td>
<td>The Commencement Date shall be at the date of the signature of the contract by both parties</td>
</tr>
<tr>
<td>GC 1.1.3.3</td>
<td>The Completion Date for the whole Construction Works 3 months.</td>
</tr>
<tr>
<td>GC 1.1.5.6</td>
<td>N A</td>
</tr>
<tr>
<td>GC 1.1.5.8</td>
<td>The Works consist of the Refurbishment of the African Development Bank’s office in Lilongwe, Malawi</td>
</tr>
<tr>
<td>GC 1.1.6.6</td>
<td>The Site is located at <strong>African Development Bank, 2nd Floor Kang’ombe House, City Centre, Lilongwe, Malawi.</strong></td>
</tr>
<tr>
<td>GC 1.2.3</td>
<td>N A</td>
</tr>
<tr>
<td>GC 1.2.4(i)</td>
<td>The following documents also form part of the Contract:</td>
</tr>
<tr>
<td>GC 1.2.4(ii)</td>
<td>i)  This bid document herewith called Volume 1</td>
</tr>
<tr>
<td></td>
<td>ii)  Technical Specification – Volume 2</td>
</tr>
<tr>
<td></td>
<td>iii)  Drawings – Volume 3</td>
</tr>
<tr>
<td></td>
<td>iv)  Bill of Quantities – Volume 4</td>
</tr>
<tr>
<td>GC 1.3.1(a)</td>
<td>The Electronic Transmission System is: N A</td>
</tr>
<tr>
<td>GC 1.3.1(b)</td>
<td>The Bank’s address for the purpose of communications is:</td>
</tr>
<tr>
<td></td>
<td><strong>The Country Manager</strong></td>
</tr>
<tr>
<td></td>
<td><strong>African Development Bank</strong></td>
</tr>
<tr>
<td></td>
<td><strong>2nd Floor, Kangg’ombe House</strong></td>
</tr>
<tr>
<td></td>
<td><strong>City Centre</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Lilongwe Malawi</strong></td>
</tr>
</tbody>
</table>
GC 1.4.1 The governing law is that of: the London Court of International Arbitration (LCIA)
The ruling language is: **English**  
The language for communications is: **English**

GC 1.6.1 The Parties **shall** enter into contract immediately after the Contractor receives the Letter of notice to proceed and will be given 10 working days for mobilization of resources.

GC 1.10.2(a) N A
GC 1.10.2(b) N A

GC 1.11.1 The individuals or firms in a joint venture, consortium or association **shall be jointly and severally liable**.

GC 1.17.1 N A

GC 1.21.1 **The minimum insurance amounts** and deductibles shall be:  
(a) for loss or damage to the Works, Plant and Materials  
(b) for loss or damage to Equipment  
(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract  
(d) for personal injury or death:  
   (i) of the Contractor’s employees  
   (ii) of other people

GC 1.28.1 N A

GC 2.1.1 The Contractor shall submit for approval a Programme for the Works within **seven (7) days** from the date of the Letter of Acceptance.

GC 2.1.3 The period between Programme updates is **7 days**.

The amount to be withheld for late submission of an updated Programme is: **3/1000**

GC 2.1.5 The Contractor shall complete the Works within **12 months** from the date of the Letter of Acceptance.

2. **Time Control**

3. **Quality Control**

4. **Cost Control**

The currency of the Bank’s country is: **EURO or USD**

The proportion of payments retained is: **10 (ten) percent**

The Liquidated Damages for the whole of the Works are 0.05 percent of the final Contract Price, per day. The maximum amount of Liquidated Damages for the whole of...
<table>
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<tr>
<th>GC 4.13.1</th>
<th>N A</th>
</tr>
</thead>
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<tr>
<td>GC 4.14.1</td>
<td>The Advance Payment shall be not more than 30% of the total contract price, backed by the Bank Guarantee from a recognised Commercial Bank.</td>
</tr>
<tr>
<td>GC 4.15.1</td>
<td>The Performance Security amount is: <strong>10% of the total amount of the contract</strong></td>
</tr>
<tr>
<td>GC 7.4.1</td>
<td><strong>Finishing the Contract</strong>: The date by which operating and maintenance manuals are required shall be: 30 calendar days after completion. The date by which “as built” drawings are required shall be: 30 calendar days after completion of the works.</td>
</tr>
<tr>
<td>GC 7.4.2</td>
<td><strong>Finishing the Contract</strong>: The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GC Clause 7.4.1 shall be 5% of the total amount of the contract</td>
</tr>
<tr>
<td>GC 7.5.2 (g)</td>
<td><strong>Finishing the Contract</strong>: 31st August 2020</td>
</tr>
<tr>
<td>GC 7.7.1</td>
<td><strong>Finishing the Contract</strong>: The percentage to apply to the value of the work not completed, representing the Bank’s additional cost for completing the Works, shall be determined in due course and certified by the project manager on the basis of actual work executed.</td>
</tr>
</tbody>
</table>
Section IX. Contract Forms

This Section contains Contract Forms which, once completed, will constitute part of the Contract. The forms for Contract Agreement, Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder, after contract award.

Table of Forms

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<td>Contract Agreement</td>
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</tbody>
</table>
Letter of Acceptance

[on letterhead paper of the Bank]

. . . . . [date]. . . . .

To: [name and address of the Contractor] . . . . . . .

Subject: [Notification of Award Contract No] . . . . .

This is to notify you that your Bid dated . . . [Insert date] . . . for execution of the . . . . . . . [insert name of the contract and identification number] . . . . . . . for the amount of . . . . . . . [insert amount (s) in figures and words and name(s) of currency(ies)], as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by us.

You are requested to furnish the Performance Security in the amount of [insert amount (s) in figures and words and name(s) of currency(ies)] within 14 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section IX (Contract Forms) of the Bidding Document.

We accept the appointment of [Bank to insert full name and address of alternative appointee proposed by Bidder in Letter of Bid] as the Adjudicator. / We do not accept the appointment of [Bank to insert full name and address of alternative appointee proposed by Bidder in Letter of Bid] as the Adjudicator. And, consequently, the provisions of GC Clause 1.31 shall apply.

Authorized Signature: ..................................................................................................................................................

Name and Title of Signatory: ..........................................................................................................................................

Name of Agency: ...............................................................................................................................................................

Attachment: Contract Agreement

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4 Or, the alternative deadline stipulated in the Particular Conditions.

5 Use one of the two options as appropriate.
Bid-Securing Declaration

Date: [insert date (as day, month and year)]

Bid No.: [insert number of bidding process]

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

To: [insert complete name of Bank]

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Bank for the period of time of **3 years** starting on July, 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 in the Letter of Bid; or

(b) having been notified of the acceptance of our Bid by the Bank 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 ITB 27.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

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

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

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

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

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]
Performance Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: [insert date (e.g., day, month, and year)]

Bidding Process Reference: [insert no. and title of bidding process]

Bank’s Branch or Office: [insert complete name of Guarantor]

Beneficiary: [insert complete name of Bank]

PERFORMANCE GUARANTEE No.: [insert Performance Guarantee number]

We have been informed that [insert complete name of the Contractor] (hereinafter called “the Contractor”) has entered into Contract No. [insert number] dated [insert day and month], [insert year] with you, for the execution and completion of [insert description of the Works] and the remedying of any defects therein (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Bank, we hereby irrevocably undertake to pay you any sum(s) not exceeding [insert amount(s) in figures and words] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing declaring the Contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the [insert number] day of [insert month], [insert year] and any demand for payment under it must be received by us at this office on or before that date. 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.

[signatures of authorized representatives of the bank]

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6 The Bank shall insert the amount(s) specified in the PC and denominated, as specified in the PC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Bank.

7 Insert the date twenty-eight days after the expected completion date. The Bank should note that in the event of an extension of the time for completion of the Contract, the Bank would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Bank might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Bank’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”
Advance Payment Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]

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

Bidding Process Reference: [insert number and title of bidding process]

[bank’s letterhead]

Beneficiary:  [insert legal name and address of Bank]

ADVANCE PAYMENT GUARANTEE No.: [insert Advance Payment Guarantee no.]

We have been informed that . . . . [insert name of the Contractor]. . . . (hereinafter called “the Contractor”) has entered into Contract No. . . . . [insert reference number of the Contract]. . . . dated [insert day and month], [insert year]. . . . . . . with you, for the execution of . . . . [insert name of contract and brief description of Works] (hereinafter called “the Contract”).

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum . . . [insert currency and amount in figures] . . . . ( . . . . [insert currency and amount in words] . . . . ) is to be made against an advance payment guarantee.

At the request of the Bank, we . . . . [insert name of the Bank]. . . . hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of . . . . [insert currency and amount in figures] . . . . ( . . . . [insert currency and amount in words] . . . . ) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than performing his obligations under the Contract or the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number . . . . [insert Contractor’s account number]. . . . . at . . . . [insert name and address of the Bank]. . . . .

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the

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8 The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Bank.
Contract Price has been certified for payment, or on the . . . day of . . . . . . . . . . . . . . . . . . 9, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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.

[Seal of Bank and Signature(s)].

Note –

All italicized text (including footnotes) is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

9 Insert the expected expiration date of the Time for Completion. The Bank should note that in the event of an extension of the time for completion of the Contract, the Bank would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Bank might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [insert number of months], in response to the Bank’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”
Retention Money Security

Demand Guarantee

________________________ [insert Bank’s Name, and Address of Issuing Branch or Office]

Beneficiary: __________________ [insert Name and Address of Bank]

Date: ___________________ [insert date (e.g., day, month, and year)]

RETENTION MONEY GUARANTEE No.: [insert Retention Money Guarantee no.]

We have been informed that ____________ [insert name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. ____________ [insert reference number of contract] dated ____________ [insert date] with you, for the execution of ________________ [insert name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of [insert either “the second half of the Retention Money”, or, if the amount guaranteed under the Performance Guarantee, when the Taking-Over Certificate is issued, is less than half of the Retention Money, “the difference between half of the Retention Money and the amount guaranteed under the Performance Security”] is to be made against a Retention Money guarantee.

At the request of the Bank, we _______________ [insert name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ____________ [insert amount in figures] ( ) [insert amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the payment of the second half of the Retention Money referred to above must have been received by the

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1 The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or, if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Bank.
Contractor on its account number _________ [insert Contractor’s account number] at ________ [insert name and address of the Bank].

This guarantee shall expire, at the latest, 21 days after the date when the Bank has received a copy of the Performance Certificate issued by the Project Manager. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

____________________
[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.
THIS CONTRACT AGREEMENT is made on the [insert: number] day of [insert: month], [insert: year].

BETWEEN

(1) [insert complete name of the Bank], a [insert description of type of legal entity, for example, an agency of the Ministry of ....] of the Government of {insert name of Country of the Bank}, or corporation incorporated under the laws of { insert name of Country of the Bank } and having its principal place of business at [ insert address of the Bank ] (hereinafter called “the Bank”),

and

(2) [insert name of the Contractor], a corporation incorporated under the laws of [insert: country of Contractor] and having its principal place of business at [insert: address of Contractor] (hereinafter called “the Contractor”).

WHEREAS the Bank invited bids for the Works, described as [insert brief description of the Works] and has accepted a Bid by the Contractor for the execution and completion of these Works and the remediying of any defects therein, and the Bank agrees to pay the Contractor 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.

The Bank and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

   (a) the Letter of Acceptance

   (b) the Bid
3. In consideration of the payments to be made by the Bank to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Bank to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Bank 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.

5. **PAYMENT SCHEDULE**

5.1 The Contract Payment structure, of price of [insert the total tendered price], is a guaranteed maximum price payable in EURO/USD unless otherwise there are variations during the contract duration, which will be approved by the Bank before execution. The payment will be disbursed as follows:

a. Advance Payment of 30% at the beginning of the project, backed by the Bank Guarantee.

b. Upon completion of 50% of the works, 30% payment of the works executed will be made, approved by the Project Manager.

c. Upon execution and completion of 75% of the works, a further 40% of the contract price is paid;

d. On completion of 100% of the works, the balance of the contract price, which is 30%.

e. The Bank shall retain an amount equal to 10% (10) percent (the “retention”) of the contract price from each paid invoice, pending the Contractor fulfilling its obligations in terms hereof. Such retention will be reduced to five (5%) percent of the contract price on Operational Acceptance of the Works by the Bank, and to zero (0) percent upon expiry of 365 days after operational acceptance.

f. The Contractor shall be responsible for payment of water, electricity and other facilities and equipment, required for the works and shall claim back from the Bank. The meter reading for water and electricity shall be obtained by the Bank on the date of handing over, to ensure that the Contractor pays for the water and electricity consumed during the contract duration.
Agreement to be executed in accordance with the laws of . . . . [insert name of the ] . . . . on the day, month and year indicated above.

Signed by: Signed by:

For and on behalf of the Bank for and on behalf the Contractor

In the presence of: in the presence of:

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date
CODE OF CONDUCT FOR SUPPLIERS OF WORKS GOODS & SERVICES

PURPOSE

a) With the aim of optimally meeting the African Development Bank’s imperative needs, this Code of Conduct lays down the key rules of conduct to which parties contracting with the Bank are held by virtue of the contract(s) concluded by both parties.

b) On behalf of company ABC, I hereby confirm as follows;

GOOD FAITH

c) In adhering to this Code of Conduct, we undertake to carry out contracts concluded between ourselves and the Bank in good faith, in accordance with the conventional practices relating to our profession and/or trade, and in line with the provisions of the contract signed with the Bank.

d) We undertake to fulfill all our commitments, in full compliance with our contract terms, during the contract implementation and beyond the conclusion of our contractual relationship.

OBLIGATION TO ADVISE

e) We undertake to fulfill with the utmost diligence the obligation incumbent on all service providers us to advise clients.

f) This advisory capacity will make it possible to work with the Bank, while protecting its interests, and provide expert advice relating to implementation of the contracts signed.

OBLIGATION OF DISCRETION

g) We undertake to ensure that our staff observe the utmost discretion concerning all issues relating to the Bank’s activities. We are aware that our staff should neither disclose nor use in their own or company interest any information they may becomes privy to in carrying out their activities within or concerning the Bank. We recognize that leaving our service does not free our staff members of this obligation. The obligation of discretion will be maintained during and following the contract implementation periods.

TRANSPARENCY
h) We undertake to implement the contract(s) concluded between ourselves and the Bank with the utmost transparency.

To this end, we undertake to:

- transmit to the Bank as early as possible and in good time, all information that can impact on our contractual relations or the implementation of the contract;
- make available to the Bank’s upon request, all accounting, financial or other information that may be useful to it;
- assist the Bank in any investigation that it may commission or conduct in respect of our contractual activities.

INTEGRITY AND PROBITY OF STAFF

i) We undertake to attach particular importance to the selection of persons to carry out contracts concluded with the Bank, particularly with respect to persons who will be allowed access to the Bank’s premises. We shall thus constantly and scrupulously scrutinize the character and integrity of persons assigned to the said contracts.

During contract implementation, all persons found to be of dubious or potentially unsuitable character will be replaced as soon as this is ascertained.

We shall moreover, in agreement with the Bank, bear full responsibility for all prejudice to the Bank caused by the said person(s) or as a result of the person’s(’) actions.

CORRUPTION AND FRAUDULENT PRACTICES

j) Further to the probity and integrity required of our staff assigned on the implementation of our contracts with the Bank, we undertake to:

k) - decline to accept from any individual or legal entity, any grant, favor or form of remuneration liable to hamper the impartial exercise of our functions under the said contracts;

l) - assist the Bank in the conduct of investigations of any purported cases of corruption or dubious practices in which our organization could be involved.

- Refrain from taking action toward or otherwise distorting facts deliberately or recklessly, or attempting to mislead the Bank in order to gain any form of advantage.

- Refrain from collusive practices for illicit purposes entailing undue influence of the actions of other persons or entities.
- Refrain from obstructive maneuvers consisting in destroying, altering or deliberately dissimulating evidence that forms the basis of a Bank enquiry concerning cases of Corruption or fraudulent or collusive practices, and making false declarations to its investigators with the intention of impeding an investigation or its pursuit.

- Refrain from threatening, harassing, or intimidating persons with the aim of preventing disclosure of information relating to an investigation or deliberately impeding the Bank’s exercise of its right to review.

**AUDIT**

m) We automatically accept that in concluding contract(s) with the Bank, we remain open to such operational and financial audits as the Bank may decide to conduct in accordance with its regulations.

We undertake to accept this process and fully cooperate in providing all required information or producing any documentation that may be useful in reaching outcomes that are objective and acceptable to all concerned.

**DILIGENCE ON THE PART OF THE BANK**

n) The commitments enumerated above also take into account the Bank’s commitment to carry out its own contractual obligations with care and diligence.

The Bank notably undertakes to make any and all payments due to our company in a timely manner, in so far as these do not raise any objections on its part, and with the aim of maintaining optimum relations with its co-contractors.

**RESPECT OF ENVIRONMENT**

During implementation of any works, goods and service contracts, we undertake to scrupulously respect the environment at all the Bank’s premises and in strict compliance with any prevailing regulations and/or standards relating to safety and environmental impacts.
CONTRACTOR’S PERFORMANCE EVALUATION FORM

The Bank will periodically assess and evaluate the performance of the contractor using this sample form.

<table>
<thead>
<tr>
<th>SERVICE PROVIDER</th>
<th>PURPOSE OF CONTRACT</th>
<th>REFERENCE OF CONTRACT</th>
<th>EFFECTIVENESS DATE</th>
<th>EXPIRY DATE</th>
</tr>
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<tbody>
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<thead>
<tr>
<th>EVALUATION PERIOD</th>
<th>OVERALL EVALUATION RATING</th>
<th>TOTAL MARK</th>
<th>OVERALL RATING IN %</th>
<th>PERFORMANCE LEVEL</th>
<th>EVALUATED BY</th>
<th>APPROVED BY</th>
<th>ENDORSED BY CGSP.2</th>
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</table>
### Evaluation Criteria

<table>
<thead>
<tr>
<th>EVALUATION CRITERIA</th>
<th>COEFFICIENT (1-3)</th>
<th>RATING (1-10)</th>
<th>TOTAL (Coef. x Rating)</th>
<th>COMMENT</th>
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<tbody>
<tr>
<td>I. Capacity of Service Provider</td>
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<tr>
<td>1. Quality of Contract Supervision</td>
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<td>2. Compliance with Regulations</td>
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<td>3. Compliance with Time Lines</td>
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<td>4. Supply</td>
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<td>5. Human Resources</td>
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<td>6. Technical Resources</td>
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<td>7. Material Resources</td>
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<td>8. Appropriate Measures Proposed</td>
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<td>9. Proactive Handling of Problems</td>
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<td>10. Planning</td>
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<td>11. Compliance with Local Laws</td>
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<td>12. Compliance of Services</td>
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<td>13. Identification of Service Provider (uniform, badge, etc.)</td>
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<td>14. Managerial Effectiveness</td>
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<td>15. Cost Control</td>
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<td>16. Compliance with Standards</td>
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<td>17. Update Capacity of Installed System</td>
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<td>18. Flexible Hours</td>
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<td>19. Compliance with Contract Clauses</td>
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<tr>
<td>20. Compliance with TOR/Technical Specifications</td>
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</table>
### II. STAFF

1. **AVAILABILITY OF CONTACT PERSON**

2. **NAME OF CONTACT PERSON (INTERFACE)**

3. **PERFORMANCE, QUALIFICATION, COMPETENCE OF WORKER**

4. **PUNCTUALITY**

5. **PROFESSIONALISM**

6. **ADJUSTMENT CAPACITY**

7. **RESPONSIVENESS**

8. **COMPLIANCE WITH INSTRUCTIONS**

9. **CONFIDENTIALITY**

10. **TIMELINESS**

11. **RESPECT FOR WORK ENVIRONMENT**

12. **QUALITY OF COLLABORATION**

13. **MASTERY OF WORKING SOFTWARE**

14. **CONDUCT / BEHAVIOUR**

15. **WORKING LANGUAGE**

### III. SERVICES

1. **QUALITY OF SERVICE**

2. **AVAILABILITY OF SERVICE**

3. **CLEANLINESS**

4. **QUANTITY**
PERFORMANCE GUARANTY