

Government of the Republic of Malawi



ROADS AUTHORITY

Request for Proposals Documents

For the

Procurement of Consultancy services

(Complex Time Based Assignments)

KENYATTA ROAD, SHARRAR STREET AND A SECTION OF MZIMBA STREET IN LILONGWE CITY

| | |
|---|--|
| Subject of Procurement | Consultancy Services for The Supervision of Construction of Kenyatta Road, Sharrar Street and a Section Of Mzimba Street in Lilongwe City |
| Procurement Reference Number | RA/DEV/CON/LLC/2023-24/21 |
| Procurement Method | Request for Proposals |
| Basis of Selection | Quality and Cost Based Selection |
| Date of Issue of Request for Proposals Document | 13th January, 2024 |

The Chief Executive Officer
The Roads Authority
Functional building
Paul Kagame Road
Private Bag B346
Lilongwe, **MALAWI**

Table of Contents

Part 1 - Bidding Procedures

Section 1 – Instructions to Bidders

Section 2 – Bid Data Sheet

Section 3 – Evaluation Criteria

Section 4 – Bidding Forms

Section 5 – Eligible Countries

Part 2 - Schedule of Requirement

Section 6 – Terms of Reference

Part 3 - Contract

Section 7 – General Conditions of Contract

Section 8 – Special Conditions of Contract

Section 9 – Contract Forms

Part I - Section 1: Instructions to Bidders

Section 1: Instructions to Bidders

Table of Clauses

| | | |
|-----------|--|-----------|
| A. | General | 5 |
| 1. | Scope of Proposal | 5 |
| 2. | Source of Funds | 5 |
| 3. | Eligible Bidders..... | 5 |
| 4. | Conflict of Interest | 5 |
| 5. | Corrupt or Fraudulent Practices | 6 |
| B. | Request for Proposals Document | 7 |
| 6. | Sections of Request for Proposals Document | 7 |
| 7. | Clarification of Request for Proposals Document | 7 |
| 8. | Amendment of Request for Proposals Document..... | 7 |
| C. | Preparation of Proposals..... | 8 |
| 9. | Preparation of Proposals | 8 |
| 10. | Language of Proposals | 8 |
| 11. | Joint Ventures, Associations and Subcontracting | 8 |
| 12. | Professional Staff | 8 |
| 13. | Contents of Technical Proposals..... | 9 |
| 14. | Contents of Financial Proposals..... | 9 |
| 15. | Currencies of Proposal..... | 10 |
| D. | Submission and Opening of Proposals | 10 |
| 16. | Submission of Proposal..... | 10 |
| 17. | Validity of Proposal..... | 10 |
| 18. | Withdrawal, Substitution and Modification of Proposals | 11 |
| 19. | Proposal Opening..... | 11 |
| E. | Evaluation of Proposals | 12 |
| 20. | Confidentiality | 12 |
| 21. | Clarification of Proposals..... | 12 |
| 22. | Responsiveness of Proposals | 12 |
| 23. | Nonconformities, Errors and Omissions..... | 12 |
| 24. | Preliminary Examination of Proposals | 12 |
| 25. | Technical Evaluation of Proposals | 13 |
| 26. | Financial Proposal Opening | 13 |
| 27. | Financial Evaluation of Proposals | 13 |
| 28. | Comparison of Proposals | 14 |
| 29. | Negotiations..... | 14 |
| F. | Award of Contract | 15 |
| 30. | Award of Contract..... | 15 |

Section I. Instructions to Bidders

A. General

1. Scope of Proposal

- 1.1 The Procuring Entity indicated in the Bid Data Sheet (BDS) invites technical and financial proposals for the consulting services described in Section 6, Terms of Reference. The proposal could form the basis for future negotiations and ultimately a contract between your firm and the Procuring Entity.
- 1.2 The procurement reference number and a brief description of the Assignment and its objectives are given in the BDS.
- 1.3 The Assignment shall be implemented in accordance with the phasing indicated in the Terms of Reference. When the Assignment includes several phases, continuation of services for the next phase shall be subject to satisfactory performance of the previous phase, as determined by the Procuring Entity.

2. Source of Funds

- 2.1 The Procuring Entity has an approved budget from public funds towards the cost of the procurement described in the BDS. The Procuring Entity intends to use these funds to place a contract for which this Request for Proposals is 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. Eligible Bidders

- 3.1 A Bidder shall:
 - (a) have the legal capacity to enter into a contract;
 - (b) not be insolvent, in receivership, bankrupt or being wound up, not have had their business activities suspended and not be the subject of legal proceedings for any of the foregoing; and
 - (c) have fulfilled their obligations to pay taxes according to the tax laws of their country of registration.
- 3.2 In order to demonstrate compliance with the criteria in ITB Sub-Clause 3.1, a Bidder shall submit with its Proposal appropriate documentary evidence demonstrating its compliance.
- 3.3 All bidders (including all members of a joint venture, subconsultants and Personnel) shall have the nationality of an eligible country, as defined in Section 5, Eligible Countries.
- 3.4 Government-owned enterprises in the Republic of Malawi may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency to the Procuring Entity.
- 3.5 A Bidder that has been debarred from participating in public procurement in accordance with ITB Sub-Clause 5.1(c), at the date of the deadline for proposal submission or thereafter, shall be disqualified.

4. Conflict of Interest

- 4.1 The Government of the Republic of Malawi (hereinafter called "the Government") requires that Consultants provide professional, objective, and impartial advice and at all times hold the Procuring Entity's interests paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work. Without limitation on the generality of the foregoing, Suppliers, and any of their affiliates, shall be

considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below:

- (a) A firm that has been engaged by the Procuring Entity to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.
 - (b) A Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the same or for another Procuring Entity. For example, a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Consultant assisting a Procuring Entity in the privatization of public assets shall not purchase, nor advise purchasers of, such assets. Similarly, a Consultant hired to prepare Terms of Reference for an assignment should not be hired for the assignment in question.
 - (c) A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the Procuring Entity's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment (iii) a member of the Procuring Entity's Internal Procurement Committee, or (iv) supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Government throughout the procurement process and the execution of the Contract.
- 4.2 Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.
- 4.3 No agency or current employees of the Procuring Entity shall work as a Consultant under their own ministries, departments or agencies. Recruiting former government employees of the Procuring Entity to work for their former ministries, departments or agencies is acceptable provided no conflict of interest exists. Bidders should be aware that existing government employees can only be nominated as personnel in Technical Proposals in accordance with the Government of Malawi's current regulations concerning external employment for government employees.
- 4.4 If a shortlisted Bidder could derive a competitive advantage from having provided consulting services related to the assignment in question, the Procuring Entity shall make available to all shortlisted Bidders together with this RFP all information that would in that respect give such Bidder any competitive advantage over competing Bidders.

5. Corrupt or Fraudulent Practices

5.1 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 the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish prices at artificial, noncompetitive levels; and
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
- (b) will reject a recommendation for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question; 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.

B. Request for Proposals Document

6. Sections of Request for Proposals Document

- 6.1 The Request for Proposals Document consist 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 Criteria
- Section 4 Bidding Forms
- Section 5 Eligible Countries

Part 2 Schedule of Requirements

- Section 6 Terms of Reference

Part 3 Contract

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

7. Clarification of Request for Proposals Document

- 7.1 Bidders requiring a clarification of the Request for Proposals Document must notify the Procuring Entity, in writing, not later than fourteen (14) days before the proposal submission date. Any request for clarification shall be sent to the Procuring Entity's address indicated in the BDS. The Procuring Entity shall respond in writing to such requests, and copies of the response shall be sent to all invited Bidders.

8. Amendment of Request for Proposals Document

- 8.1 At any time before the submission of proposals, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by an invited Bidder, modify the Documents by amendment. The amendment shall be sent in writing to all invited Bidders and will be binding on them. The Procuring Entity may at its discretion extend the deadline for the submission of proposals.

C. Preparation of Proposals

9. Preparation of Proposals

- 9.1 You are requested to submit separate technical and financial proposals.
- 9.2 In preparing the proposal, you are expected to examine all terms and instructions included in the Request for Proposals Document. Failure to provide all requested information shall be at your own risk and may result in rejection of your proposal.
- 9.3 To obtain first-hand information on the Assignment and on the local conditions, bidders are encouraged to pay a visit to the Procuring Entity before submitting a proposal and attend a pre-proposal conference if specified in the BDS. Bidders must fully inform themselves of local conditions and take them into account in preparing their proposal.
- 9.4 The Procuring Entity shall provide the inputs specified in the Terms of Reference, assist the Supplier in obtaining licenses and permits needed to carry out the services, and make available relevant project data and reports.
- 9.5 Please note that the costs of preparing the proposal and of negotiating the contract, including a visit to the Procuring Entity, are not reimbursable as a direct cost of the Assignment;
- 9.6 Please note that the Procuring Entity is not bound to accept any of the proposals submitted.

10. Language of Proposals

- 10.1 The proposal, as well as all correspondence and documents relating to the proposal exchanged by the Bidder and the Procuring Entity, shall be written in English.
- 10.2 Study reports must be in the Language(s) specified in the Terms of Reference. Working knowledge of the national language by the firm's personnel is recommended.

11. Joint Ventures, Associations and Subcontracting

- 11.1 If a Bidder considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) or other firms or entities or by sub-contracting as appropriate.
- 11.2 Bidders shall not associate with other Bidders invited for this assignment, unless otherwise specified in the BDS.
- 11.3 International Bidders for large contracts are encouraged to seek the participation of national Consultants by entering into a joint venture with, associating with or subcontracting part of the assignment to national Consultants.
- 11.4 The same subconsultant may be included in several proposals, subject to any limitations in the BDS. Any limits on the percentage of the total proposed contract price which may be subcontracted are stated in the BDS.

12. Professional Staff

- 12.1 The estimated number of key professional staff-months required for the Assignment is stated in the BDS. Your proposal should be based on a number of key professional staff-months substantially in accordance with the above number. Alternatively, for fixed-budget assignments, the available budget is given in Section 3, Evaluation Criteria and the Financial Proposal shall not exceed this budget.
- 12.2 It is desirable that the majority of the key professional staff proposed are permanent employees of the Bidder or have an extended and stable working relationship with the Bidder.

12.3 Proposed staff should have experience under conditions similar to those prevailing in the Republic of Malawi.

12.4 No alternative to key professional staff may be proposed, and only one curriculum vitae (CV) may be submitted for each position.

13. Contents of Technical Proposals

13.1 Your technical proposal shall provide the following and any additional information, using the formats included in Section 4, Bidding Forms:

- (a) The Technical Proposal Submission Sheet (Section 4, Form T1);
- (b) A brief description of the Bidder's organisation and an outline of recent experience on assignments of a similar nature. (Section 4, Form T2). For each assignment, the outline should indicate, inter alia, the profiles of the staff provided, duration, contract amount and firm involvement;
- (c) Any comments or suggestions on the Terms of Reference, including the data, services and facilities to be provided by the Procuring Entity (Section 4, Form T3);
- (d) A description of the approach, methodology and work plan that the Bidder proposes to execute the services (Section 4, Form T4);
- (e) The composition of the proposed staff team, the tasks which would be assigned to each (Section 4, Form T5);
- (f) CVs recently signed by the proposed key professional staff or an authorized manager in the home office (Section 4, Form T6). Key information should include number of years with the firm, and degree of responsibility held in various assignments during the last ten (10) years;
- (g) A Staffing Schedule, showing estimates of the total staff input to be provided to carry out the Assignment (Section 4, Form T7), supported by bar chart diagrams showing the time proposed for each professional staff member;
- (h) A Work Schedule, showing the timing proposed for each activity, which must be consistent with the methodology and workplan described in the proposal (Section 4, Form T8); and
- (i) Any additional information requested in the BDS.

13.2 The technical proposal shall not include any financial information.

14. Contents of Financial Proposals

14.1 The financial proposal shall list all costs associated with the assignment, using the following standard forms contained in Section 4, Bidding Forms:

- (a) Financial Proposal Submission Sheet (Section 4, Form F1);
- (b) Summary of Proposal (or Activity) Price (Section 4, Form F2);
- (c) Summary of Fees (Section 4, Form F3);
- (d) Summary of Reimbursables (Section 4, Form F4); and
- (e) Any additional information requested in the BDS.

14.2 The total proposal price shall be broken down into the following cost components using the appropriate forms:

- (a) Fees for staff, indicating rates for home and field work, where appropriate; and
- (b) Reimbursable expenditure, such as subsistence, transportation (international and local for mobilisation and demobilisation), services and equipment (vehicles, office equipment, furniture, and supplies), printing of documents, surveys etc.

- 14.3 Where indicated in the BDS, the total proposal price shall be broken down into separate activities and forms F2 to F4 shall be completed for each activity.
- 14.4 The financial proposal should clearly estimate, as a separate amount, the local taxes (including social security), duties, fees, levies, and other charges imposed on the Consultant and their personnel (other than nationals of or permanent residents in the Republic of Malawi), unless the BDS specifies otherwise.
- 14.5 The completed financial proposal forms, adjusted if necessary during evaluation or negotiation, will be used in any resulting Agreement, to compile the: breakdown of Contract Price in the case of a Lump Sum contract, which will be used only to determine prices for any additional Services or costs;
- 14.6 Where commissions and gratuities have or shall be paid by the Bidder in relation to the assignment these shall be listed in the Financial Proposal Submission Sheet.

15. Currencies of Proposal

- 15.1 Bidders may express the price of their services in Malawi Kwacha or any freely convertible currency, unless otherwise indicated in the BDS. Bidders may not use more than three currencies. The Procuring Entity may require Bidders to state the portion of their price representing local cost in Malawia Kwacha, if so indicated in the BDS.

D. Submission and Opening of Proposals

16. Submission of Proposal

- 16.1 Bidders shall submit one original technical proposal and one original financial proposal and the number of copies of each indicated in the BDS. Each proposal shall be in a separate envelope indicating original or copy, as appropriate. All technical proposals shall be placed in an envelope clearly marked "Technical Proposal," and the financial proposals in one marked "Financial Proposal." The envelope containing the financial proposal shall also bear a warning "DO NOT OPEN WITH THE TECHNICAL PROPOSAL". These two envelopes, in turn, shall be sealed in an outer envelope bearing the address and information indicated in the BDS. The envelope shall be clearly marked: "DO NOT OPEN, EXCEPT IN PRESENCE OF THE INTERNAL PROCUREMENT COMMITTEE."
- 16.2 In the event of any discrepancy between the copies of the proposals, the original shall govern. The original and each copy of the technical and financial proposal shall be prepared in indelible ink and shall be signed by the authorized Supplier's representative. The representative's authorization shall be confirmed by a written power of attorney accompanying the proposals, unless otherwise indicated in the BDS. All pages of the technical proposal shall be initialed by the person or persons signing the proposal.
- 16.3 The proposal shall contain no interlineation or overwriting except as necessary to correct errors made by the Bidders themselves. Any such corrections shall be initialed by the person or persons signing the proposal.
- 16.4 The completed technical and financial proposals shall be delivered on or before the time and date stated in the BDS to the address indicated in ITB Sub-Clause 16.1. The Procuring Entity shall not consider any proposal that arrives after the deadline for submission of proposal. Any proposal received by the Procuring Entity after the deadline for submission of proposals shall be declared late, rejected, and returned unopened to the Bidder.

17. Validity of Proposal

- 17.1 The proposals shall be valid for the number of days stated in the BDS from the date of the deadline for submission. During this period, Bidders shall keep available the professional

staff proposed for the assignment. The Procuring Entity shall make its best effort to complete negotiations within this period.

18. Withdrawal, Substitution and Modification of Proposals

18.1 A Bidder may withdraw, substitute, or modify its proposal after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 16.2. The corresponding substitution or modification of the proposal must accompany the respective written notice. All notices must be:

- (a) Submitted in accordance with ITB Clause 16 (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 proposals, in accordance with ITB Sub-Clause 16.5.

18.2 Proposals requested to be withdrawn in accordance with ITB Sub-Clause 18.1 shall be returned unopened to the Bidders.

18.3 No proposal may be withdrawn, substituted, or modified in the interval between the deadline for submission of proposals and expiry of the period of proposal validity specified by the Bidder on the Technical Proposal Submission Sheet or any extension thereof.

19. Proposal Opening

19.1 The Procuring Entity shall conduct the proposal opening in the presence of Bidders' designated representatives who choose to attend, and at the address, date and time specified in the BDS.

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

19.3 All other outer envelopes shall be opened one at a time, the technical proposals within them opened, reading out: the name of the Bidder and any other details as the Procuring Entity may consider appropriate.

19.4 No proposal shall be rejected at proposal opening except for late proposals, in accordance with ITB Sub-Clause 16.4. Only proposals that are opened and read out at the proposal opening shall be considered further.

19.5 The financial proposals shall remain sealed until the time and date notified for the opening of the financial proposals. Evaluators of technical proposals shall have no access to the financial proposals until the technical evaluation is concluded and the result established.

19.6 The Procuring Entity shall prepare a record of the proposal opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification. 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 shall be distributed to all Bidders, who formally request a copy.

E. Evaluation of Proposals

20. Confidentiality

- 20.1 Information relating to the examination, evaluation and comparison of proposals, and recommendation for 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.
- 20.2 Any effort by a Bidder to influence the Procuring Entity in the examination, evaluation and comparison of the proposals or Contract award decisions shall result in the rejection of its proposal.

21. Clarification of Proposals

- 21.1 To assist in the examination, evaluation and comparison of the proposals, the Procuring Entity may, at its discretion, ask any Bidder for a clarification of its proposal. Any clarification submitted by a Bidder in respect to its proposal, 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 proposal shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the financial evaluation of the proposals, in accordance with ITB Clause 27.

22. Responsiveness of Proposals

- 22.1 The Procuring Entity's determination of a proposal's responsiveness is to be based on the contents of the proposal itself.
- 22.2 A substantially responsive proposal is one that conforms to all the terms, conditions, and requirements of the Request for Proposals 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 Consultancy Services specified in the Contract; or
 - (b) limits in any substantial way, inconsistent with the Request for Proposals, the Procuring Entity's rights or the Supplier's obligations under the Contract; or
 - (c) if rectified would unfairly affect the competitive position of other Bidders presenting substantially responsive proposals.
- 22.3 If a proposal is not substantially responsive to the Request for Proposals, 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.

23. Nonconformities, Errors and Omissions

- 23.1 Provided that a proposal is substantially responsive, the Procuring Entity may waive any non-conformities or omissions in the proposal that do not constitute a material deviation.
- 23.2 Provided that a proposal 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 proposal related to documentation requirements. Such omission shall not be related to any aspect of the price of the proposal. Failure of the Bidder to comply with the request may result in the rejection of its proposal.

24. Preliminary Examination of Proposals

- 24.1 The Procuring Entity shall examine the proposals to confirm that:

- (a) the Bidder meets the eligibility criteria defined in ITB Clause 3;
- (b) the proposal has been properly signed;
- (c) all documents and information requested in ITB Clause 13 have been provided; and
- (d) the proposal is substantially responsive to the requirements of the RFP document.

24.2 The Procuring Entity shall confirm that the following documents and information have been provided:

- (a) Technical Proposal Submission Sheet, including a brief description of the services offered and the proposal validity period;
- (b) Separately sealed financial proposal;
- (c) Written confirmation of authorization to commit the Bidder;
- (d) Any other documentation as may be required by the Procuring Entity

24.3 If the proposal fails to meet the criteria specified in ITB Sub-Clause 24.1, it shall be rejected.

25. Technical Evaluation of Proposals

25.1 The Procuring Entity shall technically evaluate the proposals on the basis of the Bidder's responsiveness to the Terms of Reference, applying the evaluation criteria, sub-criteria and maximum points specified in Section 3. Each responsive proposal will be given a technical score. A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve any minimum technical score indicated in Section 3.

25.2 The proposals proceeding to the financial evaluation shall be determined in accordance with the methodology and criteria specified in Section 3.

26. Financial Proposal Opening

26.1 After the technical evaluation is completed, the Procuring Entity shall notify those Bidders whose proposals will not pass to the financial evaluation, indicating that their financial proposals will be returned unopened after completing the evaluation process. The Procuring Entity shall simultaneously notify the Bidder(s) whose proposals will proceed to the financial evaluation indicating the date and time set for opening the financial proposal(s). The opening date shall not be sooner than one week after the notification date. The notification will be sent in writing.

26.2 The financial proposal(s) shall be opened in the presence of the Bidders' representatives who choose to attend. The name of the Bidder, the technical quality score and the proposal price(s) shall be read aloud and recorded when the financial proposal(s) are opened. The Procuring Entity shall prepare minutes of the public opening.

27. Financial Evaluation of Proposals

27.1 The Procuring Entity shall financially evaluate each proposal that has been opened as stated in ITB Clauses 26.1 and 26.2 above.

27.2 The Procuring Entity will determine whether the financial proposals are complete. In the case of lump sum contracts, activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.

27.3 The Procuring Entity will correct any 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.

If the Bidder that submitted the best evaluated proposal does not accept the correction of errors, its proposal shall be disqualified.

- 27.4 Where an activity or line item is quantified in the Financial Proposal differently from the Technical Proposal no corrections shall be applied to the Financial Proposal in this respect.
- 27.5 The Procuring Entity shall convert all proposal prices expressed in various currencies into the single currency specified in the BDS, using the official selling exchange rate established by the source 14 calendar days prior to the date of submission of the proposals, as specified in the BDS.
- 27.6 The evaluation shall include those taxes, duties, fees, levies, and other charges imposed under the applicable law; and to be applied to foreign and non-permanent resident consultants (and to be paid under the contract, unless the consultant is exempted), and estimated in accordance with ITB Sub-Clause. 14.3, unless otherwise indicated in the BDS.

28. Comparison of Proposals

- 28.1 The Procuring Entity shall compare all substantially responsive proposals to determine the best evaluated proposal, in accordance with the methodology specified in Section 3, Evaluation Criteria.

29. Negotiations

- 29.1 Prior to the expiry of proposal validity, the Procuring Entity shall notify the successful bidder in writing and invite it to negotiate the Contract at the location indicated in the BDS.
- 29.2 The aim is to reach agreement on all points and initial a draft contract by the conclusion of negotiations.
- 29.3 Negotiations shall commence with a discussion of the technical proposal, including the proposed methodology, work plan, staffing and any suggestions to improve the TOR. Agreement shall then be reached on the final TOR, the staffing, and the staffing and work schedules, which shall indicate activities, staff, periods in the field and in the home office, staff months, logistics and reporting. Special attention shall be paid to optimizing the required outputs from the Supplier within the available budget and to defining clearly the inputs required from the Procuring Entity to ensure satisfactory implementation of the Assignment.
- 29.4 Changes agreed upon shall then be reflected in the financial proposal, using proposed unit rates. The fee rates will not be subject to negotiation, except in the case of Quality Based Selection.
- 29.5 Having selected the lowest evaluated proposal on the basis of, among other things, an evaluation of proposed key professional staff, the Procuring Entity expects to negotiate a contract on the basis of the staff named in the proposal. Prior to contract negotiations, the Procuring Entity shall require assurances that the staff members will be actually available. The Procuring Entity shall not consider substitutions during contract negotiations except in

cases of unexpected delays in the starting date or incapacity of key professional staff for reasons of health.

- 29.6 The negotiations shall be concluded with a review of the draft form of the contract. The Procuring Entity and the Bidder shall finalise the contract to conclude negotiations. If negotiations fail, the Procuring Entity shall invite the next ranked Bidder to Contract negotiations.

F. Award of Contract

30. Award of Contract

- 30.1 The Procuring Entity shall award the Contract to the Bidder whose proposal has been determined to be the best evaluated proposal and is substantially responsive to the Request for Proposals, subject to satisfactory negotiations and provided that such Bidder has been determined to be eligible in accordance with the provisions of Clause 3.
- 30.2 Notwithstanding ITB Sub-Clause 30.1, the Procuring Entity reserves the right to accept or reject any proposal, and to cancel the procurement process and reject all proposals, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Procuring Entity's action.
- 30.3 The Bidder whose proposal has been accepted will be notified of the award in writing by the Procuring Entity prior to expiration of the proposal validity period. Following contract award, the Procuring Entity shall promptly inform the other Bidders that their proposals have not been selected.
- 30.4 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

Part I - Section 2 Bid Data Sheet

Section 2. Bid Data Sheet

| Instructions to Bidders (ITB) reference | Data relevant to ITB |
|--|--|
| A. General | |
| ITB 1.1 | The Procuring Entity is: ROADS AUTHORITY |
| ITB 1.2 | The procurement reference number is: RA/DEV/CON/LLC/2023-24/21 |
| ITB 2.1 | The assignment is: Consultancy Services for the Supervision of Construction of Kenyatta Road, Sharrar Street and a Section of Mzimba Street in Lilongwe City |
| B. Request for Proposals Document | |
| ITB 7.1 | For <u>clarification purposes</u> only, the Procuring Entity's address is: <p style="text-align: center;">The Chief Executive Officer Roads Authority Functional Building Off Paul Kagame Road Private Bag B346 Lilongwe 3 Telephone: (265) 01 753 699 Fax: (265) 01 750 307</p> <p style="text-align: center;">Att: Procurement Specialist E-mail: ipc@ra.org.mw</p> |
| C. Preparation of Proposals | |
| ITB 9.3 | A pre-proposal meeting <u>shall not</u> be held. |
| ITB 10.2 | The reports must be in <u>English</u> . |
| ITB 11.2 | International Bidders shall be required to meet the following National Construction Industry Council (NCIC) regulations: <ul style="list-style-type: none"> a. Practice of Construction Services by Foreign Consulting Firms Regulations 2004. b. Subcontracting and Joint Ventures by Foreign and Malawian Construction Firms order 2014. |
| ITB 11.4 | Limits on subcontracting are: <u>45%</u> |
| ITB 12.1 | The estimated number of key professional staff-months shall <u>38</u> |
| ITB 13.1 (i) | The technical proposal shall include the following additional information: |

| Instructions to Bidders (ITB) reference | Data relevant to ITB |
|---|---|
| | <u>Current commitments of firm, current commitments of proposed staff</u> |
| ITB 14.1 (e) | The financial proposal shall include the following additional information: <u>Build-up of remuneration rates (eg basic salary, housing allowance, social charges etc)</u> |
| ITB 14.3 | The total proposal price <u>shall</u> be broken down into separate activities. |
| ITB 14.4 | The financial proposal <u>shall not</u> indicate local taxes as a separate amount. <u>Only VAT on fees shall be indicated as separate amount</u> |
| ITB 15.1 | Bidders may express the price of their services in any freely convertible currency. Not applicable Bidders _____ state the portion of their price representing local cost in Malawia Kwacha. <u>All bid rates and amounts shall be in Malawi Kwacha</u> |
| D. Submission and Opening of Proposals | |
| ITB 16.1 | In addition to the original of the proposal, the number of copies is: Four (3) |
| ITB 16.1 | The <u>address for proposal submission</u> is: The Chief Executive Officer Roads Authority Functional Building Off Paul Kagame Road Private Bag B346 Lilongwe 3, MALAWI Telephone: (265) 01 753 699 Fax: (265) 01 750307 In addition to the address, the outer envelope shall bear the following information: (a) the procurement reference number; (b) the title of the assignment; (c) the name and address of the Bidder; and (d) The date and time for opening of proposals. |
| ITB 16.4 | The deadline for proposal submission is: Date: <u>12th February, 2024</u> Time (local time): <u>10:00 hours</u> |
| ITB 17.1 | The proposal validity period shall be <u>One Hundred and Twenty (120)</u> days. |
| ITB 19.1 | For <u>proposal opening purposes</u> only, the Procuring Entity's address is: The Chief Executive Officer |

| Instructions to Bidders (ITB) reference | Data relevant to ITB |
|---|--|
| | <p>Roads Authority Functional Building Off Paul Kagame Road Private Bag B346 Lilongwe 3, MALAWI Telephone: (265) 01 753 699 Fax: (265) 01 750307</p> <p>The time for proposal opening is: Date: 12th February, 2024 Time (local time): 10:00 hours</p> |
| E. Evaluation of Proposals | |
| ITB 27.5 | <p>The currency that shall be used for proposal evaluation and comparison purposes to convert all proposal prices expressed in various currencies into a single currency is: <u>Not applicable</u></p> <p>The source of exchange rate shall be: <u>Not applicable</u></p> |
| ITB 27.6 | The evaluation shall include all taxes, duties, fees, levies and other charges. |
| ITB 29.1 | <p>For <u>negotiations purposes</u> only, the Procuring Entity's address is:</p> <p>The Chief Executive Officer Roads Authority Functional Building Off Paul Kagame Road Private Bag B346 Lilongwe 3, MALAWI Telephone: (265) 01 753 699 Fax: (265) 01 750307</p> |

Part I - Section 3 Evaluation Criteria

Section 3. Evaluation Criteria

This section, read in conjunction with Section 1, Instructions to Bidders and Section 2, Bid Data Sheet, contains all the factors, methods and criteria that the Procuring Entity shall use to evaluate a proposal and determine the best evaluated proposal. No other factors, methods or criteria shall be used.

1. Evaluation Methodology

The methodology for the evaluation of proposals will be **Quality and Cost Based Selection**.

2. Administrative Responsiveness Criteria

The administrative responsiveness shall be carried out prior to the technical evaluation. The administrative responsiveness check shall be based on the checklist provided in the table below. Bidders shall be required to meet **all** the administrative responsiveness requirements to be eligible for further evaluation.

| S/N | ADMINISTRATIVE COMPLIANCE CHECK LIST (Does the proposal comply with RFP requirements?) | | | | | | |
|-----|---|--|--|--|--|--|--|
| 1 | One Proposal per firm in English only | | | | | | |
| 2 | One (1) original, (3) copies of the Technical Proposal | | | | | | |
| 3 | Letter of incorporation, or other such document indicating legal status, as well as any other document showing that it intends to associate | | | | | | |
| 4 | Bid Validity in accordance with RFP. | | | | | | |
| 5 | Power of Attorney on behalf of the Consultant and its associates; | | | | | | |
| 6 | Form TECH 1 - Submission Form signed | | | | | | |
| 7 | Form TECH 2 - Bidder's Organisation and Experience | | | | | | |
| 8 | Form TECH 3 - Comments or Suggestions on ToRs | | | | | | |
| 9 | Form TECH 4 - Description of the Approach, Methodology, and Work Plan for Performing the Assignment | | | | | | |
| 10 | Form TECH 5- Team Composition and Task Assignments | | | | | | |
| 11 | Form TECH 6- Curriculum Vitae for Proposed Professional Staff | | | | | | |
| 12 | Form TECH 7- Staffing Schedule | | | | | | |
| 13 | Form TECH 8- Work Schedule | | | | | | |
| 14 | All pages initialed by the authorized person | | | | | | |
| | Substantially Compliant : Yes/No | | | | | | |

1. Technical Evaluation Criteria

The technical criteria and maximum number of points to be given under each are:

| Criteria | Maximum Points |
|--|----------------|
| (a) Specific experience of the bidder related to the assignment | 10 |
| (b) Adequacy of the proposed work plan and methodology | 25 |
| (c) Qualifications and competence of the key staff for the Assignment | 60 |
| (d) Participation of Nationals (as reflected by nationals among key staff) | 5 |
| Total Points | 100 |

2. Criteria, sub-criteria, and point system for the evaluation of the Full Technical Proposals:

- (a) **Specific experience of the Consultant (as a firm) relevant to the Assignment: 10**
- (b) **Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):**
- | | |
|---|-----------|
| (a). Technical approach and methodology | 12 |
| (b). Work plan | 8 |
| (c). Organization and staffing | 5 |
| Total points for criterion (ii): | 25 |
- (c) **Key Experts' qualifications and competence for the Assignment: 60**
- | | |
|--|-----------|
| K-1: Resident Engineer | 16 |
| K-2: Materials Engineer | 14 |
| K-3: Measurement Engineer | 12 |
| K-4: Bridge Engineer | 6 |
| K-5: Safety Health and Environmental officer | 6 |
| K-6: Engineering Surveyor | 6 |
| Total Points for Criteria (iii) | 60 |

3. The number of points to be given under each evaluation sub-criteria for (c) qualifications and competence of the key staff for the assignment are:

| Criteria | Maximum Points |
|---|----------------|
| (a) General qualifications | 30 |
| (b) Adequacy for the assignment (The maximum points of 60 to be split as follows: Number of years in the specific field (maximum of 30 points) and number of projects carried out during the period (maximum of 30 points)) | 60 |
| (c) Experience in region and language | 10 |
| Total Points | 60 |

The proposals proceeding to the financial evaluation shall be:

{For Quality & Cost Based Selection(QCBS), and Least Cost Selection}

All proposals reaching the minimum technical score of: **75%**

{For Quality Based Selection(QBS)}

The proposal achieving the highest technical score only.

4. Financial Evaluation and Comparison of Proposals

Proposals will be compared using the following methodology to determine the best evaluated proposal:

{For QCBS only}

To determine financial scores for each proposal, the lowest priced proposal shall be given a financial score of 100, and other proposals shall be given a score proportionate to this, by application of the following formula:

$$Sf = 100 \times Fm/F \quad \text{in which:}$$

Sf denotes the financial score of the proposal under consideration;

Fm is the price of the lowest price proposal that passed the technical evaluation;

F denotes the price of the proposal under consideration.

A total score (S) will be determined for each proposal, by combining its technical (St) and financial (Sf) scores using the following formula and weightings:

$$S = (St \times T\%) + (Sf \times P\%)$$

The weights given to the scores of the Technical and Financial Proposals are:

$$T = [80]$$

$$P = [20]$$

Proposals will be ranked and the proposal achieving the highest total score will be recommended for contract award, subject to satisfactory negotiations.

Part I - Section 4 Bidding Forms

Section 4 Bidding Forms

List of Forms

Technical Proposal – Standard Forms

- T1 Technical Proposal Submission Sheet.
- T2 Bidder's Organisation and Experience.
- T3 Comments and Suggestions on the Terms of Reference.
- T4 Description of the Approach, Methodology and Work Plan for performing the Assignment.
- T5 Team Composition and Task Assignments.
- T6 Curriculum Vitae for Proposed Professional Staff.
- T7 Staffing Schedule.
- T8 Work Schedule.

Financial Proposal - Standard Forms

- F1 Financial Proposal Submission Sheet.
- F2 Summary of Proposal (or Activity) Price.
- F3 Summary of Fees.
- F4 Summary of Reimbursables.

Note to Bidders: This Technical Proposal Submission Sheet should be on the letterhead of the Bidder and should be signed by a person with the proper authority to sign documents that are binding on the Bidder. It should be included by the Bidder in its technical proposal.

T1 Technical Proposal Submission Sheet

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

Procurement Reference No: **[insert Procurement Reference number]**

To: **[insert complete name of Procuring Entity]**

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Request for Proposals, including Addenda No.: **[insert the number and issuing date of each Addenda]**;
- (b) We offer to provide the consulting services for **[insert a brief description of the Services]** in conformity with your Request for Proposals and our proposal;
- (c) We hereby submit our proposal which includes this technical proposal, and a financial proposal sealed under a separate envelope;
- (d) Our proposal shall be valid for a period of **[specify the number of calendar days]** days from the date fixed for the proposal submission deadline in accordance with the Request for Proposals, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (e) We, including any associates, Joint Venture partners or Subconsultants for any part of the contract, have nationals from eligible countries **[insert the nationality of the Bidder, including that of all parties that comprise the Bidder, if the Bidder is a Joint Venture, consortium or association, and the nationality of each subcontractor]**;
- (f) We do not have any conflict of interest as defined in ITB Clause 4;
- (g) We, our affiliates or subsidiaries – including any sub-consultants for any part of the assignment - are not suspended, or excluded from participation in any public procurement exercise by the Office of the Director of Public Procurement in Malawi in accordance with ITB Sub-Clause 5.1(c);
- (h) We are not under investigation by the Anti Corruption Bureau or any other law enforcement body in Malawi relating to participation in any public procurement tender exercise or execution of any public procurement contract relating to the purchase of goods, works and services by any Procuring Entity.
- (i) The names and physical addresses of the Directors of our firm are provided in the table below or we enclose a copy of our latest Audited Accounts (issued within the last twenty-four (24) months):

| Name | Address |
|------|---------|
| | |

- (j) Our Proposal is binding upon us, subject to modifications agreed during any contract negotiations, and we undertake to negotiate on the basis of the staff proposed in our proposal;
- (k) We understand that this proposal, together with your written acceptance thereof, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (l) We understand that you are not bound to accept any proposal that you may receive;

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

In the capacity of **[insert legal capacity of person signing the proposal]**

Signed: **[signature of person whose name and capacity are shown above]**

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

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

Note to Bidders: The information requested is required in the format provided below and should be included by the Bidder in its technical proposal.

T2 Bidder’s Organisation and Experience

Bidder’s Organisation

[Provide a brief (approximately two pages) description of your firm/entity (and each associate for the assignment) – background, organisation etc.]

Bidder’s Experience

[Using the format below, provide information on relevant assignments carried out in the last five years which best illustrate your experience, where your firm/entity (and each associate for the assignment) provided services similar to the ones requested under this assignment. Please provide the name and contact details of the officer responsible for management by the client for each assignment.]

| | |
|---|---|
| Assignment Name: | Approx. value of the contract (in current US\$) |
| Country: Location within Country: | Duration of assignment (months): |
| Name of Client: | Total N° of staff-months: |
| Contact Name | Contact Details |
| Address: | Approx. value of the services provided by your firm (in current US\$) |
| Start Date (Month/Year): | Completion Date (Month/Year): |
| Name of Associated Consultants, If Any: | N° of professional staff-months provided by associated Consultants: |
| Names of Senior Staff (Project Director/Coordinator, Team Leader) involved and functions performed: | |
| Narrative Description of Project: | |
| Description of Actual Services Provided by Your Staff: | |

Bidder’s Name: _____

Note to Bidders: The information requested is required in the format provided below and should be included by the Bidder in its technical proposal. If none, include form and state "None".

T3 Comments and Suggestions on the Terms of Reference (including the data, services and facilities to be provided by the Procuring Entity)

[Give any comments, suggestions or proposed improvements to the terms of reference e.g. deleting unnecessary activities, proposing additional activities, proposing different phasing etc. Any comments should be incorporated in your proposal.

Also give any comments on the data, services and facilities to be provided by the Procuring Entity e.g. administrative support, office space, local transportation, equipment, data, counterpart staff etc.]

Note to Bidders: The information requested is required in the format provided below and should be included by the Bidder in its technical proposal.

T4 Description of Approach, Methodology and Work Plan for performing the Assignment

[It is suggested that you present your Technical Proposal divided into the following three chapters:

- a) **Technical Approach and Methodology,**
- b) **Work Plan, and**
- c) **Organisation and Staffing,**

a) Technical Approach and Methodology.

In this chapter you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.

b) Work Plan.

In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form T8.

c) Organisation and Staffing.

In this chapter you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.]

It is recommended that the approach, methodology and work plan, inclusive of charts and diagrams, should be no more than 50 pages.]

Note to Bidders: The information requested is required in the format provided below and should be included by the Bidder in its technical proposal.

T5 Team Composition and Task Assignments

| Professional Staff | | | | |
|---------------------------|-------------|--------------------------|-----------------|-----------------------|
| Name | FIRM | Area of Expertise | Position | Tasks Assigned |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Note to Bidders: The information requested is required in the format provided below for each named member of professional staff and should be included by the Bidder in its technical proposal.

T6 Curriculum Vitae for Proposed Professional Staff

1. Proposed Position: *[only one candidate for each position]* _____

2. Name of Firm: _____

3. Name of Staff: _____

4. Date of Birth: _____ **Nationality:** _____

5. Education: *[indicate college/university and other specialised education, giving names of institutions, degrees obtained and dates of obtained][*Include copies of all certificates mentioned in the Curriculum Vitae]*

6. Membership of Professional Associations: *[*Include copies of membership certificates]*

7. Other Training: *[indicate other significant training not included under Education]* _____

8. Countries of Work Experience: *[list countries of work experience in the last ten years]* _____

9. Languages: *[indicate proficiency in each language as good, fair or poor for speaking, reading and writing]* _____

10. Employment Record: *[starting with present position, list every employment held since graduation, stating dates of employment, employing organisation and positions held]* _____

From: *[year]* _____ **To:** *[year]* _____

Employer: _____

Positions held: _____

| | |
|---|--|
| <p>11. Detailed Tasks Assigned:</p> <p><i>[list all tasks to be performed under this assignment]</i></p> | <p>Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned:</p> <p><i>[indicate the following information for those assignments that best illustrate the member of staff's capability to handle the tasks listed under point 11]</i></p> <p>Name of assignment or project: _____</p> <p>Year: _____</p> <p>Location: _____</p> <p>Client: _____</p> <p>Main project features: _____</p> <p>Positions held: _____</p> <p>Activities performed: _____</p> |
|---|--|

| | |
|--------------------------------------|--|
| <p>12. Current Commitment</p> | <p><i>[indicate the following information for those assignments that you are currently undertaking]</i></p> <p>Name of assignment or project: _____</p> <p>Expected completion date: _____</p> <p>Location: _____</p> <p>Client: _____</p> <p>Main project features: _____</p> <p>Position: _____</p> <p>Activities being performed: _____</p> |
|--------------------------------------|--|

13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Signature of staff member or authorised representative of the staff
Day/Month/Year Date: _____

Full name of authorised representative: _____

STATEMENT OF EXCLUSIVITY AND AVAILABILITY¹

I, the undersigned, hereby declare that I agree to participate exclusively with the tenderer **<tenderer name>** in the above-mentioned service tender procedure. I further declare that I am able and willing to work for the period(s) foreseen for the position for which my CV has been included in the event that this tender is successful, namely:

| From | To |
|-----------------------|---------------------|
| < start of period 1 > | < end of period 1 > |
| < start of period 2 > | < end of period 2 > |
| < etc > | |

I confirm that I am not engaged in another RA-funded project in a position for which my services are required during the above periods.

By making this declaration, I understand that I am not allowed to present myself as a candidate to any other tenderer submitting a tender to this tender procedure. I am fully aware that if I do so, I will be excluded from this tender procedure, the tenders may be rejected, and I may also be subject to exclusion from other tender procedures and contracts funded by the RA.

Furthermore, should this tender be successful, I am fully aware that if I am not available at the expected start date of my services for reasons other than ill-health or *force majeure*, I may be subject to exclusion from other tender procedures and contracts funded by the RA and that the notification of award of contract to the tenderer may be rendered null and void.

| | |
|------------------|--|
| Name | |
| Signature | |
| Date | |

¹ To be completed by all key experts

Note to Bidders: The information requested is required in the format provided below and should be included by the Bidder in its technical proposal.

Staff input should be counted from the start date of the assignment and indicated in weeks or months, as appropriate. Professional staff should be indicated individually by name; support staff should be indicated by category e.g. clerical staff. Input should be indicated separately for input at home and in the field and for foreign and national staff, for the purpose of calculating travel, subsistence etc.

T7 Staffing Schedule

| No | Name of Staff | Foreign / National | Staff Input (specify weeks or months) | | | | | | | | | | | | Total Staff Input | | |
|---------------|---------------|--------------------|---------------------------------------|---|---|---|---|---|---|---|---|----|----|----|-------------------|----------------|-------|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | In Malawi | Outside Malawi | Total |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | |

 Full time input
 Part-time input

Note to Bidders: The information requested is required in the format provided below and should be included by the Bidder in its technical proposal.

Indicate all main activities of the assignment, including milestones such as submission of reports and other deliverables. For phased assignments, indicate activities separately for each phase.

T8 Work Schedule

| No | Activity | Time Period <i>(specify weeks or months)</i> | | | | | | | | | | | |
|----|----------|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|------------------|
| | | 1 st | 2 nd | 3 rd | 4 th | 5 th | 6 th | 7 th | 8 th | 9 th | 10 th | 11 th | 12 th |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |

Note to Bidders: This Financial Proposal Submission Sheet should be on the letterhead of the Bidder and should be signed by a person with the proper authority to sign documents that are binding on the Bidder. It should be included by the Bidder in its financial proposal.

F1 Financial Proposal Submission Sheet

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

Procurement Reference No: **[insert Procurement Reference number]**

To: **[insert complete name of Procuring Entity]**

We, the undersigned, declare that:

- (a) We offer to provide the consulting services for **[insert a brief description of the Services]** in conformity with your Request for Proposals and our technical and financial proposals;
- (b) The total price of our proposal is: **[insert the total proposal price in words and figures, indicating the various amounts and the respective currencies]**, inclusive of local taxes **[amend if local taxes are not required to be included]**;
- (c) Our proposal shall be valid for a period of [specify the number of calendar days] days from the date fixed for the proposal submission deadline in accordance with the Request for Proposals, and it shall remain binding upon us, subject to any modifications resulting from negotiations, and may be accepted at any time before the expiration of that period;
- (d) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: **[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity. If none has been paid or is to be paid, indicate "none"]**;

| Name and address of Recipient | Purpose Reason | Currency and Amount |
|-------------------------------|----------------|---------------------|
| | | |

- (e) We understand that you are not bound to accept any proposal that you receive;

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

In the capacity of **[insert legal capacity of person signing the proposal]**

Signed: **[signature of person whose name and capacity are shown above]**

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

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

Note to Bidders: If BDS 14.3 requires the proposal price to be quoted separately for different Activities, complete this form as a "Summary of Activity Price" for each activity and complete one overall Summary of Proposal Price.

State the currencies under (currency 1), (currency 2) etc. Delete unused columns.

For lump sum contracts, this financial information will be used as a breakdown of contract price in Appendix C of the contract. For unit price contracts, this financial information will be used as the breakdown of cost estimates in Appendix C of the contract.

F2 Summary of Proposal (or Activity) Price

(Breakdown of Lump Sum or Cost Estimates)

State activity name or total proposal: _____

| Cost item | Cost (currency) |
|------------------|-------------------------|
| Fees | |
| Direct Costs | |
| Local taxes | |
| Subtotals | |

Note to Bidders: Complete this form for the total proposal or for each activity as indicated in the ITB.

The Bidder should complete a separate form for each currency or add currency columns and show up to three totals. Where required, enter separate rates for home and field work.

F3 Summary of Fees

State activity name or total proposal: _____ Currency: _____

| Name | Position | Input Qty | Unit <i>(Days/months etc)</i> | Rate | Total |
|--------------|----------|-----------|----------------------------------|------|-------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total | | | | | |

Note to Bidders: Bidders may reproduce this form in landscape format, but are responsible for its accurate reproduction. The Bidder should complete a separate form for each currency or add currency column and show up to three totals. Complete this form for the total proposal or for each activity as appropriate.

F4 Summary of Direct Costs

State activity name or total proposal: _____

Currency: _____

| Description of Cost | Quantity | Unit of Measure | Unit Price |
|---------------------|----------|-----------------|------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Total | | | |

Notes Local transportation costs are not to be included if local transportation is being made available by the Procuring Entity. Similarly, the project site, office rent/accommodations/clerical assistance costs are not to be included if being made available by the Procuring Entity.

All other costs related to the study not specifically provided for in the financial proposal shall be deemed to have been included in the other rates.

Section 5. Eligible Countries

Procurement Reference Number:

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

A country shall not be eligible if:

- (a) as a matter of law or official regulation, the Government of the Republic of Malawi prohibits commercial relations with that country, provided that the Government is satisfied that such exclusion does not preclude effective competition for the provision of the services required; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government of the Republic of Malawi prohibits any procurement of services from that country or any payments to persons or entities in that country.

Terms of Reference

**CONSULTANCY SERVICES FOR THE SUPERVISION OF CONSTRUCTION OF
KENYATTA ROAD, SHARRAR STREET AND A SECTION OF MZIMBA STREET IN
LILONGWE CITY**

Contents

| | |
|--|-----------|
| Contents | 37 |
| 1. INTRODUCTION | 36 |
| 2. DESCRIPTION OF THE PROJECT | 36 |
| 3. SCOPE OF CONSULTANCY SERVICES | 36 |
| 3.1. General Requirements | 36 |
| 3.2. Administrative/Technical Tasks | 37 |
| 3.2.1. Consultant's Representative on Site | 37 |
| 3.2.2. Contract Preliminaries and General | 37 |
| 3.2.3. Work Programme | 38 |
| 3.2.4. Review of Work, Rejection of Defective Work and Tests | 38 |
| 3.2.5. Interpretation of Contract Documents | 39 |
| 3.2.6. Claims Control | 39 |
| 3.2.7. Modifications of Contract | 39 |
| 3.2.8. Surveying, Setting Out and Measurements (where applicable) | 40 |
| 3.2.9. Measurement of Works | 40 |
| 3.2.10. Payment Certificates | 40 |
| 3.2.11. Keeping Records | 41 |
| 3.2.12. Progress Meetings | 41 |
| 3.2.13. Health, Safety and Environmental Management | 41 |
| 3.2.14. Financial Progress Monitoring | 42 |
| 3.2.15. Completion of Works | 42 |
| 3.2.16. Required Input During Defects Liability Period | 42 |
| 4. COMMENCEMENT | 43 |
| 5. CONTRACT DURATION | 43 |
| 6. REPORTING AND DELIVERABLES | 43 |
| 6.1. Monthly Progress Reports: | 43 |
| 6.2. Minutes of Meetings: | 43 |
| 6.3. Final Report: | 43 |
| 6.4. Accident Reports: | 44 |
| 7. STAFFING | 44 |
| 8. WORK PLAN | 45 |
| 9. START-UP MEETING | 46 |
| 10. PRESENCE OF SITE SUPERVISION STAFF ON SITE | 46 |
| 11. LEAVE, RESIGNATIONS, TRANSFERS AND REPLACEMENTS | 46 |
| 12. ASSISTANCE TO THE CONSULTANT BY THE CONTRACTING AUTHORITY | 46 |
| 13. FACILITIES TO BE PROVIDED BY THE CONSULTANT | 47 |
| 14. CONTACT PERSON | 47 |
| 15. PAYMENTS | 47 |

1. INTRODUCTION

The contract is for the provision of engineering services for the supervision of construction of Kenyatta road, Sharrar Street and a section of Mzimba Street as described below:

Section 1 (Kenyatta Road):

Kenyatta road starts from the junction with the Presidential Way at the Parliament roundabout through Lilongwe Wild Life Centre and Kamuzu Central Hospital Roundabout and ends at the junction with Murray road at Constantini Junction, a distance of 4km.

Connecting to the Kenyatta drive at Constantini Junction to Junction with M001 road at Nico centre is the Sharrar Street, a stretch of about 300m.

Section 2 (Mzimba Street):

Mzimba Street starts from Central Medical Stores entrance through Kamuzu Central Hospital Roundabout and Amina House Roundabout and ends at Mchinji Roundabout, a distance of 3.9km.

2. DESCRIPTION OF THE PROJECT

The project and details of the road sections and the works that are to be supervised are shown on the Table below:

| Road Section | From | To | Length km | Description of Works |
|-------------------|---------------------------------|----------------------|-----------|--|
| 1 (Kenyatta Road) | Parliament Roundabout | Constantini Junction | 4 | Capacity improvement to 6 lanes (3 lanes in each direction) and construction of Lingadzi Bridge as well as construction of KCH Interchange |
| 1(Sharrar Street) | Constantini Junction | Junction with M001 | 0.3 | Capacity improvement to 3 lanes (2 lanes in one direction and 1 lane in the other direction) |
| 2 (Mzimba Street) | Central Medical Stores entrance | Mchinji Roundabout | 3.9 | Capacity improvement to 6 lanes (3 lanes in each direction) |

3. SCOPE OF CONSULTANCY SERVICES

3.1. General Requirements

- (a) The Consultant's supervision teams shall work in close cooperation with the Roads Authority. The team is to operate from the consultant's offices on site.

- (b) The Road Authority will provide all relevant information available. Interpretation of such information will, however, be the sole responsibility of the Consultant. Any additional data will be collected by the consultant.
- (c) Accommodation of the Consultants site teams will be the responsibility of the Consultant.
- (d) The provision of support staff and transport for the Consultant inclusive of fuel and drivers will also be the responsibility of the Consultant.
- (e) The consultant shall be responsible for providing office space and facilities, accommodation, transport, survey equipment and support staff for the supervision teams for the period of the services.
- (f) Preparation of minor designs that may be required can be covered by using standard drawings available from the Road Authority. Where standard drawings are not available for a particular item, the Consultant is to prepare such drawings.
- (g) Detailed drawings of the works have been prepared by the design consultant. The Consultant will be expected to review these and to recommend any revisions that should be considered appropriate or necessary. Such revisions as are agreed to will be issued to the Contractors as site instructions with the necessary detailed drawings which will be prepared by the Consultant.

3.2. Administrative/Technical Tasks

3.2.1. Consultant's Representative on Site

The Consultant shall undertake full time supervision and contract administration during the construction works and shall provide the full- time supervision team described below:

- (i) Resident Engineer
- (ii) Materials Engineer
- (iii) Measurement Engineer
- (iv) Bridge Engineer
- (v) Safety, Health and Environmental Officer

For each Section of the works:

- (i) Surveyor
- (ii) Materials Technicians
- (iii) Inspectors of works and

The Road Authority may request interviews with the candidates for the positions of the resident Engineer, Materials Engineer and the Bridge Engineer proposed by the selected Consultant. Any costs incurred in arranging such interviews will be for the Consultants account.

3.2.2. Contract Preliminaries and General

- (a) The Resident Engineer shall review the qualifications of the proposed key site management personnel of the Contractor and make appropriate recommendations to the Client;
- (b) The Resident Engineer shall receive from the Contractor, check for compliance with Contract requirements, approve and forward to the Client all performance bonds, insurance certificates and policies and guarantees relating to the Contract before submitting to the Client for acceptance.

- (c) During the mobilization of contractor's equipment, camp and personnel, the Resident Engineer shall monitor the contractor's progress against the approved program.
- (d) The Resident Engineer shall prepare and compile detailed works specific forms and check lists relevant to the nature of works. These shall be used and maintained by the inspectors for monitoring work activities. These forms shall be available for inspection by the Client at all times.

3.2.3. Work Programme

- (a) The Resident Engineer shall review the programs submitted by the Contractor for the execution of the Works to establish whether the methods, arrangements, order and timing of the activities are realistic and coherent in relation to the conditions pertaining on Site.
- (b) The Resident Engineer shall identify from the approved program the information needed by the Contractor for the execution of the works and ensure that such information is made available to the Contractor in a timely manner. The requirement for detailed drawings and information related to the works should be given adequate consideration.

3.2.4. Review of Work, Rejection of Defective Work and Tests

The Resident Engineer using the resources of the supervision Teams shall:

- (a) Conduct on-site observation of the work in progress to determine if the work is proceeding in accordance with the contract schedule, and that the completed work conforms to the contract's technical specifications;
- (b) Carry out quality control of construction materials through testing on site or in the laboratory, for compliance with the relevant clauses in the technical specifications. Soils and materials testing records shall be kept on site, with comments in the monthly report. The onus for all testing and control rests entirely on the Consultant.
- (c) Verify that selection and use of materials is in accordance with the specifications. Establish procedures, criteria, and testing methods to verify the quality of the materials;
- (d) Inform the Contractor when work is to be corrected or rejected or to be uncovered for observation, or special testing, inspection or approval;
- (e) Suggest or review and approve substitute materials when necessary. Estimate the cost of such materials and make appropriate adjustments in the specifications in consultation with the Client.
- (f) Inspect and test the works including testing of materials for incorporation in the works for compliance with the relevant clauses in the Technical Specifications. Soils and materials testing records shall be kept on site, with comments in the monthly report.
- (g) Advise the Contractor of the necessity for special inspection and testing of materials and plant to be supplied for incorporation in special maintenance requirements.
- (h) Receive, review and approve or recommend revisions as necessary the Contractors Traffic Management Plan and monitor that once approved this is implemented as proposed.
- (i) The Consultant is to monitor all aspects of health and safety during the execution of the works and ensure that the relevant regulations and requirements are complied with by the Contractor

- (j) The Consultant is to report on all incidents or accidents on the site of the works or associated with the implementation of the works and liaise as necessary with the local authorities and/or police and promptly provide the client with copies of such reports
- (k) Accompany visiting Inspectors representing public or other agencies having jurisdiction over the project, and record the outcomes of these inspections and report as appropriate

3.2.5. Interpretation of Contract Documents

The Resident Engineer shall:

- (a) Maintain liaison with contractor, working principally through the contractor's senior personnel and assist them as necessary in understanding the intent of the contract documents.
- (b) Issue in good time additional details and drawings necessary for the proper execution of the contract;
- (c) Provide interpretations necessary for the proper execution and progress of work, with reasonable promptness and in accordance with agreed time limits;
- (d) Provide written recommendations within a reasonable time, on all claims, disputes and other matters in question relating to the execution or progress of work or the interpretation of the contract documents.
- (e) Instruct the contractor to immediately stop in the event that an activity commences before the contractor has made appropriate submissions and obtained necessary approvals.
- (f) Issue written instructions to the contractor as required.
- (g) Recommend suspension of work when the contractor consistently fails to perform the work in accordance with the contract, and recommend appropriate action.

3.2.6. Claims Control

The Resident Engineer shall:

- (a) Conduct regular meetings with the Contractor to identify issues of design, technical and commercial challenges that may give rise to delays or claims. Ensure that measures are put in place to address these.
- (b) Ensure that the Client is kept fully informed of all issues that the consultant believes may result in claims.
- (c) Identify any correspondence from the Contractor that may be construed as early warning of a claim and ensure proper record keeping is in place to monitor the issue.
- (d) Review the Contractor's 'early warnings' submissions and claim submissions and make recommendations in accordance with the requirements of the Contract.

3.2.7. Modifications of Contract

The Resident Engineer shall:

- (a) Consider and evaluate the Contractor's suggestions for modifications in drawing or specifications and report them to the Client with recommendations;
- (b) Examine Contractor's proposals for changes in construction and provide recommendations to the Client for approval when changes affect cost or quality.

Changes, which do not affect cost or quality may be approved on-site and recorded in the monthly progress reports. Such changes shall be effected by written orders issued by the Consultant; and;

- (c) Prepare any further design and drawings necessary for the information of the Contractor to enable him to carry out the Works. In particular, the Consultant shall issue all instructions related to the works for which the Contract contains only provisional items.

3.2.8. Surveying, Setting Out and Measurements (where applicable)

The Resident Engineer using the resources of the Section supervision Team shall:

- (a) Indicate to the contractor the location of all survey control points established during the design stage and where necessary re-establish any points that have been lost or disturbed.
- (b) Check all alignment and elevation control points provided to the Contractor;
- (c) Check all setting out of the works undertaken by the Contractor; and
- (d) Compile necessary field measurements and calculate quantities of materials incorporated in the works.
- (e) Check the setting out of the alignment and elevations and maintain the corresponding documentation. Continuous control of pavement levels, culvert levels and levels of any other structures;

3.2.9. Measurement of Works

The Resident Engineer through the Measurement Engineer shall:

- (a) Carry out measurement of the works completed on site together with the Surveyor to be used in checking contractor's payment and progress claims; and
- (b) Maintain a record of measured works on site.

3.2.10. Payment Certificates

The Resident Engineer with assistance of the Measurement Engineer shall review monthly interim payment applications submitted by the Contractor in accordance with the conditions of contract and the Resident Engineer shall certify these for payment or return them to the Contractor for revision. Upon certification the Resident Engineer will forward five copies of the approved payment certificates plus all supporting measurements sheets and supporting documentation within two weeks of receipt from the Contractor to the Client, who will forward these for payment to the Road Fund Administration.

The interim payment certificates shall detail the actual quantities of work items completed to date compared with the total billed quantity for each item together with the contract unit rates for each work item, materials on site, details of Dayworks, price adjustments, any other payments to which the Contractor may be entitled to under the contract, and deductions for retentions and advance repayments.

Any matters of dispute on the extent of payments shall be resolved between the Resident Engineer and the Client and any agreed adjustments advised to the Contractor by the Resident Engineer and included as adjustments in the subsequent month's certification.

3.2.11. Keeping Records

The Resident Engineer shall:

- (a) Maintain at the project office files for correspondence, reports, minutes of meetings, product and material submissions, additional drawings issued subsequent to the execution of the Contract, as well as Consultant's clarifications and interpretations of the documents, progress reports and other related documents;
- (b) Keep a diary or log book, recording Contractor's staff hours on job site, equipment availability/ operation, weather conditions, data relative to questions of extras or deductions, list of visiting officials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and
- (c) Maintain a set of drawings (As-built drawings) recording all details of the work as actually executed.

3.2.12. Progress Meetings

The Resident Engineer shall:

- (a) Arrange monthly progress meetings with site inspections and notify those expected to attend. In arranging these meetings, he is expected to circulate the meeting agenda and to subsequently maintain and circulate minutes thereof;
- (b) Prepare monthly progress reports recording the contractor's and the consultant's activities, physical and financial progress in relation to the contractor's program, quality of materials and workmanship, and comment on any unusual occurrences. Eight copies of the reports are to be submitted to the Client within two weeks following the month reported.

3.2.13. Health, Safety and Environmental Management

The Resident Engineer shall:

- (a) Ensure that the contractor complies with all national health and safety rules and all health and safety requirements of the contract documents;
- (b) Ensure that all contractor's staff are properly equipped with personal protective equipment;
- (c) Ensure that the contractor carries sufficient training of his personnel to ensure a safe working environment;
- (d) Ensure that any accidents are properly reported and investigated and that preventative measures are put in place to prevent recurrence;
- (e) Monitor the contractor's implementation of his traffic accommodation to ensure safety of road users including pedestrians and non-motorized traffic during the rehabilitation works;

- (f) Ensure that the contractor has appointed all safety personnel required by the contract documents, trained them and set up systems to allow them to function properly;
- (g) Conduct regular safety meetings with the Contractor's nominated health and safety officers;
- (h) Ensure that an HIV and AIDS awareness program is implemented in accordance with the requirements of the works contract;
- (i) Monitor HIV and AIDS awareness activities to ensure that the program is being implemented as required by the works contract;
- (j) Check that the contractor has put in place environmental and Social management procedures compliant with the contract Environmental and Social Management Plan;
- (k) Monitor compliance with the Environmental and Social Management Plan; and
- (l) Report on environmental and social compliance in the Monthly Progress Report.

3.2.14. Financial Progress Monitoring

The Resident Engineer shall:

- (a) Ensure that the Contractor provides regular cash flow updates in accordance with the works contract;
- (b) Monitor actual cash flows against programme;
- (c) Maintain a "Final Job estimate" which shall be published at least once per quarter and shall contain the base estimate of the final job cost taking into account changes in quantities, variation orders, and claims.

3.2.15. Completion of Works

The Resident Engineer shall:

- (a) Inspect the works in the company of representatives of the Client, the Contractor and the Sub-contractor, if any, prior to handing over of any section of the works;
- (b) Prepare a final snag list of items to be completed or replaced together with a time schedule for remedying of the same;
- (c) Verify that all items on the final snag list have been completed or corrected; and
- (d) Prior to the commencement of the Defects Liability Period for any section, provide written affirmation that the works have been completed in accordance with the requirements of the contract, plans and specifications, and issue a Taking-Over Certificate.
- (e) Where applicable, the Consultant shall maintain and keep updated a set of 'As-Built Drawings'. On substantial completion these shall be finalized for submission with the final report.

3.2.16. Required Input During Defects Liability Period

- (a) Immediately prior to the expiration of the Defects Liability Period for any section of the works for which a Taking-Over Certificate has been issued, the Resident Engineer shall in the company of the Client, and the Contractor inspect the said section and provide written affirmation that the works have been completed and maintained in accordance with the contract, and issue a Maintenance Certificate for the relevant section subject to the approval of the client.
- (b) Upon receipt from the Contractor within 56 days of the issue of the Maintenance Certificate for the last section for which the defects liability period has expired, the

Resident Engineer shall prepare in co-operation with the Contractor the Final Account for the contract.

4. COMMENCEMENT

The consultant is to commence work within thirty (30) calendar days of the Effective Date. The effective date is the date the supervision contract is signed.

5. CONTRACT DURATION

The duration for the assignment is estimated at a total of 9 months based on the anticipated durations of the works contracts as listed below, plus a Defects Liability Period of Twelve (12) months for each Section.

- For Section 1: 9 months
- For Section 2: 9 months

6. REPORTING AND DELIVERABLES

The following reports shall be submitted:

6.1. Monthly Progress Reports:

The Resident Engineer shall submit comprehensive monthly reports on the progress of the works, the Contractors' Performance Assessment Reports and Environmental Monitoring Forms by the 10th of the month following the month reported.

The Resident Engineer shall furnish the client with project progress photographs for each contract in a CD together with the monthly reports.

Non-compliance with that requirement will attract a penalty. For each calendar day of delayed submission (after the tenth day of each month) a deduction of 0.25 % of the Consultant's monthly Invoice will be applied as penalty.

An example of the Monthly Progress Report which includes all the required information will be submitted to the Resident Engineer at the beginning of the assignment. A total of six (6) copies of the reports shall be submitted to Roads Authority.

6.2. Minutes of Meetings:

The Resident Engineer shall issue comprehensive minutes of regular and special meetings and submit three copies to Roads Authority. Minutes of the regular meetings may be attached to the Monthly Progress Reports or, depending on the circumstances, may be submitted separately.

6.3. Final Report:

Within 28 days of the issuance of the Taking Over Certificate, the Resident Engineer shall prepare a Final Report, which shall highlight all major points of interest that arose during the Contract. The report will also include the summary of the type, quality, quantities and sources of materials used on the project; Contractor's plant and personnel; problems encountered and solutions employed; changes in design and specifications and the reasons therefore; a

breakdown of the final cost item by item; a summary of variation orders and expenditures of provisional sums and contingency sums.

6.4. Accident Reports:

A report of the circumstances of accidents occurring on the site shall be forwarded to the Client with all due dispatch.

7. STAFFING

The following expertise will be required to carry out the consultancy services. For each expert proposed, curriculum vitae of no more than four pages shall be submitted.

| Item | Description | Man Month |
|----------------------------|---|-----------|
| A – Key Personnel | | |
| 1 | Resident Engineer (1 No) | 11 |
| 2 | Materials Engineer (1 No) | 9 |
| 3 | Measurement Engineer (1 No) | 9 |
| 4 | Bridge Engineer (1No) | 9 |
| SUB-TOTAL A | | 38 |
| B - Other Personnel | | |
| 5 | Surveyor (2 No) | 18 |
| 6 | Safety, Health and Environmental Officer (1 No) | 9 |
| 7 | Materials Technician (4 No) | 36 |
| 8 | Inspector of Works - Structures (1 No) | 9 |
| 9 | Inspector of Works - Surfacing (1 No) Kenyatta | 9 |
| 10 | Inspector of Works - Earthworks (1 No) Kenyatta | 9 |
| 11 | Inspector of Works - Pavement (1 No) Kenyatta | 9 |
| 12 | Inspector of Works – Surfacing (1 No) Mzimba | 9 |
| 13 | Inspector of Works - Earthworks (1 No) Mzimba | 9 |
| 14 | Inspector of Works - Pavement (1 No) Mzimba | 9 |
| SUB-TOTAL B | | 126 |

The consultant's personnel, nominated for this project, shall be suitably qualified and experienced. As a guide, the following is an indication of the minimum level of training and experience expected of the key members of the Consultants supervision team:

a. Resident Engineer:

A professionally qualified Civil Engineer with a minimum qualification of B.Sc. in Civil Engineering or the equivalent, with a minimum of 20 years' experience of which at least fifteen (15) years must have been in the design and supervision of road construction works. Candidates must have documented experience in the position of Resident Engineer on at least five (5) projects of a similar size and nature in the general region of Sub Saharan Africa.

b. Materials Engineer

A minimum qualification of B.Sc. in Civil Engineering or equivalent, registered and at least ten (10) years working experience in supervision of road works as a Materials Engineer with documented experience in the capacity of Materials Engineer on at least three (3) road projects of similar size and nature in the Region of Sub Saharan Africa

c. Measurement Engineer

A minimum qualification of a B.Sc. in Civil Engineering or quantity surveying or equivalent, and at least ten (10) years working experience in supervision of road works as a Measurement Engineer with documented experience in the capacity of Measurement Engineer on at least three (3) road projects of similar size and nature in the Region of Sub Saharan Africa

d. Bridge Engineer

A minimum qualification of B.Sc. in Civil Engineering or the equivalent, registered and at least ten (10) years of working experience in supervision of road works as a Bridge Engineer with not less than documented experience in the capacity of Bridge Engineer on at least three (3) road projects of similar size and nature in the Region of Sub Saharan Africa

e. Safety, Health and Environmental Officer

A minimum qualification of a degree or diploma in a relevant discipline and 10 years' general related experience of which five (5) years must have been in the implementation of environmental management requirements and the monitoring and implementation of health and safety requirements on three (3) road construction projects.

f. Surveyor

A minimum qualification of a BSc in Surveying or a Diploma in Civil Engineering previous experience of at least five (5) years in setting out and survey control with not less than documented experience in the capacity of Surveyor on at least three (3) road projects of similar size and nature in the Region of Sub Saharan Africa

g. Materials Technicians

A minimum qualification of either a BSc Degree in Civil Engineering and 2 years' experience in materials testing or a Diploma in Civil Engineering and 3 years' experience in materials testing on a road project in the Sub Saharan Africa Region.

h. Inspectors

A minimum qualification of either a Diploma in Civil Engineering and 5 years' experience in a site capacity on road works in the region or a NCIC Grade II Roads Foremanship Certificate or Ministry of Works Certificate with at least 10 years of working experience in road works.

8. WORK PLAN

On the basis of the activities outlined in 6.3.2 of these Terms of Reference, the consultants will prepare a work plan for the assignment and include this in their technical proposal as well as state the approach to be taken in carrying out the assignment. The work plan should set out the consultants' approach to the following activities.

- Organization of the Project team and interrelations between the members of the team;
- Description of tasks and duties of each member of the Project team
- Mobilization of the Team and deployment of each expert;
- Bar-charts displaying activities to be carried out on site, period of holidays of each expert indicative dates for short term missions of each expert, etc.;
- Reporting

9. START-UP MEETING

The successful Consultant shall attend together with all their proposed supervision staff (i.e. Resident Engineer, Assistant Resident Engineer, Materials Engineer, Bridge Engineer and Measurement Engineer) to a meeting with the Client to be held before the commencement of the supervision services. The client or his representative shall elaborate the expected inputs and deliverables from each level of staffing. The client shall not be responsible for the costs incurred by the consultant in attending this meeting.

10. PRESENCE OF SITE SUPERVISION STAFF ON SITE

In order to satisfactory perform the tasks it is a requirement that the all site supervision staff are present on site at all times while the works are in progress.

11. LEAVE, RESIGNATIONS, TRANSFERS AND REPLACEMENTS

The Consultant's staff shall arrange their annual leave to coincide with the Contractor's annual recess. Should a staff member however be granted special leave outside the Contractor's annual close-down, the Consultant shall provide at no additional cost to the Employer an equally qualified person to stand in for the period that the permanent site staff member is on special leave.

The special leave of a permanent site staff member as well as the person relieving a permanent site staff member shall be approved by the Client prior to such leave being taken. The Consultant shall not transfer any staff without prior written permission of the Client and shall replace personnel, if deemed necessary by the Client and fill vacancies which are created for whatever reason, e.g. resignation, illness, non-performance etc., at no additional costs to the Employer, with equally or better qualified persons approved by the Client.

The remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced. In case of lesser qualifications and working experience, the client shall have either the right to reject the proposed replacement or to negotiate reduced remuneration.

12. ASSISTANCE TO THE CONSULTANT BY THE CONTRACTING AUTHORITY

The Contracting Authority will make available the following information and support to the consultant:

- (i) All available drawings, reports, documents, maps, data, tender dossier, etc. regarding the works to be supervised;
- (ii) Introduction letters to facilitate the access of the consultants' staff to Ministries, Government administrations, public organizations, authorities and agencies, etc. whose activities and roles are relevant to the consultancy assignment.
- (iii) Senior Staff of the Roads Authority when necessary and relevant.

13. FACILITIES TO BE PROVIDED BY THE CONSULTANT

The Consultant shall be responsible for the provision of all facilities required to undertake the efficient and effective site supervision of road works with the exception of laboratory facilities which will be provided through the works contract.

With respect to transport, the consultant shall provide nine (9) motor vehicles for the supervision of the works and the measurement unit for the transport shall be “vehicle-months”.

14. CONTACT PERSON

- (a) The Consultant’s liaison person shall be the Resident Engineer and as necessary the stated representative of the Consultants firm in the Head or Regional Office;
- (b) The Clients liaison person on this project shall be the designated Project Engineer in the Roads Authority.

15. PAYMENTS

Payment for site supervision services shall be on monthly basis and shall depend on the actual time inputs of the various staff on site supported by time sheets confirmed by the Resident Engineer and countersigned by the Clients representative.

GENERAL CONDITIOND OF CONTRACT

Section 7: General Conditions of Contract

Table of Clauses

| | | |
|-----------|--|-----------|
| A. | General Provisions..... | 80 |
| 1. | Definitions..... | 80 |
| 2. | Corrupt Practices..... | 80 |
| 3. | Contract Documents..... | 81 |
| 4. | Law Governing the Contract..... | 82 |
| 5. | Language..... | 82 |
| 6. | Notices..... | 82 |
| 7. | Location..... | 82 |
| 8. | Authorized Representatives..... | 82 |
| 9. | Taxes and Duties..... | 82 |
| 10. | Eligibility..... | 82 |
| B. | Commencement, Completion, Modification and Termination of Contract..... | 82 |
| 11. | Effectiveness of Contract..... | 82 |
| 12. | Commencement of Services..... | 82 |
| 13. | Expiration of Contract..... | 83 |
| 14. | Modification..... | 83 |
| 15. | Force Majeure..... | 83 |
| 16. | Termination..... | 83 |
| C. | Obligations of the Consultant..... | 84 |
| 17. | General..... | 84 |
| 18. | Conflict of Interests..... | 84 |
| 19. | Confidentiality..... | 85 |
| 20. | Insurance to Be Taken Out by the Consultant..... | 85 |
| 21. | Consultant's Actions Requiring Client's Prior Approval..... | 85 |
| 22. | Reporting Obligations..... | 85 |
| 23. | Documents Prepared by the Consultant to Be the Property of the Client..... | 86 |
| D. | Consultant's Personnel..... | 86 |
| 24. | Description of Personnel..... | 86 |
| 25. | Removal and/or Replacement of Personnel..... | 86 |
| E. | Obligations of the Client..... | 86 |
| 26. | Assistance and Exemptions..... | 86 |
| 27. | Change in Laws..... | 87 |
| 28. | Services and Facilities..... | 87 |
| F. | Payments to the Consultant..... | 87 |
| 29. | Contract Price and Currency..... | 87 |
| 30. | Payment..... | 87 |
| 31. | Payment Schedule and Advance Payment..... | 88 |
| 32. | Payment Terms..... | 88 |
| 33. | Price Adjustments..... | 88 |
| G. | Settlement of Disputes..... | 89 |
| 34. | Amicable Settlement..... | 89 |
| 35. | Dispute Settlement..... | 89 |

Section 7. General Conditions of Contract

A. General Provisions

1. Definitions

- 1.1 Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

“Contract” means the Agreement entered into between the Parties and includes the Contract Documents.

“Contract Documents” means the documents listed in GCC 2.1, including all attachments, appendices, and all documents incorporated by reference therein, and shall include any amendments thereto.

“Contract Price” means the sum stated in the Agreement representing the maximum, total or estimated amount payable for the provision of the Services.

“Days” are calendar days; “months” are calendar months.

“Eligible Countries” means the countries and territories eligible as listed in the SCC.

“GCC” means these General Conditions of Contract.

“Government” means the Government of the Republic of Malawi.

"Member", in case the Supplier consists of a joint venture of more than one entity, means any of these entities; "Members" means any of these entities, and "Member in charge" means the entity specified in the SCC to act on their behalf in exercising all the Suppliers' rights and obligations towards the Procuring Entity under this Contract.

"Party" means the Procuring Entity or Supplier, as the case may be, and "Parties" means both of them.

“Personnel” means persons engaged by the Supplier or by any Sub-consultant as employees and assigned to the performance of the Services or any part thereof; “Foreign Personnel” means such persons who at the time of being so engaged had their domicile outside the Republic of Malawi; “Local Personnel” means such persons who at the time of being so engaged had their domicile inside the Republic of Malawi; and “Key Personnel” means those Personnel that are regarded by the Supplier as essential to the successful completion of the Services and related tasks.

“Procuring Entity” means the Roads Authority of Malawi, purchasing the Services, as specified in the Agreement, hereinafter called “the Client”.

“SCC” means the Special Conditions of Contract.

“Services” means the consultancy services to be performed by the Supplier as described in the contract.

“Supplier” means the natural person, private or government entity, or a combination of the above, whose proposal to perform the Contract has been accepted by the Procuring Entity and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier, hereinafter called “the Consultant”.

“Sub-consultant” 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 is subcontracted by the Supplier.

“Time-Based contract” means a contract under which the Services are provided on the basis of fixed fee rates and payments are made on the basis of time actually spent.

2. Corrupt Practices

- 2.1 It is the Government's policy to require that Procuring Entities, as well as Bidders and Consultants under Government financed contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Government:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish prices at artificial, noncompetitive levels; and
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
 - (b) will 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.
- 2.2 In pursuit of the policy defined in GCC Clause 2.1, the Procuring Entity may terminate a Contract in accordance with GCC Clause 16 if it at any time determines that corrupt, fraudulent, collusive or coercive practices were engaged in by representatives of the Procuring Entity or of a Consultant, during the procurement or the execution of that contract.

3. Contract Documents

- 3.1 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Contract Agreement, including all appendices;
 - (b) Special Conditions of Contract;
 - (c) General Conditions of Contract; and
 - (d) Terms of Reference
 - (e) 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 a Modification to Contract is made in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party thereto.
- 3.4 If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.
- 3.5 Any action required or permitted to be taken, and any document required or permitted to be executed, under the Contract by the Client or the Consultant may be taken or executed by the authorised representatives specified in the SCC.
- 3.6 The Contract constitutes the entire agreement between the Client and the Consultant and supersedes all communications, negotiations and agreements (whether written or oral)

of parties with respect thereto made prior to the date of Contract. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

4. Law Governing the Contract

- 4.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the laws of the Republic of Malawi, unless otherwise specified in the SCC.

5. Language

- 5.1 This Contract has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract, unless otherwise specified in the SCC.

6. Notices

- 6.1 Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered to an authorised representative of the Party at the address specified in the SCC.

7. Location

- 7.1 The Services shall be performed at such locations as are specified in the Terms of Reference and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Malawi or elsewhere, as the Client may approve.

8. Authorised Representatives

- 8.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Consultant may be taken or executed by the authorised representatives specified in the SCC.

9. Taxes and Duties

- 9.1 Unless otherwise specified in the SCC, the Consultant, Sub-consultants, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the law of the Republic of Malawi, the amount of which is deemed to have been included in the Contract Price.

10. Eligibility

- 10.1 The Consultant and its Subconsultants shall have the nationality of an eligible country. A Consultant or Subconsultant 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.
- 10.2 The Consultant and its Sub-consultants shall provide Personnel who shall be citizens of eligible countries.

B. Commencement, Completion, Modification and Termination of Contract

11. Effectiveness of Contract

- 11.1 This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be stated in the SCC.

12. Commencement of Services

12.1 The Consultant shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be specified in the SCC.

13. Expiration of Contract

13.1 Unless terminated earlier pursuant to Clause 16, this Contract shall terminate at the end of such time period after the Effective Date as is specified in the SCC.

14. Modification

14.1 Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

15. Force Majeure

Definition

15.1 For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

No Breach of Contract

15.2 The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

Extension of Time

15.3 Any period specified within the Contract by which a Party is required to complete any action or task, if as a result of Force Majeure, shall be extended for a period equal to the time during which the Party was unable to perform the action or task.

Payments

15.4 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Service after the end of such period.

16. Termination

By the Client

16.1 The Client may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in paragraphs (a) through (e) of this Clause 16.1 and sixty (60) days' in the case of the event referred to in (f):

- (a) if the Consultant does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- (b) if the Consultant become insolvent or bankrupt;
- (c) the Consultant fails to comply with any final decision reached as a result of dispute settlement proceedings pursuant to GCC Clause 35;

- (d) the Consultant, in the judgement of the Client, has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract;
- (e) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (f) if the Client, in its sole discretion, decides to terminate the Contract.

By the Consultant

16.2 The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) to (d) of this Clause 16.2:

- (a) If the Client fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue;
- (b) If the Client 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 Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach;
- (c) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) If the Client fails to comply with any final decision reached as a result of dispute settlement proceedings pursuant to GCC Clause 35.

Payment upon Termination

16.3 Upon termination of this Contract pursuant to Clauses 16.1 or 16.2, the Client shall make the following payments to the Consultant:

- (a) Remuneration pursuant to Clause 29 or 30 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 16.1, 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.

C. Obligations of the Consultant

17. General

17.1 The Consultant shall perform the Services and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-consultants or third parties.

18. Conflict of Interests

Consultant Not to Benefit from Commissions, Discounts etc

18.1 The remuneration of the Consultant pursuant to Clause 29, 30 or 33 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services, and the Consultant shall not accept for its own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of its obligations under the Contract, and the Consultant shall use its best

efforts to ensure that the Personnel, any Sub-consultants, and agents of either of them similarly shall not receive any such additional remuneration.

Consultant and Affiliates Not to Be Otherwise Interested in Project

18.2 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and its affiliates, as well as any Sub-consultant and any of its affiliates, shall be disqualified from providing goods, works, or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

Prohibition of Conflicting Activities

18.3 Neither the Consultant nor its Sub-consultants nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of the Contract, any business or professional activities in the Republic of Malawi which would conflict with the activities assigned to them under the Contract; or
- (b) after the termination of this contract, such other activities as may be specified in the SCC.

19. Confidentiality

19.1 The Client and the Consultant shall keep confidential and shall not without the written consent of the other party hereto, divulge to any third party any reports or data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Consultant may furnish to its Sub-consultant such documents, data, and other information it receives from the Client to the extent required for the Sub-consultant to perform its work under the Contract, in which event the Consultant shall obtain from such Sub-consultant an undertaking of confidentiality similar to that imposed on the Consultant under the Contract.

20. Insurance to Be Taken Out by the Consultant

20.1 The Consultant shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage, as shall be specified in the SCC.

20.2 The Consultant, at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

21. Consultant's Actions Requiring Client's Prior Approval

21.1 The Consultant shall obtain the Client'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;
- (b) appointing such members of the of the personnel not listed by name in the Contract; and
- (c) any other action that may be specified in the SCC.

22. Reporting Obligations

22.1 The Consultant shall submit to the Client the reports and documents specified in the Terms of Reference in the form, in the numbers, and within the periods set forth in the said Terms of Reference.

23. Documents Prepared by the Consultant to Be the Property of the Client

- 23.1 All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Consultant in accordance with the Contract shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SCC.

D. Consultant's Personnel**24. Description of Personnel**

- 24.1 The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in the Contract. The Key Personnel and Sub-consultants listed by title as well as by name in Contract are hereby approved by the Client.

25. Removal and/or Replacement of Personnel

- 25.1 Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
- 25.2 If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds therefor, provide as a replacement a person with qualifications and experience acceptable to the Client.
- 25.3 The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

E. Obligations of the Client**26. Assistance and Exemptions**

- 26.1 Unless otherwise specified in the SCC, the Client shall use its best efforts to ensure that the Government shall:
- (a) Provide the Consultant, Sub-Consultants and Personnel with work permits and such other documents as shall be necessary to enable the Consultant, Sub-Consultants or Personnel to perform the Services.
 - (b) Arrange for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Republic of Malawi.
 - (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependents.
 - (d) Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.
 - (e) Provide assistance to the Consultant's international personnel and, where applicable international Sub-Consultants employed by the Consultant, to obtain registration or obtain any permit to practice their profession in the Republic of Malawi.
 - (f) Grant to the Consultant, any Sub-Consultants and the Personnel of either of them the privilege, pursuant to the laws of the Republic of Malawi, of bringing into the Republic of

Malawi reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.

- (g) Provide to the Consultant, Sub-Consultants and Personnel any such other assistance as may be specified in the SCC.

27. Change in Laws

27.1 Unless otherwise specified in the Contract, if after the date of the Request for Proposals, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the Republic of Malawi (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the period for completion of the Services and/or the Contract Price, then such time period and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Consultant 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 by a contract modification or a price adjustment.

28. Services and Facilities

28.1 The Client shall make available to the Consultant the Services and Facilities listed in the Contract.

F. Payments to the Consultant

29. Contract Price and Currency

29.1 The Contract Price shall be expressed as a specific amount or amounts in the Agreement representing the estimated amount for a Time-Based contract.

29.2 Payments shall be made in the currency or currencies of the contract price, unless otherwise specified in the SCC.

29.3 In consideration of the Services performed by the Consultant under the Contract, the Client shall make to the Consultant such payments in such manner as is provided by the Contract.

30. Payment

30.1 The Contract Price shall be an estimated amount, based on the Breakdown of Cost Estimates in the Contract.

30.2 Payment shall be made for the time actually spent and for reimbursable expenses actually incurred by the Consultant in the performance of the Services.

30.3 Fees for the Personnel shall be determined on the basis of time actually spent by the Personnel in the performance of the Services after the date determined in accordance with the Commencement Date of the Services, or such other date as the Parties may agree in writing, and at the rates specified in the Contract. Personnel time spent in the performance of the Services shall include time for necessary travel via the most direct route, at the rates detailed in the Contract, unless otherwise specified in the SCC.

30.4 Reimbursable expenditures shall include costs actually and reasonably incurred by the Consultant in the performance of the Services, as specified in the Contract.

- 30.5 The Consultant's total remuneration shall not exceed the ceiling amount stated in the SCC. The Consultant shall notify the Client as soon as cumulative charges incurred for the Services have reached 80% of the ceiling amount.
- 30.6 Separate invoices shall be submitted for fees and for reimbursable expenditure. Invoices shall be supported by the documentation specified in accordance with GCC 32.2.
- 30.7 A final payment shall be made against submission by the Consultant of a final statement, identified as such and approved by the Client. The final statement shall be deemed approved by the Client ninety calendar days after receipt by the Client unless the Client, within this period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the deliverables or the final statement.
- 30.8 Any amount which the Client has paid or caused to be paid which is in excess of the amounts actually payable in accordance with the provisions of the Contract, shall be reimbursed by the Consultant to the Client within thirty days after receipt by the Consultant of a notice thereof. Any such claim by the Client for reimbursement must be made within twelve months after receipt by the Client of a final statement approved by the Client.

31. Payment Schedule and Advance Payment

- 31.1 All payments under the Contract shall be made in accordance with the payment schedule specified in the SCC.
- 31.2 Unless otherwise stated in the SCC, where any payment is made in advance of any deliverables as an advance payment, the payment shall be made against the provision by the Consultant of a bank guarantee for the same amount, and shall be valid for the period stated in the SCC.
- 31.3 Should the advance payment guarantee cease to be valid and the Consultant fails to re-validate it, a deduction equal to the amount of the advance payment may be made by the Client from future payments due to the Consultant under the contract.
- 31.4 If a Contract is terminated for any reason, the guarantee securing the advance may be invoked in order to recover the balance of the advance still owed by the Consultant.

32. Payment Terms

- 32.1 Unless otherwise specified in the SCC, payments shall be made by the Client, no later than sixty days after submission of a request for payment by the Consultant.
- 32.2 The Consultant's request for payment shall be made to the Client in writing, accompanied by invoices and supporting documents. The supporting documentation required shall be as specified in the SCC.
- 32.3 The Client shall notify the Consultant 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 Client 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 Consultant, the Client may add or subtract the difference from any subsequent payments.
- 32.4 If the Client has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Consultant for each day of delay at the rate stated in the SCC.

33. Price Adjustments

- 33.1 Prices charged by the Consultant 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.

G. Settlement of Disputes

34. Amicable Settlement

- 34.1 The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

35. Dispute Settlement

- 35.1 Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the laws of the Republic of Malawi.

SPECIAL CONDITIONS OF CONTRACT

Section 8: Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

| GCC Clause | Special Conditions of Contract |
|------------|--|
| GCC 1.1 | The Procurement Reference Number for the contract is: |
| GCC 1.1 | The Eligible Countries are those described in Section 6 of the Request for Proposals document. |
| GCC 3.1(e) | Other documents forming part of the contract are: Letter of award Minutes of Contract negotiations Technical Proposal with Standard Forms T4, T5, T6, T7 and T8 Financial Proposal with Standard Forms F2, F3, F4 and F5 Section 6 of the Request for Proposals Document |
| GCC 4.1 | The Contract shall be governed by the laws of <u>Malawi</u> |
| GCC 5.1 | The language of the contract shall be <u>English</u> . |
| GCC 6.1 | The addresses for Notices are: For the Client: Roads Authority Functional Building Off Paul Kagame (Chilambula) Road Private Bag B346 Lilongwe 3 Telephone: 265 (01) 753 699 Fax: 265 (01) 750 307 Attention: The Chief Executive Officer E mail: ra@ra.org.mw For the Consultant: <i>(Insert Name)</i> Street Address: <i>(Insert)</i> Town/City: <i>(Insert)</i> Country: <i>(Insert)</i> Telephone: Email:..... |
| GCC 8.1 | The Authorised Representatives are: for the Roads Authority <u>Eng.Florence Ndenguma, Chief Executive Officer</u> for the Consultant: <i>(Insert Name and position)</i> |
| GCC 11.1 | Date of signing of the contract by both parties <i>(Insert)</i> |
| GCC 12.1 | The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than thirty (30) days after the date the contract becomes effective. |
| GCC 13.1 | The period for expiration of the contract is: 18 months after the Effective Date. |
| GCC 17.1 | <i>Add the following to this clause:</i> In order to satisfactorily perform the site supervision of road works it is a requirement that site supervision staff are physically present on site at all times while the works are in progress. Non-compliance with these minimum requirements will be considered by the RA as violation of the contract. Consequently, days of non-attendance will be deducted from the Consultant's Invoice proportionately to the tendered rates of the man-months. |

| | |
|-------------|--|
| | <p>Costs of wrong instructions of consultants' site supervision staff to the contractor that lead to damage or reduced quality in workmanship of activities will be claimed from the consultant and have to be covered by the Professional Indemnity Insurance of clause SCC 20.1</p> <p>Cost of contractor's claims resulting from delayed instructions of consultants' site supervision staff have to be covered by the Professional Indemnity Insurance of clause SCC 20.1.</p> |
| GCC 18.3(b) | The following activities are prohibited: <u>N/A</u> |
| GCC 20.1 | <p>The risks and coverage shall be:</p> <p>(i) Third Party motor vehicle -</p> <p>(ii) Third Party liability-</p> <p>(iii) Employer's liability and workers' compensation-</p> <p>(iv) Professional Indemnity Insurance- The value of the Consultancy fees</p> <p>(v) Loss or damage to equipment and property-</p> <p><i>* This will be required only in respect of the vehicle(s) provided by the Consultant</i></p> |
| GCC 21.1(a) | <p>The Client's prior approval is also required for:</p> <p><u>Any increase in any item of the civil works BOQ in excess of 25% with an aggregate limit of 50% of the contingency amount;</u></p> <p><u>Use of contingencies in the civil works contract in excess of 50% of the contingency total;</u></p> <p><u>Extension of time for civil works contract</u></p> <p><u>Approval for contractors' claims</u></p> <p><u>Approval of variation orders for civil works contracts</u></p> <p><u>Approval of subcontracting parts of civil works contracts</u></p> <p><u>Use of all reports or documents generated as part of the services</u></p> |
| GCC 22 | The Resident Engineer shall submit comprehensive Monthly Reports on the progress of the works as well as the Contractors' Performance Assessment Reports by the 10th of the month following the month reported. Non-compliance with that requirement will attract a penalty. For each calendar day of delayed submission (after the eleventh of each month) a deduction of 0.25 % of Consultants monthly Invoice will be applied as penalty. |
| GCC 23.1 | The future use of documents is restricted as follows: <u>the document shall not be used for the purposes unrelated to the contract without the prior written approval of the Client</u> |
| GCC 29.2 | Payments shall be made in Malawi Kwacha only unless otherwise provided in this SCC |
| GCC 30.5 | The ceiling amount is the Contract Price |
| GCC 31.1 | <p>The payment schedule shall be:</p> <p>Twenty (20) percent of the contract value shall be paid upon receipt by of an acceptable Advance Payment Guarantee. The advance payment will be repaid by deduction in equal instalments against invoices for the subsequent 12 months.</p> <p>Monthly payments shall be made for the actual inputs provided and reimbursable costs incurred by the consultant, against invoices supported by itemised statements and supporting documentation.</p> <p>The final payment shall be made after submission and approval of the final report and a final statement of expenditure.</p> |
| GCC 31.2 | An Advance Payment Guarantee shall be required in the format of the example given in Section 10, Contract Forms, or similar approved in advance by the Client. The period of validity of the Advance Payment Guarantee shall be: 12 Months |
| GCC 32.2 | The following documentation shall be required to support requests for payment: Reports, approved Time sheets and other agreed deliverables Evidence of Reimbursables (receipts of hotels or lodges for authorised trips, signed logbooks)" |
| GCC 32.4 | Interest shall be paid on late payments at the rate of: 1% above the Commercial Bank rate calculated at simple interest |
| GCC 33.1 | This contract is not subject to price adjustment |

| | |
|--|--|
| GCC 35.1 | The law governing the contract is the law of the Republic of Malawi. There will be one Arbitrator The Arbitration will take place in Malawi The Arbitration will be held in the English language. |
| The following new Clauses are included | |
| GCC 36 | Termination of Contract for Failure to Become Effective If this Contract has not become effective within one month after the date of Contract signature either Party may, by not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by the consultant without providing acceptable grounds, the consultant might be debarred from procurement by the Roads Authority for a period of 24 months. |
| GCC 37 | Suspension The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension. |

Section 9: Contract Forms

Section 9: Contract Forms

| | |
|--------------------------|----|
| Contract Agreement | 72 |
| Advance Payment Security | 74 |

Contract Agreement

This Contract Agreement is made the..... day of the month of between The Government of Malawi through the Roads Authority of Private Bag B346, Lilongwe 3 (the "Client ") and of (the "Consultant").

WHEREAS

- (a) the Client has requested the Consultant to provide certain consultancy services (hereinafter called the "Services") as defined herein and attached to this Contract;
- (b) the Consultant having represented to the Client that it has the required professional skills, personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto agree as follows:

1. The documents forming the Contract shall be in the order of priority and stated below as follows:
 - **Contract**
 - **Letter of Award**
 - **Minutes of Contract Negotiations**
 - **Special Conditions of Contract (SCC)**
 - **General Conditions of Contract (GCC)**
 - **Technical Proposal with Standard Forms T4, T5, T6**
 - **Terms of Reference**
 - **Financial Proposal with Standard Forms F2, F3, F4**
2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
 - (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall pay the Consultant the Contract Price of _____ (MWK _____) or such other sum as may become payable under the provisions of the Contract, at the times and in the manner prescribed by the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

Signed by _____ (for the Client)

Name: Eng. Florence Ndenduma Authorised Representative

Position: Chief Executive Officer

Witnessed by:

Name:

Signed by _____ (for the
Consultant)

Name: _____ Authorised
Representative

Position:

Witnessed by:

Name:

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

Advance Payment Security

Date: **[insert date (as day, month, and year) of Advance Payment Security]**

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

To: **[insert complete name of Client]**

In accordance with the payment provision included in the Contract, in relation to advance payments, **[insert complete name of Consultant]** (hereinafter called “the Consultant”) shall deposit with the Client a security consisting of **[indicate type of security]**, to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of **[insert currency and amount of guarantee in words and figures]**.

We, the undersigned **[insert complete name of Guarantor]**, legally domiciled in **[insert full address of Guarantor]** (hereinafter “the Guarantor”), as instructed by the Consultant, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Client on its first demand without whatsoever right of objection on our part and without its first claim to the Consultant, in the amount not exceeding **[insert currency and amount of guarantee in words and figures]**.

This security shall remain valid and in full effect from the date of the advance payment received by the Consultant under the Contract until **[insert day and month]**, **[insert year]**.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

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

In the capacity of **[insert legal capacity of person signing the Security]**

Signed: **[signature of person whose name and capacity are shown above]**

Duly authorised to sign the Security for and on behalf of: **[insert complete name of the Financial Institution]**

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