

User Guide

for

Request for Proposals

for the

**Procurement of Consultancy
Services (Small Lump Sum Contract)**

Government of the Republic of Malawi

December 2004

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Acronyms

EC	Evaluation Criteria
ITB	Instructions to Bidders
LS	List of Services
PE	Procuring Entity
RFP	Request for Proposals
SBD	Standard Bidding Document
SOR	Schedule of Requirements
TOR	Terms of Reference

Guidance Notes on the use of the Standard Request for Proposals and User Guide

Purpose of the Request for Proposals (RFP)

The purpose of the RFP is to provide Procuring Entities (PEs) with one standard draft containing basic contractual provisions and safeguards which are required by the Government of the Republic of Malawi in the execution of public procurement and the use of public funds.

The RFP for the Procurement of Consultancy Services has been designed to:

- (i) simplify the drafting of a specific RFP document for Procurement of Consultancy Services by procurement staff;
- (ii) minimise the time required by the Internal Procurement Committee to approve RFP documents prior to release;
- (iii) reduce Bidders' time and effort in the preparation of proposals; and
- (iv) facilitate and simplify the evaluation and comparison of proposals and Contract award by the Procuring Entity.

The key feature of the RFP is that it can be used with minimum changes, as it does not contain explanations, footnotes or examples that should not form part of the RFP document.

Purpose of the User Guide

This User Guide has been prepared to provide guidance to public officials in the correct use of the RFP for Consultancy Services as a model for preparing an individual RFP. This user guide should be used in conjunction with the appropriate Desk Instructions that provide straightforward, but detailed, guidance on the procedures to be followed when conducting procurement using public funds. They are designed to be simple to use and understand, by breaking the overall procurement process down into a series of individual procedures and breaking each procedure down into step-by-step instructions.

Users should ensure that the correct User Guide is referred to. Different User Guides have been produced for each standard document including the Standard Bidding Documents (SBD) for the Procurement of Goods, Works and Services depending upon the form of contract to be used. Users should refer to the header and footer of each page of the User Guide to ascertain this.

All the explanations and notes necessary for PEs to use the standard documents are contained in this User Guide.

All guidance notes, in both the standard documents and the user guide, are found between square brackets in bold e.g. **[insert date for submission of proposals]**.

This User Guide is not part of the RFP and is not intended for issue to Bidders. Notes intended for Bidders are included in the RFP document itself. These notes are in italics and should not be deleted when drafting the RFP.

When to Use the Request for Proposals for Consultancy Services

Procurement Method and Value

User Guide for the Request for Proposals for the Procurement of Consultancy Services (Small Lump Sum Contracts)

This RFP for the Procurement of Consultancy Services is suitable for use under the Request for Proposals procurement method for low value procurement up to Malawi Kwacha 3 million. It should be used when any shortlist contains only Malawian companies or individuals, however with some adaptation it can be used for low value procurement when foreign companies and individuals have been shortlisted.

For higher value consultancy services the lump sum and complex time based request for proposal should be used and for very low value procurement the Request for Quotations document should normally be used.

Type of Contract

Lump-sum contracts are normally used when definition of the tasks to be performed is clear and unambiguous, when the commercial risk taken by the Consultant is relatively low and Consultants are therefore prepared to perform the assignment for an agreed predetermined lump-sum price. The lump sum price is arrived at on the basis of inputs - including fee rates - provided by the Bidder. The Procuring Entity agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs e.g. reports. A major advantage of the lump-sum contract is the simplicity of its administration, as the Procuring Entity only has to be satisfied with the outputs without monitoring the staff inputs. Studies are usually carried out on a lump-sum basis: for example, surveys, master plans, economic, sector, simple feasibility and engineering studies.

Summary of the Bidding Process

The Public Procurement Act of 2003, and the Public Procurement Regulations 2004 detail the full procurement processes, rules and procedures and the procurement methods to be followed by Procuring Entities. The Public Procurement Act and Regulations must be complied with at all times.

The relevant parts of the bidding process are summarised here as follows:

Selection of Bidders;

Preparation and Issue of RFP Documents;

Bidding Period and Receipt of Proposals;

Proposal Opening;

Proposal Evaluation; and

Proposal Acceptance, Contract Award and placement.

Full details of the procedures to be adopted in the bidding process are contained in the following desk instructions:

1. Raising a requisition
- 2C Preparing a description of requirements for services
3. Selecting the procurement method and planning the procurement
- 4B Obtaining and assessing expressions of interest
- 5B Developing a short list
- 6A Drafting a bidding document or request for proposals document
8. Issuing invitation documents
9. Managing a pre-bid conference and site visits
10. Handling bidder clarifications, modifications and extensions
11. Receiving tenders
- 12B Opening tenders
14. General evaluating procedures for consultancy services
- 14A – C Evaluating proposals for consultancy services (QCBS, QCS & LCS)
- 16 Conducting Negotiations
17. Cancelling procurement proceedings
18. Issuing a notice of acceptance
- 19A Preparing and issuing a contract document
- 20 Publishing a contract award notice and debriefing unsuccessful bidders

Guidance Notes for the preparation of Notices seeking Expressions of Interest and Letters of Invitation

Notices seeking Expressions of Interest

Notices seeking expressions of interest must be published for Request for Proposals. They are designed to provide information that enables potential bidders to decide whether or not to participate in a procurement process. Apart from the essential items listed in the draft below, the notice should also indicate any important evaluation criteria which will apply and any further information relating to the proposed procurement process, such as the intention to hold a pre-proposal meeting.

The notice is for publication purposes only and is not a part of the RFP document.

Standard Format for Notices seeking Expressions of Interest

Invitation to Express Interest in [*Subject of Procurement*]

[Insert Procurement Reference number].

The **[insert name of Procuring Entity]** has allocated/received funds **[if received state source]** and intends to apply part of the proceeds of these funds towards the cost of **[insert description of consultancy services to be procured]**.

The **[insert name of procuring entity]** now invites suitably qualified bidders to submit sealed expressions of interest for **[insert description of consultancy services to be procured]**.

[Insert brief narrative of consultancy services required, normally four to six lines, including location of project, length of contract, type of services or professional staff required and other information necessary to enable potential bidders to decide whether to express interest.]

[Insert details of any particular qualifications, skills, experience etc. required.]

Expressions of interest will be evaluated in accordance with the Public Procurement Act of 2003 and the Public Procurement Regulations 2004. Participation is open to all eligible bidders. **[If there are any restrictions on eligibility, such as source countries, include these here.]**

Interested eligible bidders may submit expressions of interest to **[insert name of procuring entity]**, including **[insert details of information or documentation required]**.

Expressions of interest must be delivered to the address below at or before **[insert time and date]**. Late submissions shall be rejected.

[Insert name of office and name of officer]

[Insert postal address] and/or [Insert street address]

[Insert telephone and facsimile number, indicate country and city code/

Letters of Invitation

Letters of Invitation, using the format below, should be issued with the RFP document. The Letter of Invitation is not a part of the RFP document.

Standard Format for Letter of Invitation

{Letterhead paper with PE name and address}

[insert date of issue]

Dear **[insert name of Bidder]**:

[Procurement Reference Number and Title of Assignment]

The **[insert name of Procuring Entity]** invites proposals to provide the consulting services reference above. More details on the services required are provided in the attached Request for Proposals (RFP) document.

The RFP has been addressed to the following shortlisted bidders:

[insert list of Shortlisted Bidders]

A Consultant will be selected in accordance with procedures described in this RFP and the Public Procurement Act of 2003, the Public Procurement Regulations 2004 and the procedures described in Part 1: Proposal Procedures, herein.

The services required are described in detail in Part 2: Schedule of Requirements.

The format for any resulting contract will be as detailed in Part 3: Form of Contract.

Please inform us, upon receipt:

- a that you received the RFP;
- b whether you will submit a proposal; and
- c if you plan to submit a proposal, when and how you will transmit it.

Yours sincerely,

[insert signature, name, and title of Officer]

Guidance Notes on the Covering Page

The covering page of the Request for Proposals requires inputs and text changes as illustrated below.

[Insert Entity or Project Crest or Logo]

Government of the Republic of Malawi

{Insert name of Procuring Entity and/or Project}

**Request for Proposals Document
for the
Procurement of Consultancy Services
(Small Lump Sum Contracts)**

Subject of Procurement:	[Insert general description of Services required].
Procurement Reference Number:	[Insert the Procurement Reference number for this procurement]
Basis of Selection	[Insert the selection methodology to be used; QCBS, QBS or Least Cost Selection]
Date of Issue:	[Insert official issue date of the RFP to Bidders]

RFP Part 1 Proposal Procedures

Proposal Procedures

The Proposal Procedures section informs Bidders of the procedures that will regulate the procurement process and gives them instructions on preparing their proposal. The Proposal Procedures section **will not form a part of the Contract**.

The RFP document includes standard text outlining the procedures and instructions normally used, but the details relevant to each individual procurement process must be specified in the relevant spaces e.g. the date and time of the deadline for submission of quotations. **No clause should be left blank**. Additional details of the procurement procedures to be used or additional special instructions for Bidders can be added if required.

In exceptional cases, the standard wording given in Part 1 may be amended or deleted, if it is not appropriate to the particular procurement requirement. However, procurement staff must ensure that any amendments comply with the Law and Regulations and should draw the attention of the Internal Procurement Committee to the changes when seeking approval of the document.

Part 1 Proposal Procedures should be prepared by the Specialised Procurement Unit prior to the issue of the RFP document.

This Guide provides information to the Procuring Entity on how to enter all information required by the standard text in Part 1. A copy of Part 1 that summarises all information to be provided is included overleaf. Guidance notes on completion are shown [**in bold in square brackets**].

Technical and Financial Proposal Submission Sheets

The Technical and Financial Proposal Submission Sheets provide standard forms for Bidders to complete and include as the first page of their technical and financial proposals.

All information required on the Proposal Submission Sheets is to be completed by Bidders. The Procuring Entity **is not required to input or change any information** in the Proposal Submission Sheets and they are therefore not included in this User Guide.

Instructions to the Bidders on completing the forms are given at the top of each form in italics and should not be deleted by the Procuring Entity.

Breakdown of Contract Price Form

The Breakdown of Contract Price form provides a standard form for Bidders to complete and include in their financial proposal with details of how they have arrived at the price quoted for the assignment in the Financial Proposal Submission Form.

All information required on the Breakdown of Contract Price form is to be completed by Bidders. The Procuring Entity **is not required to input or change any information** in the Breakdown of Contract Price form and it is therefore not included in this User Guide.

Instructions to the Bidders on completing the form are given at the top of the form in italics and should not be deleted by the Procuring Entity.

[Input of Information to be completed by Procuring Entity]

Part 1: Proposal Procedures

1.1 Procurement Reference Number: **[Insert Procurement Reference Number, ensuring it is the same as on the RFP letter]**

1.2 Preparation of Proposals: You are requested to quote for these services by submitting separate technical and financial proposals, as detailed below. **[Amend if a technical proposal only is required]**. The standard forms in this Request for Proposals may be retyped for completion but the Bidder is responsible for their accurate reproduction.

You are advised to carefully read the complete RFP document, including the Special Conditions of Contract in Part 3: Contract, before preparing your proposal.

1.3 Preparation of Technical Proposals: Technical proposals should contain the following documents and information:

1. the Technical Proposal Submission Sheet in this Part;
2. a brief methodology for performing the services;
3. a workplan, showing the inputs of all key staff;
4. CV's of key staff;
5. a summary of your experience in similar assignments;
6. **[List any additional documents which are required with the technical proposal e.g. the Bidder's company registration documents, as evidence of eligibility. Amend or delete the suggested list above e.g. the summary of previous experience may not be required where this has been taken into account in shortlisting].**

1.4 Preparation of Financial Proposals: Financial proposals should contain the following documents and information:

1. the Financial Proposal Submission Sheet in this Part;
2. the Breakdown of Contract Price form in this Part for each currency of your proposal, showing all costs for the assignment, broken down into fees and reimbursable costs;
3. **[List any additional documents which are required with the financial proposal]**

1.5 Basis of Pricing: The contract will be a lump sum price contract. Payments will be made on the following basis that the contract price shall be a fixed total lump sum, including all costs required to carry out the Services. The Breakdown of Contract Price shall be used only to determine the price for any additional services agreed.

1.6 Validity of Proposals: The proposal validity required is **[Insert the number of days of the required validity period. This is normally done in multiples of 30 days i.e. 30, 60 or 90] days**.

1.7 Sealing and marking of Proposals: The technical and financial proposals should be sealed in separate envelopes, both clearly marked with the Procurement Reference Number above, the Bidder's name, the name of the Procuring Entity and either "Technical Proposal" or "Financial Proposal" as appropriate.

Both envelopes should be enclosed in a single outer envelope, clearly marked with the Procurement Reference Number above, the Bidder's name and the name of the Procuring

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Entity. All three envelopes should be sealed in such a manner that opening and resealing cannot be achieved undetected.

1.7 Submission of Proposals: Proposals should be submitted to the address below, no later than the date and time of the deadline below. Late proposals will be rejected.

Date of deadline: **[Insert date of deadline giving the day, month and year e.g. 1st July 2004 (day, month and year)].**

Time of deadline: **[Insert time of deadline and identify a.m. or p.m. e.g. 11:00 a.m.]** (local time).

Address: **[Insert address for submission of quotations. The address should be a physical address, not a PO Box address, as the PE must be able to verify whether quotations were received on time and reject any late quotations].**

1.8 Opening of Proposals: The technical proposals will be opened in public at the time, date and address shown below by the Procuring Entity. Financial proposals will be kept unopened and the evaluation committee shall have no access to financial information until the detailed evaluation is concluded.

Date of opening: **[Insert date of opening giving the day, month and year e.g. 1st July 2004 (day, month and year).**

Time of opening: **[Insert time of opening and identify a.m. or p.m. e.g. 12:00 p.m.]** (local time).

Address: **[Insert address for opening.]**

1.9 Evaluation of Proposals: The evaluation of proposals will use the **[insert selection procedure, which should be either (1) Quality and Cost Based Selection, (2) Quality Based Selection or (3) Least Cost Selection. Consult the Regulations for guidance on the appropriate methodology to use]** selection procedure as detailed below:

1. Preliminary examination to confirm that all documents required have been provided, to confirm the eligibility of bidders and to confirm that the bidder has accepted all terms and conditions without material deviation or reservation;
2. Technical evaluation _____;
3. Financial evaluation _____.

[Complete the wording for the relevant selection procedure, using the appropriate standard wording given below. You must also include, amend or delete the wording relevant to the chosen evaluation methodology under Technical Criteria, Financial Criteria and Recommendation for Award below:]

[For (1) Quality and Cost Based Selection:

1. Preliminary examination to confirm that all documents required have been provided, to confirm the eligibility of bidders and to confirm that the bidder has accepted all terms and conditions without material deviation or reservation;
2. Technical evaluation to assess the technical quality of proposals against the criteria below, to determine the technical score for each proposal and to determine which proposals reach the minimum technical score given below; and

3. Financial evaluation to determine the financial score of each proposal, to weight the technical and financial scores and to determine the total score of each proposal.]

[For (2) Quality Based Selection:

- 1. Preliminary examination to confirm that all documents required have been provided, to confirm the eligibility of bidders and to confirm that the bidder has accepted all terms and conditions without material deviation or reservation;**
- 2. Technical evaluation to assess the technical quality of proposals against the criteria below, to determine the technical score for each proposal and to determine which is the best technical proposal; and**
- 3. Financial evaluation to examine the financial proposal of the best technical bidder only and prepare for negotiations.]**

[For (3) Least Cost Selection:

- 1. Preliminary examination to confirm that all documents required have been provided, to confirm the eligibility of bidders and to confirm that the bidder has accepted all terms and conditions without material deviation or reservation;**
- 2. Technical evaluation to assess the technical quality of proposals against the criteria below, to determine the technical score for each proposal and to determine which proposals reach the minimum technical score given below; and**
- 3. Financial evaluation to determine the lowest priced proposal which meets the minimum technical score.]**

Proposals failing any stage will be eliminated and not considered in subsequent stages.

1.11 Eligibility Criteria: You are required to meet the following criteria to be eligible to participate in public procurement:

You are required to meet the following criteria to be eligible to participate in public procurement:

- A. have the legal capacity to enter into a contract;
- B. not be insolvent, in receivership, bankrupt or being wound up, not have had your business activities suspended and not be the subject of legal proceedings for any of the foregoing; and
- C. have fulfilled your obligations to pay taxes according to the tax laws of your country of registration.
- D. are not suspended, or excluded from participation in any public procurement exercise by the Office of the Director of Public Procurement in Malawi
- E. not have been convicted, or any of your directors or officers been convicted, of any criminal offence relating to obtaining or attempting to obtain a contract or subcontract;
- F. 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.

G. [Insert any additional eligibility criteria].

In order to demonstrate compliance with these criteria, you should submit with the technical proposal appropriate documentary evidence.

1.12 Conflict of Interest: 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, Consultants, 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 privatisation 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.

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.

No agency or current employees of the Procuring Entity shall work as Consultants 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

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Government of Malawi's current regulations concerning external employment for government employees.

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.

1.13 Corrupt Practices: The Government requires that Procuring Entities, as well as Bidders and Consultants 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.

1.14 Technical Criteria: Proposals shall be awarded scores out of the maximum number of points indicated below for each of the following criteria:

[Amend, delete or add to the criteria in the first column to suit the individual assignment, the criteria provided below are examples and the requirements for each procurement exercise will probably differ depending upon the terms of references and requirements for each procurement exercise. Select the maximum number of points for each criteria, which should normally be within the range given below. The total points for all criteria must equal 100. Where required, sub-criteria can be added e.g. for key personnel. Further guidance is available in the User Guide for the full RFP for Consultancy Services.]

Specific Experience	[0-10] points
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Methodology Proposed	[20-50] points
Key Personnel	[30-60] points
Transfer of Knowledge	[0-10] points
Participation by Nationals	[20-25] points
Total:	100 points

The minimum technical score required to pass the technical evaluation is **[insert the minimum technical score for QCBS and LCS. The minimum should normally be between 70 and 85 points. Delete this paragraph for QBS.]** points.

1.15 Financial Criteria:

[Text should be added or the title deleted, depending on the selection procedure selected, following the instructions below:]

[For QCBS add the following:

“Financial scores shall be determined by awarding 100 points to the lowest priced proposal and giving all other proposals a score which is proportionate to this.

Total scores shall be determined using a weighting of _____% for technical proposals and a weighting of _____% for financial proposals.”

The weighting for technical proposals should be in the range of 70 to 90%, with a higher rating used where quality is of greater importance. The total of both weightings must total 100%]

[For QBS, no criteria are required and the title should be deleted.]

[For LCS, no criteria are required and the title should be deleted.]

1.16 Currency: Proposals may be priced in Malawi Kwacha or any other freely convertible currency and in up to two currencies. The currency of evaluation will be Malawi Kwacha. Proposals in other currencies will be converted to this currency for evaluation purposes only, using the exchange rates published by the Reserve Bank of Malawi 14 calendar days prior to the date of the submission deadline. **[Amend if proposals are only permitted in Malawi Kwacha. Proposals in other currencies should generally be permitted where international bidders are invited].**

1.17 Recommendation for Award: The proposal **[Insert the standard wording given below for the selection procedure methodology used.]** shall be recommended for award of contract, subject to any negotiations.

[For QCBS insert “the proposal with the highest total score”].

[For QBS insert “the proposal with the highest technical score”].

[For LCS insert “the proposal with the lowest evaluated price that meets the minimum technical score given above”].

1.18 Award of contract: Award of contract shall be by placement of a Purchase Order in accordance with Part 3: Contract.

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1.19 Right to Reject: The Procuring Entity reserves the right to accept or reject any proposal or to cancel the bidding process and reject all proposals at any time prior to contract award.

RFP Part 2 Schedule of Requirements

The Schedule of Requirements (SOR) gives Bidders details of the services the Procuring Entity wishes to procure. **The Schedule of Requirements will form part of the Contract.**

Part 2 Schedule of Requirements should be prepared by the Specialised Procurement Unit, with assistance from the User Department, prior to the issue of the RFP Document. Where required, assistance should be sought from an official with relevant technical knowledge in preparing the SOR.

The Schedule of Requirements normally consists of Terms of Reference. Where required, additional details or documents can be included.

Terms of Reference

The PE should insert the procurement reference number at the top of the page, ensuring that it is the same as on the RFP letter.

Terms of Reference (TOR) should be prepared by the User Department, with guidance from the Specialised Procurement Unit as required. It is important that the recipient or manager of the services is involved in drafting or checking the TOR, as the TOR must reflect the requirements of the intended contract.

The TOR should provide sufficient information to enable Bidders to prepare proposals that are realistic and competitive and which meet the PE's needs. The TOR should be complete, precise, and clear. Incomplete, imprecise, or unclear TOR may prompt bidders to request clarifications from the Procuring Entity or to submit conditional proposals or proposals that may be based on different understandings of the Procuring Entity's requirements. Depending on the nature of the clarifications, the Procuring Entity may need to amend the RFP and eventually to extend the submission deadline. Conditional quotations may have to be rejected. Quotations that are not comparable could not be evaluated.

The contents of Terms of Reference is determined by the individual assignment, but typically should include the following details:

- the background to the assignment, including details of any larger project which the assignment will be part of;
- the objectives of the assignment and what it is expected to achieve;
- a description of the scope of the services required;
- the specific deliverables required, such as study reports and recommendations, software, databases, bidding documents, drawings, specifications, maps, software, training materials etc and the dates by when they are required;
- requirements for transfer of knowledge or training programmes;
- the location or locations for performance of the services;
- the role, qualifications and experience of key staff;
- the duration of the contract or expected completion date;
- any facilities, services or resources to be provided by the Procuring Entity, including any counterpart staff;

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- arrangements for reporting to the Procuring Entity, including lines of communication and the contact point for management and administration of the assignment;
- a schedule of any reports required, including inception, progress and final reports;
- any other details or requirements relevant to the assignment.

RFP Part 3 Form of Contract

The draft form of contract is normally issued in its original format with the Request for Proposals and only finalised to reflect all agreements between the selected Consultant and the Procuring Entity. Care should be taken when preparing the contract documents to ensure that the relevance of the contract wording is checked against the requirements of the services to be procured.

Ensure that all agreements concluded between the Procuring Entity and the Consultant during negotiations are accurately reflected in the Contract and in the Annexes before issuing the letter of acceptance to the Consultant. Ensure that any legal requirements or conventions regarding the sealing of contracts are followed.

Covering Page

The covering page of the contract documentation should be completed

[Insert Entity or Project Crest or Logo]

Government of the Republic of Malawi

[Insert Name of Procuring Entity and/or Project]

CONTRACT FOR CONSULTING SERVICES

Small Assignments
Lump-Sum Payments

[Insert Title of the Assignment]

between

[Insert Name of the Procuring Entity]

and

[Insert Name of the Supplier]

Procurement Number: **[Insert procurement reference number that should be the same as used for the RFP]**

Dated: **[Insert the date on which the contract will be signed taking into account any time that is required to prepare the contract accordingly]**

**CONTRACT FOR CONSULTING SERVICES
SMALL ASSIGNMENTS
LUMP-SUM PAYMENTS**

CONTRACT

THIS CONTRACT (“Contract”) is entered into this **[insert start date of assignment]**, by and between **[insert name of Procuring Entity]** (“the Procuring Entity” hereinafter known as “the Client”) having its principal place of business at **[insert address of Client]**, and **[insert name of Supplier]** (“the Supplier” hereinafter known as “the Consultant”) having its principal office located at **[insert address of Consultant]**.

WHEREAS, the Client wishes the Consultant perform the services hereinafter referred to, and

WHEREAS, the Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services**
- (i) The Consultant shall perform the services specified in Annex A, “Terms of Reference and Scope of Services,” which is made an integral part of this Contract (“the Services”).
 - (ii) The Consultant shall provide the personnel listed in Annex B, “Consultant’s Personnel,” to perform the Services.
 - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Annex C, “Consultant’s Reporting Obligations.”

2. Term The Consultant shall perform the Services during the period commencing **[insert starting date]** and continuing through **[insert completion date]**, or any other period as may be subsequently agreed by the parties in writing.

3. Payment A. Ceiling

For Services rendered pursuant to Annex A, the Client shall pay the Consultant an amount not to exceed **[insert the currency of the contract and the total contract value]**. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. Schedule of Payments

The schedule of payments is specified below:

[insert the currency of the contract and the amount to be paid at this stage] upon the Client's receipt of a copy of this Contract signed by the Consultant; against submission of Bank Guarantee for the Advance Payment in accordance with Annex D of this Contract.

[insert the currency of the contract and the amount to be paid at this stage] upon the Client's receipt of the draft report, acceptable to the Client; and

[insert the currency of the contract and the amount to be paid at this stage] upon the Client's receipt of the final report, acceptable to the Client.

[insert the currency of the contract and the total contract value] Total

C. Payment Conditions

Payment shall be made in **[insert the currency of the contract]** no later than 45 days following submission by the Consultant of invoices in duplicate to the Coordinator designated in paragraph 4.

4. Project Administration

A. Coordinator.

The Client designates **[insert the name of the member of staff from the Client who is responsible for management of the assignment]** as the Client's Coordinator; the Coordinator will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables by the Client and for receiving and approving invoices for the payment.

B. Reports.

The reports listed in Annex C, "Consultant's Reporting Obligations," shall be submitted in the course of the assignment, and will constitute the basis for the payments to be made under paragraph 3.

5. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this

Contract that the Client considers unsatisfactory.

- 6. Confidentiality** The Consultants shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.
- 7. Ownership of Material** Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.
[Any restrictions on future use of the documents, reports or software developed for the Client may also be inserted at the end of this paragraph. Examples of such clauses are as follows
- **“For a period of two years after the termination of this contract, the Consultants shall not use these documents or software for purposes unrelated to this Contract without the prior written approval of the Client.”**
 - **“The Client shall not use these documents for purposes unrelated to this Contract without the prior written approval of the Consultants.”**
 - **“Neither Party shall use these documents for purposes unrelated to this Contract without the prior written approval of the other Party.”]**
- 8. Consultant Not to be Engaged in Certain Activities** The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, 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.
- 9. Insurance** The Consultant will be responsible for taking out any appropriate insurance coverage.
- 10. Assignment** The Consultant shall not assign this Contract or sub-contract any portion of it without the Client's prior written consent.
- 11. Law Governing Contract and Language** The Contract shall be governed by the laws of the Republic of Malawi, and the language of the Contract shall be English.
- 12. Resolution of Disputes** Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration in accordance with the laws of the Republic of Malawi.

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[In the case of a Contract entered into with a foreign Consultant, the following provision may be substituted for paragraph 12: “Any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force]

FOR THE CLIENT

FOR THE CONSULTANT

Signed by _____

Signed by _____

Title: _____

Title: _____

WITNESS

WITNESS

Signed by _____

Signed by _____

Name _____

Name _____

LIST OF ANNEXES

[The Annexes to the contract cannot be completed until after the winning Consultant has been selected and successful negotiations have been concluded.]

The contract document will include the Annexes based on the Terms of Reference and the standard forms submitted by the Consultant with his Technical and Financial Proposals. Note that during negotiation of the contract the Terms of Reference and details of the Annexes may be adjusted for the final contract by agreement of both parties.]

Annex A: Terms of Reference and Scope of Services

[Prepare Annex A based on the original Terms of Reference, but including any modifications to the Terms of Reference or the scope of the services as agreed with the Consultant during negotiations. Note that modifications which drastically change the general nature, or the scope of the services, are not normally acceptable, since the end result could be a very different assignment to that on which competing bidders have submitted their proposals. If such modifications are substantial in a competitive bidding process, the advice of the Office of the Director of Public Procurement should be sought before proceeding to signature of the contract.]

Annex B: Consultant's Personnel

[Prepare this Annex based on the information provided by the Consultant in the Technical Proposal, as modified by agreement or later information provided by the Consultant during negotiations. For simple assignments this is a list of the job titles, names, staff months and fee rates of the Personnel to be used by the Consultant on the assignment. A list of reimbursable expenses should also be included if these are agreed to be paid separately from the staff fees.]

The fee rate information is used only for the purpose of determining the price of any additional services required by the Client.]

Annex C: Consultant's Reporting Obligations

[Prepare the Reporting Requirements based on the original Terms of Reference as modified by agreement with the Consultant during negotiations. The Annex should specify the format, frequency, and contents of reports; the persons to receive them; the dates of submission; etc. If no reports are to be submitted, state here "Not applicable."]

Annex D: Format of Bank Guarantee for Advance Payment

[The draft format should be attached for guidance of the Consultant and issued with the Request for Proposals.]

Annex D—Format of Bank Guarantee for Advance Payments

TO: *[Name and Address of Client]*
[Name of Contract for Consultants' Services]

Gentlemen:

In accordance with the provisions of the above-mentioned Contract (hereinafter called “the Contract”), *[name and address of Consultants]* (hereinafter called “the Consultants”) shall deposit with *[name of Client]* a bank guarantee to guarantee their proper and faithful performance under the said provisions of the Contract in an amount of *[amount of Guarantee]*, *[amount of Guarantee in words]*.⁴

We, the *[bank or financial institution]*, as instructed by the Consultants, agree unconditionally and irrevocably to guarantee as primary obligor and not as Surety merely, the payment to *[name of Client]* on his first demand without whatsoever right of objection on our part and without his first claim to the Consultants, in the amount not exceeding *[amount of Guarantee]*, *[amount of Guarantee in words]*.

We further agree that no change or addition to or other modification of the terms of the Contract which may be made between *[name of Client]* and the Consultants, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until fifty (50) percent of the Contract Price has been paid to the Consultant.

Yours truly,

Signature and Seal

Name of Bank/Financial Institution

Address

Date