

Section 1: Instructions to Bidders

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Section I. Instructions to Bidders

A. General

1. Scope of Bid

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

2. Source of Funds

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

3. Fraud and Corruption

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

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

4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB Sub-Clause 4.5 - or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the BDS, all parties shall be jointly and severally liable.
- 4.2 This Invitation for Bids is open to all suppliers from eligible source countries as defined in Section 5, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors for any part of the Contract including related services.
- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to be in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if they are associated or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Government of Malawi to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services to be procured under this Invitation for Bids.
- 4.4 A firm that has been debarred in accordance with ITB Clause 3.1 (c) at the date of the deadline for bid submission or thereafter, shall be ineligible. A foreign firm shall be ineligible if it has been debarred by a competent national or international authority.
- 4.5 Government-owned enterprises shall be eligible if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency (directly or indirectly) of the Procuring Entity or the Government of Malawi.
- 4.6 Bidders shall provide such evidence of their eligibility, satisfactory to the Procuring Entity, to verify that the bidder:
 - (i) has the legal capacity to enter into a contract;
 - (ii) is not insolvent, in receivership, bankrupt or being wound up, not have had their business activities suspended and not be the subject of legal proceedings for any of the foregoing; and
 - (iii) has fulfilled their obligations to pay taxes according to the tax laws of their country of registration.
- 4.7 In order to demonstrate compliance with the criteria in ITB Sub-Clause 4.6, a Bidder shall submit with its Bid:
 - (i) a copy of its annual tax clearance certificate;
 - (ii) appropriate documentary evidence demonstrating its compliance; and
 - (iii) such other documentary evidence as may be specified in the BDS.

5. Eligible Services and Related Goods

- 5.1 All services and related goods to be provided under the Contract shall have as their country of origin an eligible country in accordance with Section 5.

B. Contents of Bidding Document**6. Sections of Bidding Document**

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

Part 1 Bidding Procedures

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

Part 2 Statement of Requirements

- Section 6 Statement of Requirements

Part 3 Contract

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

- 6.2 The Invitation to Bid is not part of the Bidding Document.

- 6.3 The Procuring Entity is not responsible for the completeness of the Bidding Documents and their addenda if they were not obtained directly from the Procuring Entity. Bidding Documents not obtained from the Procuring Entity may be rejected during evaluation. Where a Bidding Document is obtained from the Procuring Entity on a Bidder's behalf, the Bidder's name must be registered with the Procuring Entity at the time of sale and issue.

- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

7. Clarification of Bidding Documents

- 7.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Procuring Entity in writing at the Procuring Entity's address indicated in the BDS. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of bids. The Procuring Entity shall forward copies of its response to all Bidders who have acquired the Bidding Documents directly from it, including a description of the inquiry but without identifying its source. Should the Procuring Entity deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and Sub-Clause 25.2.

8. Amendment of Bidding Documents

- 8.1 At any time prior to the deadline for submission of bids, the Procuring Entity may amend the Bidding Documents by issuing addenda.

- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all Bidders who have obtained the Bidding Documents directly from the Procuring Entity.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB Sub-Clause 25.2

C. Preparation of Bids

9. Cost of Bidding

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

10. Language of Bid

- 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Bid, such translation shall govern.

11. Preparation of Bids

- 11.1 Bidders are required to prepare and submit a single bid containing both technical and financial information.
- 11.2 A pre-bid meeting will be held where indicated in the BDS. Attendance at the pre-bid meeting is optional.

12. Documents Comprising the Bid

- 12.1 The Bid shall comprise the following:
- (a) Bid Submission Sheet and the applicable Price Schedules in accordance with ITB Clauses 13, 15, and 16;
 - (b) Bid Security, if applicable, in accordance with ITB Clause 22;
 - (c) alternative bids, if permissible, in accordance with ITB Clause 14;
 - (d) written confirmation authorising the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 23;
 - (e) documentary evidence in accordance with ITB Clause 17 establishing the Bidder's eligibility to bid;
 - (f) documentary evidence in accordance with ITB Clause 18, that the Services and Related Goods to be provided by the Bidder are of eligible origin;
 - (g) documentary evidence in accordance with ITB Clauses 19 and 31, that the Services and Related Goods conform to the Bidding Documents;
 - (h) documentary evidence in accordance with ITB Clause 20 establishing the Bidder's qualifications to perform the contract if its Bid is accepted; and
 - (i) any other document required in the BDS.

13. Bid Submission Sheet and Price Schedules

- 13.1 The Bidder shall submit the Bid Submission Sheet using the form furnished in Section 4,

Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested, which includes:

- (a) the reference of the Bidding Document and the number of each addenda received;
- (b) a brief description of the Services and Related Goods offered;
- (c) the total bid price;
- (d) any discounts offered and the methodology for their application;
- (e) the period of validity of the bid;
- (f) a commitment to submit a performance security, if required, and the amount;
- (g) a declaration of nationality of the Bidder;
- (h) a declaration that the Bidder, including all parties comprising the Bidder, is not participating, as a Bidder, in more than one bid in this bidding process; except for alternative bids in accordance with ITB Clause 14;
- (i) confirmation that the Bidder has not been debarred by the Director of Public Procurement;
- (j) a declaration concerning investigations relating to any other public procurement tender exercise or awarded contract,
- (k) a declaration on gratuities and commissions;
- (l) the names and addresses of the Directors of the bidder, and
- (m) an authorised signature.

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

- (a) the item number;
- (b) a brief description of the Services and Related Goods to be provided;
- (c) their country of origin;
- (d) quantity;
- (e) unit prices;
- (f) all taxes paid or payable in Malawi;
- (g) total price per item;
- (h) subtotals and totals per Price Schedule; and
- (i) authorised signature.

14. Alternative Bids

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

15. Bid Prices and Discounts

15.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet and in the Price Schedules shall conform to the requirements specified below.

15.2 All items in the Statement of Requirements must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be

assumed to be not included in the Bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with ITB Sub-Clause 32.3

15.3 The price to be quoted in the Bid Submission Sheet, in accordance with ITB Sub-Clause 13.1(c), shall be the total price of the Bid, excluding any discounts offered.

15.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Bid Submission Sheet, in accordance with ITB Sub-Clause 13.1(d).

15.5 Prices proposed on the Price Schedule Forms for the Services and Related Goods shall be disaggregated, when appropriate as indicated in this sub-clause. This disaggregation shall be solely for the purpose of facilitating the comparison of bids by the Procuring Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered:

(a) For services

- (i) the price of the services;
- (ii) all taxes already paid or payable on the services if the contract is awarded to the Bidder; and
- (iii) the total price for the service.

(b) For related goods:

- (i) the price of the goods shall be quoted CIP named port of destination, or as specified in the BDS. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible countries. Similarly, the Bidder may obtain insurance services from any eligible source country;
- (ii) all taxes already paid or payable on the goods or on the components and raw materials used in the manufacture or assembly if the contract is awarded to the Bidder; and
- (iii) the total price for the goods.

15.6 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS. A bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITB Clause 31. However, if in accordance with the BDS, prices quoted by the Bidder are subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

15.7 If so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages), bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB Sub-Clause 15.4, provided the bids for all lots are submitted and opened at the same time.

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

accordance with ITB Sub-Clause 15.4, provided the bids for all lots are submitted and opened at the same time.

16. Currencies of Bid

16.1 For Services and Related Goods that the Bidder will provide from inside Malawi the prices shall be quoted in Malawi Kwacha, unless otherwise specified in the BDS.

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

17. Documents Establishing the Eligibility of the Bidder

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

18. Documents Establishing the Eligibility of Services and Related Goods

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

19. Documents Establishing the Conformity of the Services and Related Goods to the Bidding Documents

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

19.2 The documentary evidence on technical and professional qualifications.

20. Documents Establishing the Qualifications of the Bidder

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

21. Period of Validity of Bids

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

21.2 In exceptional circumstances, prior to expiry of the bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB Clause 22, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB Sub-Clause 21.3.

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

22. Bid Security

22.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, a bid security in original form and in the amount and currency specified in the BDS.

22.2 The bid security shall be in any of the following forms:

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

all from a reputable source in an eligible country. The bid security shall be submitted either using the Bid Security Form included in Section 4, Bidding Forms, or in another substantially similar format, acceptable to the Procuring Entity. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eighty (28) days beyond the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.

22.3 Any bid not accompanied by a substantially responsive bid security, if one is required in accordance with ITB Sub-Clause 22.1, shall be rejected by the Procuring Entity as non responsive.

22.4 The bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 45.

22.5 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security, where applicable.

22.6 The bid security may be forfeited:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub-Clause 21.2; or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 44;
 - (ii) furnish a performance security in accordance with ITB Clause 45; or
 - (iii) accept the correction of its Bid Price pursuant to ITB Sub-Clause 32.5.

23. Format and Signing of Bid

23.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 12 and clearly mark it "ORIGINAL." In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

23.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Bidder. This authorisation shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorisation must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be signed or initialled by the person signing the bid.

23.3 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

D. Submission and Opening of Bids**24. Sealing and Marking of Bids**

24.1 The Bidder shall enclose the original and each copy of the bid, including alternative bids, if permitted in accordance with ITB Clause 14, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope.

24.2 The inner and outer envelopes shall:

- (a) be addressed to the Procuring Entity in accordance with ITB Sub-Clause 25.1;
- (b) bear the subject of the procurement or the Project name, and procurement reference number indicated in the BDS;

24.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to ITB Clause 26.1.

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

25. Deadline for Submission of Bids

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

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

26. Late Bids

26.1 The Procuring Entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 25. Any bid received by the Procuring Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

27. Withdrawal, Substitution, and Modification of Bids

27.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorised representative, and shall include a copy of the authorisation in accordance with ITB Sub-Clause 23.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) Submitted in accordance with ITB Clauses 23 and 24 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” or “Modification;” and
- (b) Received by the Procuring Entity prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 25.

27.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 27.1 shall be returned unopened to the Bidders.

27.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and expiry of the period of bid validity specified by the Bidder on the Bid

Submission Sheet or any extension thereof.

28. Bid Opening

28.1 The Procuring Entity shall conduct the bid opening in the presence of Bidders` designated representatives who may choose to attend, and at the address, date and time specified in the BDS.

28.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at bid opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.

28.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers, if permitted in the BDS; the presence of a bid security, if required; and any other details as the Procuring Entity may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB Sub-Clause 26.1.

28.4 The Procuring Entity will prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. The Bidders` representatives who are present shall be requested to sign the record. The omission of a Bidder`s signature on the record shall not invalidate the contents and effect of the record. A copy of the record may be provided to Bidders upon request.

E. Evaluation and Comparison of Bids**29. Confidentiality**

29.1 Information relating to the examination, evaluation, comparison, and post qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

29.2 Any effort by a Bidder to influence the Procuring Entity in the examination, evaluation, comparison, and post-qualification of the bids or Contract award decisions shall result in the rejection of its bid.

29.3 Notwithstanding ITB Sub-Clause 29.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Procuring Entity on any matter related to the bidding process, it should do so in writing.

30. Clarification of Bids

30.1 To assist in the examination, evaluation, comparison and post qualification of the bids, the Procuring Entity may, at its discretion, ask any Bidder for a clarification of its bid. Any

clarification submitted by a Bidder that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the bids, in accordance with ITB Clause 32.

31. Responsiveness of Bids

31.1 The Procuring Entity's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.

31.2 A substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

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

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

32. Nonconformities, Errors, and Omissions

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

32.2 Provided that a bid is substantially responsive, the Procuring Entity may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.

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

32.4 Provided that the bid is substantially responsive, the Procuring Entity shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the

amount in figures shall prevail subject to (a) and (b) above.

32.5 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

33. Preliminary Examination of Bids- Eligibility and Administrative Compliance

33.1 The Procuring Entity shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 12 have been provided, and to determine the completeness of each document submitted.

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

(a) Bid Submission Sheet, including:

- (i) a brief description of the Services and Related Goods offered; and
- (ii) the price of the Bid;
- (iii) the period of validity of the Bid;

(b) Price Schedules;

(c) Written confirmation of authorisation to commit Bidder; and

(d) Bid Security, if applicable.

34. Detailed Commercial and Technical Evaluation

34.1 The Procuring Entity shall examine the bid to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Bidder without any material deviation or reservation.

34.2 The Procuring Entity shall evaluate the technical aspects of the bid submitted in accordance with ITB Clause 19, to confirm that all requirements specified in Section 6, Statement of Requirements of the Bidding Documents, have been met without any material deviation or reservation.

34.3 If, after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the bid is not substantially responsive in accordance with ITB Clause 31, it shall reject the bid.

35. Conversion to Single Currency

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

36. Margin of Preference

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

37. Financial Comparison of Bids

37.1 The Procuring Entity shall financially evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.

37.2 To financially evaluate a bid, the Procuring Entity shall only use the criteria and methodologies defined in this Clause and in Section 3, Evaluation Methodology and Criteria. No other criteria or methodology shall be permitted.

37.3 To financially evaluate a bid, the Procuring Entity shall consider the following:

- (a) the bid price;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 32.4;
- (c) price adjustment due to discounts offered in accordance with ITB Sub-Clause 15.3;
- (d) adjustment for nonconformities and omissions in accordance with ITB Sub-Clause 32.3;
- (e) application of all the evaluation factors indicated in Section 3, Evaluation Methodology and Criteria; and
- (f) adjustments due to the application of a margin of preference, in accordance with ITB Clause 36.

38. Determination of lowest evaluated bid

38.1 The Procuring Entity shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB Sub-Clause 15.6.

39. Post-qualification of the Bidder

39.1 The Procuring Entity shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily.

39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 20, to clarifications in accordance with ITB Clause 30 and the qualification criteria indicated in Section 3, Evaluation Methodology and Criteria. Factors not included in Section 3 shall not be used in the evaluation of the Bidder's qualification.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Procuring Entity shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

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

40.1 The Procuring Entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders.

F. Award of Contract

41. Award Procedure

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

42. Procuring Entity's Right to Vary Quantities at Time of Award

42.1 At the time the Contract is awarded, the Procuring Entity reserves the right to increase or decrease the amount of Services and Related Goods originally specified in Section 6, Statement of Requirements, provided this does not exceed the percentages indicated in the

BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.

43. Notification and Acceptance of Award

43.1 Prior to expiry of the period of bid validity, the Procuring Entity shall notify the successful Bidder, in writing, that its bid has been accepted. At the same time, the Procuring Entity shall also notify all other Bidders of the results of the bidding.

43.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

43.3 The Procuring Entity shall publish in the Malawi Government Gazette the results of the award of contract, as required by the Public Procurement Act 2003.

44. Signing of Contract

44.1 Promptly after notification, the Procuring Entity shall send the successful Bidder the contract documents and the Special Conditions of Contract.

44.2 Within thirty (30) days of receipt of the contract documents, the successful Bidder shall sign, date, and return it to the Procuring Entity.

45. Performance Security

45.1 Within thirty (30) days of receipt of notification of award from the Procuring Entity, the successful Bidder shall furnish the performance security in the amount and form specified in the BDS and SCC, using for that purpose the Performance Security Form included in Section 9 or another form acceptable to the Procuring Entity.

45.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for annulment of the award and forfeiture of the bid security. In that event, the Procuring Entity may award the Contract to the next lowest evaluated Bidder whose bid is substantially responsive and is determined by the Procuring Entity to be qualified to perform the Contract satisfactorily.