

Part 3: Section 7
General Conditions of Contract

Section 7: General Conditions of Contract

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A General Provisions

1 Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them:
- (a) “Contract” means the Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
 - (b) “Contract Documents” means the documents listed in the Agreement, including and amendments thereto.
 - (c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
 - (d) “Day” means calendar day.
 - (e) “Eligible Countries” means the countries and territories eligible as listed in Section 5 of the Bidding Document.
 - (f) “GCC” means the General Conditions of Contract.
 - (g) “Personnel” means persons engaged by the Bidder or by any Sub-contractor as employees and assigned to the performance of the Services or any part thereof;
 - (h) “Procuring Entity” means the entity procuring the Services and Related Goods, as specified in the Agreement.
 - (i) “SCC” means the Special Conditions of Contract.
 - (j) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Services to be provided or execution of any part of the Services is subcontracted by the bidder.
 - (k) The Site, where applicable, means the place named in the SCC.
- 1.2 If the context so requires, singular means plural and vice versa.
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2 Fraud and Corruption

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

- i. defines, for the purposes of this provision, the terms set forth below as follows:

“corrupt practice” means –

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(A) *the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person;*

(B) influence peddling;

(C) the extortion of any advantage;
in the procurement process or in contract execution.

"fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;

"collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish prices at artificial, noncompetitive levels; and

"coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.

- ii. will reject a recommendation for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question; and
- will debar a Bidder from participation in public procurement for a specified period of time if it at any time determines that the firm has engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a contract.

B The Contract

3 Contract Documents

- 3.1 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Agreement,
 - (b) Letter of Bid Acceptance,
 - (c) Bidder's Bid ,
 - (d) Special Conditions of Contract,
 - (e) General Conditions of Contract,
 - (f) Statement of Requirements,
 - (g) any other document listed in the SCC as forming part of the Contract.
- 3.2 All documents forming the Contract are intended to be correlative, complementary, and mutually explanatory
- 3.3 No amendment, modification or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party thereto.
- 3.4 The Contract constitutes the entire agreement between the Procuring Entity and the bidder and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.
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4 Governing Law

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

5 Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Bidder and the Procuring Entity, shall be written in English unless specified otherwise in the SCC.

6 Notices

- 6.1 Any notice, request or consent required or permitted to be given or made pursuant to the Contract shall be in writing. Any such notice shall be deemed to have been given when delivered to the authorised representative of the Party at the address specified in the SCC.
- 6.2 A Party may change its address for notice hereunder by giving the other Party notice of such change.

7 Assignment

- 7.1 The Procuring Entity or the bidder shall not assign, in whole or in part, their obligations under this Contract, except with the prior written consent of the other party.

8 Subcontracting

- 8.1 The Bidder shall request approval in writing from the Procuring Entity of all subcontracts awarded under the Contract that are not included in the Contract. Subcontracting shall in no event relieve the Bidder from any of its obligations, duties, responsibilities or liability under the Contract.
- 8.2 Subcontracts shall comply with the provisions of GCC Clauses 2 and 26.

9 Contract Amendments

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

10 Change in Laws

- 10.1 Unless otherwise specified in the Contract, if after the date of the Bidding Document, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the Republic of Malawi or where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Statement of Requirements and/or the Contract Price, then such Statement of Requirements and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Bidder has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the contract amendment provisions in accordance with GCC Clause 9 or price adjustment in accordance with GCC Clause 23.

11 Taxes and Duties

- 11.1 The Bidder shall bear and pay all taxes, duties, and levies imposed on the Bidder, by all municipal, state or national government authorities, both within and outside Republic of Malawi, in connection with the provision of the Services to be supplied
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under the Contract.

- 11.2 For the purpose of the Contract, it is agreed that the Contract Price specified in the Agreement is based on the taxes, duties, levies, and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the Republic of Malawi (called “tax” in this clause). If any tax rates are increased or decreased, a new tax is introduced, an existing tax is abolished, or any change in interpretation or application of any tax occurs in the course of the performance of the Contract, which was or will be assessed on the Bidder, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

12 Force Majeure

- 12.1 The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 12.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 12.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

13 Termination

- 13.1 The Procuring Entity may terminate this Contract, by not less than thirty days written notice of termination to the Bidder, to be given after the occurrence of any of the events specified in paragraphs (a) to (e) of this Clause and 60 days’ notice in the case of the event referred to in paragraph (f):
- (a) the Bidder fails to remedy a failure in the performance of its obligations under the Contract, within thirty days after being notified or within such period as the Procuring Entity may have subsequently approved in writing;
 - (b) the Bidder becomes insolvent or bankrupt or enters into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary, other than for a reconstruction or amalgamation;
 - (c) the Bidder fails to comply with any final decision reached as a result of arbitration proceedings pursuant to GCC Clause 16 hereof;
 - (d) the Bidder is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days;
 - (e) the Bidder, in the judgment of the Procuring Entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
 - (f) the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.
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- 13.2 The Bidder may terminate this Contract, by not less than thirty days written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in (a) to (d) below, if:
- (a) the Procuring Entity fails to pay any money due to the Bidder pursuant to the Contract and not subject to dispute pursuant to GCC Clause 16, within forty-five days after receiving written notice from the Bidder that such payment is overdue;
 - (b) the Procuring Entity is in material breach of its obligations pursuant to the Contract and has not remedied the same within forty-five days (or such longer period as the Bidder may have subsequently approved in writing) following the receipt by the Procuring Entity of the Bidder's notice specifying such breach;
 - (c) the Procuring Entity is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days; or
 - (d) the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to GCC Clause 16 hereof.
- 13.3 Upon termination of this Contract pursuant to Clauses 13.1 or 13.2, the Procuring Entity shall make the following payments to the Bidder:
- (a) Remuneration pursuant to Clause 21 for Services satisfactorily performed prior to the effective date of termination
 - (b) Except in the case of termination pursuant to paragraphs (a) to (d) of Clause 13.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the contract, including the cost of the return travel of the Personnel and their eligible dependents

14 Cessation of Rights and Obligations

- 14.1 Upon termination of the Contract pursuant to GCC Clause 13, or upon completion of the Contract pursuant to GCC Clause 19 hereof, all rights and obligations of the Parties shall cease, except -
- (a) such rights and obligations as may have accrued on the date of termination or expiry;
 - (b) the Bidder's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Clause 29; and
 - (c) any right which a Party may have under the Governing Law.

15 Cessation of Services

- 15.1 Upon termination of the Contract by notice of either Party to the other pursuant to GCC Clause 13, the Bidder shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

16 Settlement of Disputes

- 16.1 The Procuring Entity and the Bidder shall make every effort to resolve disputes amicably arising between them under or in connection with the Contract or
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interpretation thereof.

- 16.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight days from the commencement of such consultation, either party may require that the dispute be referred for resolution in accordance with the Arbitration Law of the Republic of Malawi or such other formal mechanism specified in the SCC.

17 Liquidated Damages

- 17.1 Except as provided under GCC Clause 12, if the Bidder fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 13.

18 Commencement of Services

- 18.1 The Bidder shall commence the Services within 30 days after the Contract becomes effective, or at such other date as may be specified in the SCC.

19 Completion Period and Completion of the Services

- 19.1 The completion period within which the Services are required to be performed shall be detailed in the SCC.

C Obligations of the Procuring Entity

20 Provision of Information and Assistance

- 20.1 The Procuring Entity shall supply the Bidder with any information or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Procuring Entity at the end of the period of the Contract.
- 20.2 The Procuring Entity shall issue to its employees, agents and representatives all such instructions as may be necessary or appropriate to facilitate the prompt and effective performance of the Services.
- 20.3 The Procuring Entity shall give the Bidder access to its premises, where required for the performance of the Services, and assist the Bidder with any security documentation necessary at the premises where the Services are to be performed in accordance with the Contract.

D Payment

21 Contract Price

- 21.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 21.2 The Contract Price shall include the total cost for performing the Services and shall include payments for all Personnel, materials and supplies used for the Services and any other overhead or incidental costs except any costs specifically excluded and described in the SCC.
- 21.3 The Contract Price shall be paid in accordance with the payment schedule in the SCC.
- 21.4 The Contract Price may only be increased if the Parties have agreed to additional
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payments by contract amendment in accordance with GCC Clause 9.

22 Price Adjustments

22.1 Prices charged by the Bidder for the services performed under the Contract shall not vary from the prices quoted in the Contract, with the exception of any price adjustments authorised in the SCC.

23 General Payment Procedure

23.1 Unless otherwise specified in the SCC, payments shall be made by the Procuring Entity, no later than 30 days after submission of a request for payment by the Bidder.

23.2 The Bidder's request for payment shall be made to the Procuring Entity in writing, accompanied by invoices and supporting documents. The supporting documentation required shall be as specified in the SCC.

23.3 The Procuring Entity shall notify the Bidder of the inadmissibility of a request for payment due to an error, discrepancy, omission or any other reason so that the Parties may resolve such error, discrepancy, omission or other fault and agree a solution to enable payment of the corrected request for payment. The Procuring Entity shall not unreasonably withhold payment of any undisputed portion of a request for payment. Should any discrepancy be found to exist between actual payment made and costs authorised to be incurred by the Bidder, the Procuring Entity may add or subtract the difference from any subsequent payments.

23.4 If the Procuring Entity has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Bidder for each day of delay at the rate stated in the SCC.

23.5 The currency in which payments shall be made to the Bidder under this Contract shall be specified in SCC.

23.6 Unless otherwise stated in the SCC, where any payment is as an advance payment, payment shall be made against the provision by the Bidder of a bank guarantee for the same amount, and shall be valid for the period stated in the SCC.

E Obligations of the Bidder

24 Obligations of the Bidder

24.1 The Bidder shall perform the Services under the contract with due care, efficiency and diligence, in accordance with best professional practices.

24.2 The Bidder shall respect and abide by all laws and regulations in force. The Bidder shall indemnify the Procuring Entity against any claims and proceedings arising from any infringement by the Bidder, its sub-contractors or their employees of such laws and regulations.

24.3 The Bidder shall ensure that services conform to applicable environmental and quality standards, that no chemical or other product/equipment is used in such a way as to cause negative impact on the environment in general and occupational health hazards for the personnel of the Procuring Entity in particular, and shall employ the most recent technology, safe and effective equipment, machinery, materials and methods, as necessary. The Bidder shall always act, in respect of any matter relating to this

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Contract, to safeguard the Procuring Entity's legitimate interests, pursuant to Conditions of this Contract

- 24.4 The Bidder shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:
- a) entering into a subcontract for the performance of any part of the Services, it being understood that the Bidder shall remain fully liable for the performance of the Services by the Sub-contractor and its Personnel pursuant to the Contract;
 - (b) any other action that may be specified in the SCC.
- 24.5 The Bidder shall furnish the Procuring Entity with any personnel data or information required by the Procuring Entity to arrange the provision of documentation required in accordance with GCC Clause 20.3.

25 Eligibility

- 25.1 The Bidder and its Subcontractors shall have the nationality of an eligible country. A Bidder or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 25.2 The Bidder and its Sub-contractors shall provide Personnel who shall be citizens of eligible countries and use supplies with their origin from an eligible country.

26 Code of Conduct

- 26.1 The Bidder shall at all times refrain from making any public statements concerning the Services without the prior approval of the Procuring Entity, and from engaging in any activity which conflicts with its obligations towards the Procuring Entity under the contract. It shall not commit the Procuring Entity without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.

27 Indemnification

- 27.1 At its own expense, the Bidder shall indemnify, protect and defend, the Procuring Entity, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Bidder in the performance of the Services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trade marks and other forms of intellectual property such as copyrights.
- 27.2 At its own expense, the Bidder shall indemnify, protect and defend the Procuring Entity, its agents and employees, from and against all actions, claims, losses or damages arising out of the Bidder's failure to perform its obligations provided that:
- (a) the Bidder is notified of such actions, claims, losses or damages not later than 30 days after the Procuring Entity becomes aware of them;
 - (b) the ceiling on the Bidder's liability shall be limited to an amount equal to the contract value, but such ceiling shall not apply to actions, claims, losses or damages caused by the Bidder's wilful misconduct;
 - (c) the Bidder's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 27.3 The aggregate liability of the Bidder to the Procuring Entity shall not exceed the total contract value or such other amount specified in the SCC.
- 27.4 The Bidder shall have no liability whatsoever for actions, claims, losses or damages
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occasioned by:

- a) the Procuring Entity omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Bidder, or requiring the Bidder to implement a decision or recommendation with which the Bidder disagrees or on which it expresses a serious reservation; or
 - b) the improper execution of the Bidder's instructions by agents, employees or independent contractors of the Procuring Entity.
- 27.5 The Bidder shall remain responsible for any breach of its obligations under the contract for such period after the Services have been performed as may be determined by the law governing the contract.

28 Insurance to be Taken Out by the Bidder

- 28.1 The Bidder shall take out, maintain and shall cause any Sub-contractors to take out and maintain, at their own cost insurance coverage against the risks and on terms and conditions approved by the Procuring Entity as shall be specified in the SCC.
- 28.2 The Bidder shall at the Procuring Entity's request, provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained.

29 Accounting, Inspection and Auditing

- 29.1 The Bidder shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with generally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs.

F Performance of the Services

30 Scope of Services

- 30.1 The Services to be provided shall be as specified in the Statement of Requirements in the Contract.
- 30.2 The Services shall be performed at such sites as are specified in the Statement of Requirements.

31 Bidder's Personnel

- 31.1 The Bidder shall employ and provide such qualified and experienced Personnel and Sub-contractors as are required to carry out the Services. The Bidder shall be responsible for the performance of the Personnel.
- 31.2 If required by the Agreement, the Bidder shall ensure that a manager, acceptable to the Procuring Entity, takes charge of the performance of the Services.

32 Working hours of the Personnel

- 32.1 Where the Services are performed on a regular basis at the premises of the Procuring Entity, the Bidder shall work during the hours agreed with the Procuring Entity where not specified in the Statement of Requirements or the SCC.

33 Replacement of Personnel

- 33.1 If the Procuring Entity requests the Bidder in writing to remove a person who is a member of the Bidders staff or work force, stating the reasons, the Bidder shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

34 Performance Security

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- 34.1 If so stated in the SCC, the Bidder shall, within 30 days of the notification of contract award, provide a Performance Security for the due performance of the Contract in the amount and currency specified in the SCC or in a freely convertible currency acceptable to the Procuring Entity.
 - 34.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Bidder's failure to complete its obligations under the Contract.
 - 34.3 The Performance Security shall be in one of the forms stipulated by the Procuring Entity in the SCC, or in another form acceptable to the Procuring Entity.
 - 35.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Bidder not later than 30 days following the date of completion of the Bidder's performance obligations under the Contract, unless specified otherwise in the SCC.
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