



REPUBLIC OF MALAWI

NATIONAL FOOD RESERVE AGENCY (NFRA)

**Bidding Document for the  
Procurement of Goods By  
NATIONAL COMPETITIVE BIDDING (NCB)**

**Subject of Procurement :** Supply and Delivery of Non Genetically Modified Organism (GMO) White Maize.

**Procurement Ref. Number :** NFRA/SGR/2019/01

**Date of Issue :** 21<sup>st</sup> August, 2019

The Chairman  
Internal Procurement and Disposal Committee (IPDC)  
National Food Reserve Agency  
Private Bag B450  
Capital City  
**Lilongwe 3**



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# Section 1: Instructions to Bidders

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# Section I. Instructions to Bidders

## A. General

### 1. Scope of Bid

- 1.1 The Procuring Entity indicated in the Bid Data Sheet (BDS), invites bids by the issue of this Bidding Document for the supply of Goods as specified in Section 6, Statement of Requirement. These Instructions to Bidders shall be read in conjunction with the BDS. The subject of procurement, the procurement reference number, and number of lots of this Bidding Document are provided in the BDS.

### 2. Source of Funds

- 2.1 The Procuring Entity has an approved budget from public funds toward the cost of the procurement described in the BDS.

### 3. Fraud and Corruption

- 3.1 The Government of Malawi 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. The Procuring entity is governed by the same. In pursuance of this policy, the Procurement entity:

- (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.

### 4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, government-owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association all parties shall be jointly and severally liable.
- 4.2 This Invitation for Bids is open **only** to suppliers from **Malawi** as defined in Section 5, Eligible Countries.
- 4.3 A firm that is under a declaration of suspension by the Office of the Director of Public Procurement in accordance with ITB Clause 3.1 (c) shall be ineligible.

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- 4.4 Bidders shall provide such evidence of their eligibility satisfactory to the Procuring Entity, to verify that the bidder:
- (i) has the legal capacity to enter into a contract;
  - (ii) is not insolvent, in receivership, bankrupt or being wound up, not have had their business activities suspended and not be the subject of legal proceedings for any of the foregoing; and
  - (iii) has fulfilled their obligations to pay taxes.
- 4.5 To demonstrate compliance with the criteria in ITB Sub-Clause 4.4, a Bidder shall submit with its Bid:
- (i) appropriate documentary evidence demonstrating its compliance; and
  - (ii) such other documentary evidence as may be specified in the BDS.

## **5. Eligible Goods and Related Services**

- 5.1 All Maize to be supplied under the Contract shall have Malawi as the country of origin as an eligible country in accordance with Section 5, Eligible Countries.
- 5.2 The term “country of origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognised article results that differs substantially in its basic characteristics from its imported components.
- 5.3 If so required in the BDS, the Bidder shall demonstrate that it has been duly authorised by the Manufacturer of the Goods to supply, in the Republic of Malawi the Goods indicated in its bid.

**NOT APPLICABLE**

## **B. Contents of Bidding Document**

### **6. Sections of Bidding Document**

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

#### **Part 1 Bidding Procedures**

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

#### **Part 2 Supply Requirements**

- Section 6 Statement of Requirements

#### **Part 3 Contract**

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

- 6.2 The Procuring Entity is not responsible for the completeness of the Bidding Documents and their addenda if they were not obtained directly from the Procuring Entity. Bidders who did not obtain the Bidding Document directly from the Procuring Entity may be rejected during evaluation. Where a Bidding Document is obtained from the Procuring Entity on a Bidder's

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behalf, the Bidder's name must be registered with the Procuring Entity at the time of sale and issue.

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

## **7. Clarification of Bidding Documents**

- 7.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Procuring Entity in writing at the Procuring Entity's address indicated in the BDS. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of bids. The Procuring Entity shall forward copies of its response to all Bidders who have acquired the Bidding Documents directly from it, including a description of the inquiry but without identifying its source. Should the Procuring Entity deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and Sub-Clause 23.2.

## **8. Amendment of Bidding Documents**

- 8.1 At any time prior to the deadline for submission of bids, the Procuring Entity may amend the Bidding Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all Bidders who have obtained the Bidding Documents directly from the Procuring Entity.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB Sub-Clause 23.2

## **C. Preparation of Bids**

### **9. Cost of Bidding**

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

### **10. Language of Bid**

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

### **11. Documents Comprising the Bid**

- 11.1 The Bid shall comprise the following:
- (a) Bid Submission Sheet and the applicable Price Schedules in accordance with ITB Clauses 12, and 14;
  - (b) Bid Security, in accordance with ITB Clause 20; **NOT APPLICABLE**
  - (c) documentary evidence in accordance with ITB Clause 15 establishing the Bidder's eligibility to bid;
  - (d) documentary evidence in accordance with ITB Clauses 17 and 29, that the Goods and

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Related Services conform to the Bidding Documents;

- (e) documentary evidence in accordance with ITB Clause 18 establishing the Bidder's qualifications to perform the contract if its Bid is accepted; and
- (f) any other document required in the BDS.

## **12. Bid Submission Sheet and Price Schedules**

12.1 The Bidder shall submit the Bid Submission Sheet using the form furnished in Section 4, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested, which includes:

- (a) the reference of the Bidding Document and the number of each addenda received;
- (b) a brief description of the Goods and Related Services offered;
- (c) the total bid price;
- (d) the period of validity of the bid;
- (e) a commitment to submit a performance security and the amount;
- (f) confirmation that the Bidder has not been declared ineligible or suspended by the Office of the Director of Public Procurement;
- (g) a declaration concerning investigations relating to any other public procurement tender exercise or awarded contract,
- (h) a declaration on gratuities and commissions;
- (i) the names and addresses of the Directors of the bidder
- (j) a declaration concerning the country of registration of the Bidder;
- (k) an authorised signature.

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

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

## **13. Bid Prices**

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

13.2 The terms EXW (Ex Works), CIF (Cost Insurance & Freight), CIP (Carriage & Insurance Paid), and other similar terms shall be governed by the rules prescribed in the **2015 edition of Incoterms**, published by The International Chamber of Commerce.

13.3 Prices proposed on the Price Schedule Forms for Goods and Related Services, shall be disaggregated solely for the purpose of facilitating the comparison of bids by the Procuring

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Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered:

- (a) For goods:
  - (i) the price of the goods shall be quoted DDP named place of delivery, or as specified in the BDS;
  - (ii) all Malawian customs duties and sales and other taxes already paid or payable on the goods or on the on the components and raw material used in the manufacture or assembly if the contract is awarded to the Bidder; and
  - (iii) the total price for the item.
- (b) For related services
  - (i) the price of the related services;
  - (ii) all Malawian customs duties and sales and other taxes already paid or payable on the related services if the contract is awarded to the Bidder; and
  - (iii) the total price for the item.

13.4 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS.

13.5 If so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Prices quoted shall be for each complete lot or item.

#### **14. Currencies of Bid**

**14.1** For these Goods that the Bidder will supply, the prices shall be quoted in **Malawi Kwacha**.

14.2 For Goods and Related Services that the Bidder will supply from outside Malawi prices shall be expressed in Malawi Kwacha unless otherwise specified in the BDS. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may indicate the percentage of the bid price to be paid in no more than three currencies different from the currency of Malawi.

**NOT APPLICABLE**

#### **15. Documents Establishing the Eligibility of the Bidder**

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

#### **16. Documents Establishing the Eligibility of Goods and Related Services**

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

#### **17. Documents Establishing the Conformity of the Goods and Related Services to the Bidding Documents**

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

17.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of the Statement of Requirement.

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17.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Statement of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Statement of Requirement.

## **18. Documents Establishing the Qualifications of the Bidder**

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

## **19. Period of Validity of Bids**

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

19.2 In exceptional circumstances, prior to expiry of the bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB Clause 21, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

## **20. Bid Security**

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

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

- (a) a cashier's or bank certified cheque or payable order (**Not Applicable**)
- (b) an irrevocable letter of credit (**Not Applicable**)

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

20.3 Any bid not accompanied by a substantially responsive bid security, if one is required in accordance with ITB Sub-Clause 20.1, shall be rejected as non-responsive.

20.4 The bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 42.

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

20.6 The bid security may be forfeited:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub-Clause 19.2; or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB Clause 41;
  - (ii) furnish a performance security in accordance with ITB Clause 42; or

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- (iii) accept the correction of its Bid Price pursuant to ITB Sub-Clause 30.5.

## **21. Format and Signing of Bid**

- 21.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 11 and clearly mark it “ORIGINAL.” In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.
- 21.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Bidder. The name and position held by each person signing the authorisation must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be signed or initialled by the person signing the bid.
- 21.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

## **D. Submission and Opening of Bids**

### **22. Sealing and Marking of Bids**

- 22.1 The Bidder shall enclose the original and each copy of the bid in separate sealed envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 22.2 The inner and outer envelopes shall:
- (a) be addressed to the Procuring Entity in accordance with ITB Sub-Clause 23.1;
  - (b) bear the subject of the procurement or the Project name, and procurement reference number indicated in the BDS;
- 22.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to ITB Clause 24.1.
- 22.4 If all envelopes are not sealed and marked as required, the Procuring Entity shall assume no responsibility for the misplacement or premature opening of the bid.

### **23. Deadline for Submission of Bids**

- 23.1 Bids must be received by the Procuring Entity at the address and no later than the date and time indicated in the BDS.
- 23.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

### **24. Late Bids**

- 24.1 The Procuring Entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 23. Any bid received by the Procuring Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

### **25. Withdrawal, Substitution, and Modification of Bids**

- 25.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorised representative. The corresponding substitution or

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modification of the bid must accompany the respective written notice. All notices must be:

- (a) Submitted in accordance with ITB Clauses 21 and 22 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” or “Modification;” and
- (b) Received by the Procuring Entity prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 23.

25.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 25.1 shall be returned unopened to the Bidders.

25.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and expiry of the period of bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.

## **26. Bid Opening**

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

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

26.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers; the presence of a bid security, if required; and any other details as the Procuring Entity may consider appropriate. No bid shall be rejected at bid opening except for late bids, in accordance with ITB Sub-Clause 24.1.

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

## **E. Evaluation and Comparison of Bids**

### **27. Confidentiality**

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

27.2 Any effort by a Bidder to influence the Procuring Entity in the examination, evaluation,

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comparison, and post-qualification of the bids or Contract award decisions shall result in the rejection of its bid.

27.3 Notwithstanding ITB Sub-Clause 27.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Procuring Entity on any matter related to the bidding process, it should do so in writing.

## **28. Clarification of Bids**

28.1 To assist in the examination, evaluation, comparison and post qualification of the bids, the Procuring Entity may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Procuring Entity shall not be considered. The request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the bids, in accordance with ITB Clause 30.

## **29. Responsiveness of Bids**

29.1 The Procuring Entity's determination of a bid's responsiveness is to be based on the contents of the bid itself.

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

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

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

## **30. Nonconformities, Errors, and Omissions**

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

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

30.3 Provided that a bid is substantially responsive, the Procuring Entity shall rectify nonmaterial nonconformities or omissions. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component. The adjustment shall be made using the highest price quoted among all the other bidders for the missing or non-conforming item.

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

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- (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 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.

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

### **31. Preliminary Examination of Bids**

31.1 The Procuring Entity shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 11 have been provided, and to determine the completeness of each document submitted.

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

- (a) Bid Submission Sheet, including:
  - (i) a brief description of the Goods being offered;
  - (ii) the price of the Bid and;
  - (iii) the period of validity of the Bid;
- (b) Price Schedules; and
- (c) Bid Security, if applicable. ( N/A)

### **32. Examination of Terms and Conditions; Technical Evaluation**

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

32.2 The Procuring Entity shall evaluate the technical aspects of the bid submitted in accordance with ITB Clause 17, to confirm that all requirements specified in Section 6, Statement of Requirements, have been met without any material deviation or reservation.

32.3 If, after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the bid is not substantially responsive in accordance with ITB Clause 29, it shall reject the bid.

### **33. Conversion to Single Currency**

33.1 Not required. All offers to be in **Malawi Kwacha**.

### **34. Evaluation of Bids**

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

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

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

- (a) the bid price;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 30.4;
- (c) adjustment for nonconformities and omissions in accordance with ITB Sub-Clause 30.3;
- (d) application of all the evaluation factors indicated in Section 3, Evaluation and Qualification Criteria.

34.4 In the calculation of the evaluated cost of bids, the Procuring Entity shall exclude and not take into account:

- (a) in the case of goods manufactured in the Republic of Malawi or goods of foreign origin already located in the Republic of Malawi, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Bidder;
- (b) in the case of goods of foreign origin offered from abroad, customs duties and other similar import taxes which will be payable on the goods if the contract is awarded to the Bidder; and
- (c) any allowance for price adjustment during the period of execution of the Contract, if provided in the bid.

34.5 The Procuring Entity's cost evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 13. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids as specified in Section 3, Evaluation and Qualification Criteria. The factors to be used and the methodology of application shall be indicated in Section 3, Evaluation and Qualification Criteria.

### **35. Comparison of Bids**

35.1 The Procuring Entity shall compare all substantially responsive bids to determine the lowest evaluated bid.

### **36. Post-qualification of the Bidder**

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

36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 18, to clarifications in accordance with ITB Clause 28 and the qualification criteria indicated in Section 3, Evaluation and Qualification Criteria. Factors not included in Section 3 shall not be used in the evaluation of the Bidder's qualification.

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

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

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

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## **F. Award of Contract**

### **38. Award Criteria**

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

### **39. Procuring Entity's Right to Vary Quantities at Time of Award**

39.1 At the time the Contract is awarded, the Procuring Entity reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section 6, Statement of Requirement, provided this does not exceed the percentages indicated in the BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents. **NOT APPLICABLE**

### **40. Notification of Award**

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

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

40.3 The Procuring Entity shall publish in the Print media the results of the award of contract, as required by the Public Procurement Act 2003.

### **41. Signing of Contract**

41.1 Promptly after notification, the Procuring Entity shall send the successful Bidder the Contract documents.

41.2 Within five (5) days of receipt of the Contract documents, the successful Bidder shall sign, date, and return it to the Procuring Entity.

### **42. Performance Security**

42.1 Within seven (7) days of receipt of notification of award, the successful Bidder shall furnish the performance security in accordance with the GCC, using for that purpose the Performance Security Form included in Section 9, Contract Forms, or another form acceptable to the Procuring Entity (**Not Applicable**).

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

## Section 2. Bid Data Sheet (BDS)

Instructions to Bidders (ITB) reference	Data relevant to ITB																														
<b>A. Introduction</b>																															
<b>ITB 1.1</b>	The Procuring Entity is: <b>National Food Reserve Agency (NFRA)</b>																														
<b>ITB 1.1; 2.1 and 22.2(b)</b>	The Project name or the subject of the procurement is: <b>Supply and Delivery of Non Genetically Modified Organism (GMO) White Maize to Strategic Grain Reserve</b>																														
<b>ITB 1.1and 22.2(b)</b>	The Procurement Reference Number is: <b>NFRA/SGR/2019/01</b>																														
<b>ITB 1.1</b>	<p>The number and identification of Lots in this Bidding Document is: <b>4 Lots</b></p> <p><b>LOT 1: Delivery at NFRA Lilongwe Silos</b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th style="width: 10%;">Lot No</th> <th style="width: 40%;">Description of Goods</th> <th style="width: 15%;">Quantity</th> <th style="width: 15%;">Physical unit</th> <th style="width: 20%;">Delivery period</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Supply and Delivery of Non GMO White Maize</td> <td style="text-align: center;">27,000</td> <td style="text-align: center;">Metric Tonne (MT)</td> <td style="text-align: center;">4 weeks</td> </tr> </tbody> </table> <p><b>LOT 2 : Delivery at NFRA Mangochi Silos</b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th style="width: 10%;">Lot No</th> <th style="width: 40%;">Description of Goods</th> <th style="width: 15%;">Quantity</th> <th style="width: 15%;">Physical unit</th> <th style="width: 20%;">Delivery period</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">2</td> <td>Supply and Delivery of Non GMO White Maize</td> <td style="text-align: center;">10,000</td> <td style="text-align: center;">Metric Tonne (MT)</td> <td style="text-align: center;">4weeks</td> </tr> </tbody> </table> <p><b>LOT 3: Delivery at NFRA Bangula Warehouse</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Lot No</th> <th style="width: 40%;">Description of Goods</th> <th style="width: 15%;">Quantity</th> <th style="width: 15%;">Physical unit</th> <th style="width: 20%;">Delivery period</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">3</td> <td>Supply and Delivery of Non GMO White Maize</td> <td style="text-align: center;">1,000</td> <td style="text-align: center;">Metric Tonne (MT)</td> <td style="text-align: center;">4 weeks</td> </tr> </tbody> </table>	Lot No	Description of Goods	Quantity	Physical unit	Delivery period	1	Supply and Delivery of Non GMO White Maize	27,000	Metric Tonne (MT)	4 weeks	Lot No	Description of Goods	Quantity	Physical unit	Delivery period	2	Supply and Delivery of Non GMO White Maize	10,000	Metric Tonne (MT)	4weeks	Lot No	Description of Goods	Quantity	Physical unit	Delivery period	3	Supply and Delivery of Non GMO White Maize	1,000	Metric Tonne (MT)	4 weeks
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		<b>LOT 4: Delivery at NFRA Kazomba Warehouse</b>			
	<b>Lot No</b>	<b>Description of Goods</b>	<b>Quantity</b>	<b>Physical unit</b>	<b>Delivery period</b>
	4	Supply and Delivery of Non GMO White Maize	2,000	Metric Tonne (MT)	4 weeks
<p>Minimum quantities to be awarded per bidder is <b>100 metric tonnes.</b>  <b>Maximum quantities to be awarded per bidder is 5,000 metric tonnes.</b></p>					
<b>ITB 1.2</b>	The Bidding Document is issued under <b>National Competitive Bidding (NCB) in accordance with the Public Procurement and Disposal of Assets Act, 2017.</b>				
<b>ITB 4.1</b>	The individuals or firms in a joint venture, consortium or association, <b>Shall</b> jointly and severally <b>be</b> liable.				
<b>ITB 5.5</b>	The Bidder <b>is</b> required to include with its bid, documentations from the <b>Source or Manufacturer</b> , that it has been duly authorised to supply, in Malawi, the Goods indicated in its bid. <b>NOT APPLICABLE</b>				
<b>B. Bidding Documents</b>					
<b>ITB 7.1</b>	<p>For <b><u>Clarification of bid purposes</u></b> only, the Purchaser's address is: <b>The Chief Executive Officer for National Food Reserve Agency</b>  Attention: The IPDC Chairperson, National Food Reserve Agency,  Kanengo Silos Complex, Kanengo Industrial Area  Alimaunde, Lilongwe  City: <b>Lilongwe</b></p>				

Instructions to Bidders (ITB) reference	Data relevant to ITB
	Private Bag B450, Lilongwe 3 Country: <b>Malawi</b> Telephone: +265 (0)887082356 Electronic mail address: <a href="mailto:nfra@nframw.com">nfra@nframw.com</a>
<b>C. Preparation of Bids</b>	
<b>ITB 11.1 (f)</b>	<p><b>Litigation</b></p> <p>The Bidder shall provide details of all claims, arbitration, or other litigation, pending or already resolved, for the past 5 years.</p> <p>All pending litigation shall in total not represent more than <b>30</b> percent of the Bidder's net worth.</p> <p>2. Experience and technical capacity documents shall include:</p> <p>1) List of three contracts for similar goods successfully completed, each for a value greater than <b>MK10,000,000.00</b> during the past <b>three</b> years ending on the bid submission deadline. <b>NOT APPLICABLE</b></p>
<b>ITB 13.3</b>	For these Goods, the Bidder shall quote prices using the following <b>2015 Incoterms Edition: (DDP)</b> .
<b>ITB 13.4</b>	The prices quoted by the Bidder <i>shall not</i> be adjustable.
<b>ITB 14.1</b>	The currency of the bid shall be <b>Malawi Kwacha</b> .
<b>ITB 19.1</b>	The bid validity period shall be: <b>90</b> days.
<b>ITB 20.</b>	The Bid shall include a duly signed <b>Bid Securing Declaration</b>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 21.1</b>	In addition to the original of the bid, the number of copies required is: <b>Four (4)</b>
<b>ITB 23.1</b>	For <u>bid submission purposes</u> only, the Purchaser's address is : <b>National Food Reserve Agency</b>

Instructions to Bidders (ITB) reference	Data relevant to ITB
	<p>Attention: <b>The Chairman, Internal Procurement and Disposal Committee (IPDC)</b></p> <p>Street Address: <b>Kanengo Industrial Area, Kanengo Silos Complex</b></p> <p>Floor/Room number: <b>NFRA Reception</b></p> <p>City: <b>Lilongwe</b></p> <p>Post Code: <b>Private Bag B450, Capital City, Lilongwe 3</b></p> <p>Country: <b>Malawi</b></p> <p><b>The deadline for bid submission is:</b></p> <p><b>Date: 28<sup>th</sup> August,2019</b></p> <p><b>Time: 14:00 Hours Local Time</b></p>
<b>ITB 26.1</b>	<p>The <b>bid opening</b> shall take place at:</p> <p><b>National Food Reserve Agency Headquarters, Kanengo Silos Complex</b></p> <p>Street Address: <b>Kanengo Industrial Area, Kanengo Silos Complex</b></p> <p>City : <b>Lilongwe</b></p> <p>Country: <b>Malawi</b></p> <p><b>28<sup>th</sup> August,2019</b></p> <p><b>Time: 14:00 Hours Local Time</b></p>
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 33.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: N/A</p> <p>The source of exchange rate shall be: N/A</p> <p>The date for the exchange rate shall be: N/A</p>
<b>F. Award of Contract</b>	
<b>ITB 39.1</b>	<p>The percentage by which quantities may be increased/decreased is <b>plus or minus 10%</b></p>

## Section 3. Evaluation and Qualification 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 bid and determine whether a bidder has the required qualifications. No other factors, methods or criteria shall be used.

### 1. Additional Evaluation Factors

- 1.1 In accordance with ITB Clause 34.3(d), the Procuring Entity's evaluation of a bid will take into account, in addition to the bid price, the following factors, which will be quantified as specified in 1.2 below:
- (a) Compliance with the minimum technical specification is required for all items marked as mandatory.-
  - (b) The delivery schedule offered by the bidder.
  - (c) The payment schedule proposed by the bidder.
- 1.2 The factors specified in 1.1 above will be quantified as follows:
- (a) Failure to meet the specified minimum technical specifications for mandatory requirements will result in rejection of the bid. Superior specifications will be considered on the same basis as those bids meeting the minimum technical specification.
  - (b) Later delivery schedules proposed by the Bidder will result in a 1% addition to the bid price (for evaluation purposes only) for each week of delay up to a maximum of 15%. Bids offering delivery schedules later than **4 Weeks** after the specified delivery period may be rejected at the discretion of the Procuring Entity.
  - (c) For payment schedules proposed by the bidder which would result in earlier payment to the Supplier than that proposed in the bidding documents, the difference in the net present value of the Bidder's proposal shall be added to the bid price for evaluation purposes.

### 2. Evaluation of Multiple Contracts –Not Applicable

If in accordance with ITB Sub-Clause 36.6 the Procuring Entity is allowed to award one or multiple lots to more than one Bidder, the following methodology shall be used for award of multiple contracts:

To determine the lowest-evaluated lot combinations, the Procuring Entity shall: Not Applicable

- (a) evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB 14.9
- (b) take into account:
  - (i) the lowest-evaluated bid for each lot that meets the requirement of evaluation criteria;
  - (ii) the price reduction per lot and the methodology for their application as offered by the Bidder in its bid; and
  - (iii) the contract-award sequence that provides the optimum economic combination, taking into account any limitations due to constraints in supply

or execution capacity determined in accordance with the post-qualification criteria, as set in ECQ Clause 4, Post Qualification.

### **3. Application of Domestic Preference**

The Procuring Entity shall grant a margin of preference to locally manufactured or goods supplied from within Malawi by Malawian suppliers for the purpose of bid comparison, in accordance with the procedures outlined in subsequent paragraphs: **APPLICABLE**

### **4. Qualification Criteria**

After determining the lowest-evaluated bid in accordance with ITB Sub-Clause 37.1, the Procuring Entity shall carry out the post-qualification of the Bidder in accordance with ITB Clause 38, using only the factors, methods and criteria specified below. Factors not included in this Section shall not be used in the evaluation of the Bidder's qualification.

1. Financial capability documents shall include the following

1) Bank references demonstrating the availability of :

(i) Sufficient funds of not less than **20%** of the bid value. **NOT APPLICABLE**

(ii) Lines of credit to successfully perform the contract of amount not less than **20%** of the bid value. **NOT APPLICABLE**

(iii) Physically demonstrate the availability of stocks equivalent to **80%** of the bid value. **NOT APPLICABLE**

#### **Litigation**

The Bidder shall provide details of all claims, arbitration, or other litigation, pending or already resolved, for the past 5 years.

All pending litigation shall in total not represent more than **30** percent of the Bidder's net worth.

2. Experience and technical capacity documents shall include:

1) List of three contracts for similar goods successfully completed, each for a value greater than **MK10,000,000.00** during the past **three** years ending on the bid submission deadline. **NOT APPLICABLE**

#### **TONNAGE ALLOCATION PRINCIPLES**

Subject to post qualification assessment results, the following principles shall be used to allocate tonnage to winning qualified bidders. Note that this schedule is providing guidance on allocation of tonnage to bidders based on their **RATES/TONNE** after passing the preliminary and technical evaluations. The Procuring Entity reserves the right to allocate more or less tonnage to any other bidder

**(See details below)**

**TONNAGE ALLOCATION SCHEDULE**

<b>Bidder's Price</b>	<b>Tonnage Applied for by Bidder</b>	<b>Total Tonnage to be awarded / allocated per Delivery Point i.e. NFRA</b>		
		<b>Lilongwe Depot</b>		
1. Lowest Evaluated Bidder in the band.	Any <b>Quantity</b>	All qty applied for <b>BUT</b> subject to a maximum of <b>5,000 MT</b> and bid price		
2. Bidder whose price is in the range of up to <b>5%</b> above price of the Lowest Evaluated Bidder	Any <b>Quantity</b>	All qty applied for <b>BUT</b> a maximum of <b>2,000 MT</b> <b>subject to the bid price</b>		
3. Bidder whose price is in the range of <b>6% to 10%</b> above price of the Lowest Evaluated Bidder	Any <b>Quantity</b>	All qty applied for <b>BUT</b> a maximum of <b>1,000 MT</b> <b>subject to bid price</b> and availability of unallocated tonnage		
4. Bidder whose price is in the range of <b>11% to 15%</b> above price of the Lowest Evaluated Bidder	Any <b>Quantity</b>	All qty applied for <b>BUT</b> a maximum of <b>500 MT</b> <b>subject to bid price</b> and availability of unallocated tonnage		

# **Section 4. Bidding Forms**

## **Table of Forms**

<b>Bid Submission Sheet .....</b>	<b>20</b>
<b>Price Schedule for Goods and Related Services .....</b>	<b>22</b>
<b>Bid Securing Declaration .....</b>	<b>23</b>
<b>Manufacturer’s Authorisation.....</b>	<b>24</b>

## Bid Submission Sheet

### [Input of Information to be completed by Bidder]

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

Procurement Reference Number: [insert reference number]

To: [insert complete name of Procuring Entity].

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda No: [insert the number and issuing date of each Addenda];
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the delivery schedule specified in the Statement of Requirements the following Goods and Related Services: [insert a brief description of the Goods and Related Services];
- (c) The total price of our Bid is: [insert the total bid price in words and figures, indicating the various amounts and the respective currencies];
- (d) Our bid shall be valid for a period of [specify the number of calendar days] days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before expiry of that period;
- (e) We, including any subcontractors for any part of the contract resulting from this procurement process, are eligible to participate in public procurement in accordance with ITB Clause 4.1 and have not been suspended by the Office of the Director of Public Procurement in Malawi from participating in public procurement;
- (f) We are not participating, as Bidders, in more than one bid in this bidding process;
- (g) We do not have any conflict of interest and have not participated in the preparation of the original Statement of Requirements for the Procuring Entity;
- (h) Our firm, its affiliates or subsidiaries, including subcontractors or suppliers for any part of the contract 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

Name	Address

- (j) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents, in the amount of **[insert amount and currency in words and figures of the Bid security]** for the due performance of the Contract;
- (k) We understand that this bid, together with your written acceptance thereof included in your notification of award, 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 the lowest evaluated bid or any other bid that you may receive.

Name **[insert complete name of person signing the Bid]** In the capacity of **[insert legal capacity of person signing the bid]**.

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

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

Dated on ..... day of ....., 20....**[insert date of signing]**

## Price Schedule for Goods and Related Services

### [Input of Information to be completed by Bidder]

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

Procurement Reference Number: [insert number of bidding process]

Name of the Bidder: ...[Insert full name of Bidder]

1	2	3	4	5	6	7	8
Item No.	Good or Related Service	Country of origin	Quantity (No. of units)	Unit price <sup>1</sup>	Import Duties, Sales Taxes and other Taxes, per unit <sup>1</sup>	Total Price	Total Bid Amount
[Insert number of item]	[name of items, good or related service]	[insert country of origin of this item]	[insert number of units of this item to be purchased]	[insert the unit price of this item, excluding all import duties and taxes, paid or payable in the Republic of Malawi]	[insert all import duties, taxes paid or payable in the Republic of Malawi on this item]	[insert the total price for this item, which is the sum of columns 5 and 6]	

**Note on Prices: NFRA shall only be bound to accept offers of between MK 180.00 per kg and MK 200.00 per kg.**

<sup>1</sup> In accordance with ITB Clauses 13 and 14.

Name [insert complete name of person signing the Bid] In the capacity of [insert legal capacity of person signing the bid]

Signed insert signature of person whose name and capacity are shown above]

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

Dated on ..... day of ....., 20 ... [insert date of signing]

## **Bid Securing Declaration**

*[The bidder shall fill in this form in accordance with the instruction indicated.]*

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

NCB No.: *[insert number of bidding process]*

Alternative No.: *[inset identification No. if this is a bid for an alternative]*

To: *[insert complete name of procuring entity]*

We, the undersigned, declare that

- 1 We understand that according to your conditions bids must be supported by a Bid Securing Declaration
- 2 We accept that we will automatically be suspended from being eligible for bidding in any contract with the Procuring Entity and/or any other government entity for a period of **24 months** starting on the date as may be determined by the Government of Malawi if we are in breach of our obligation(s) under the bid conditions, because we:
  - (a) Have withdrawn our bid during the period of bids validity specified by us in the bid date sheet; or
  - (b) Having been notified of the acceptance of our bid by the Procuring Entity during the period of bids validity, (i) fail or refuse to execute the contract, if required, or (ii) fail or refuse to furnish the performance security, in accordance with the ITB
- 3 We understand that this Bid Securing Declaration shall expire if we not the successful bidder upon the earlier of (i) our receipts of a copy of your notification of the name of the successful bidder, or (ii) thirty days after the expiring of the bid.
- 4 We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

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

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

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

Date: .....day of .....*[insert date of signing]*

Witnessed By: *[insert name of witness]* in capacity of *[insert designation of witness]*

**Date:** On \_\_\_\_\_ day of \_\_\_\_\_ *[insert date of signing]*

## **Manufacturer's Authorisation**

### **[Input of Information to be completed by Bidder]**

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

Procurement Reference Number: **[insert number of bidding process]**

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

WHEREAS **[insert complete name of Manufacturer]**, who are official manufacturers of **[insert type of goods manufactured]**, having factories at **[insert full address of Manufacturer]**, do hereby authorise **[insert complete name of Bidder]** to submit a bid in relation to the Invitation for Bids indicated above, the purpose of which is to provide the following Goods, manufactured by us **[insert name and or brief description of the Goods]**, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the Goods offered by the above firm in reply to this Invitation for Bids.

Name: **[insert complete name of person signing the Bid]** In the capacity of **[insert legal capacity of person signing the bid]**

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ **[insert date of signing]**

*Note: This letter of authorisation should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. It should be included by the Bidder in their bid, if indicated in the BDS. THIS APPLIES IF MAIZE WILL BE SUPPLIED FROM A THIRD PARTY.*

## **Section 5. Eligible Countries - MALAWI ONLY**

**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 of the Republic of Malawi is satisfied that such exclusion does not preclude effective competition for the provision of goods or related 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 import of Goods from that country or any payments to persons or entities in that country.

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# Section 6. Statement of Requirements

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## 1. List of Goods and Related Services

The Procurement Reference Number is: NFRA/SGR/2019/01

### LOT 1: Delivery at NFRA Lilongwe Silos

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
1	Supply and Delivery of Non GMO White Maize	27,000	Metric Tonne (MT)	4 weeks

### LOT 2: Delivery at NFRA Mangochi Silos

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
2	Supply and Delivery of Non GMO White Maize	10,000	Metric Tonne (MT)	4 weeks

### LOT 3: Delivery at NFRA Bangula Warehouse

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
3	Supply and Delivery of Non GMO White Maize	1,000	Metric Tonne (MT)	4 weeks

### LOT 4: Delivery at NFRA Kazomba Warehouse

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
4	Supply and Delivery of Non GMO White Maize	2,000	Metric Tonne (MT)	4 weeks

*The specific conditions for the goods are attached and will form an integral part of any resulting contract.*

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## 2. Delivery and Completion Schedule

The delivery or completion period shall commence from the date of contract award. Refer to Incoterms specified in the ITB for the interpretation of the delivery period.

### LOT 1: Delivery at NFRA Lilongwe Silos

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
1	Supply and Delivery of Non GMO White Maize	27,000	Metric Tonne (MT)	4 weeks

### LOT 2: Delivery at NFRA Mangochi Silos

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
2	Supply and Delivery of Non GMO White Maize	10,000	Metric Tonne (MT)	4 weeks

### LOT 3: Delivery at NFRA Bangula Warehouse

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
3	Supply and Delivery of Non GMO White Maize	1,000	Metric Tonne (MT)	4 weeks

### LOT 4: Delivery at NFRA Kazomba Warehouse

Lot No	Description of Goods	Quantity	Physical unit	Delivery period
4	Supply and Delivery of Non GMO White Maize	2,000	Metric Tonne (MT)	4 weeks

### 3. Technical Specifications and Compliance Sheet

#### Procurement Reference Number: NFRA/SGR/2019/01

Column b states the minimum technical specification of the item(s) required by the Procuring Entity.

The Bidder is to complete column c with the technical specification of the item(s) offered and to state whether the offered items “comply” or do “not comply” giving details of the areas of non-compliance.

Item No	Name of Goods or Related Service	Technical Specifications and Standards	Mandatory	Compliance of specifications offered																										
A	B	C	D	E																										
1	<b>Non-GMO<sup>1</sup> White Maize (the maize)</b>	<p>sound and merchantable quality, suitable for human consumption and of the following specifications</p> <table> <tr> <td>Origin</td> <td>Malawi</td> </tr> <tr> <td>Production Year</td> <td>2019</td> </tr> <tr> <td>Moisture content</td> <td>Max. 12.50%</td> </tr> <tr> <td>Broken</td> <td>Max 3%</td> </tr> <tr> <td>Shrivelled</td> <td>1%</td> </tr> <tr> <td>Weeviled grain</td> <td>1%</td> </tr> <tr> <td>Grain of other colour</td> <td>2%</td> </tr> <tr> <td>Extraneous Matter and Trash</td> <td>Max 0.3%</td> </tr> <tr> <td>Rotten / Moulded</td> <td>Max 1%</td> </tr> <tr> <td>Germinated grain</td> <td>0%</td> </tr> <tr> <td>Aflatoxin</td> <td>Max 3 ppb</td> </tr> <tr> <td>Contaminants</td> <td>None</td> </tr> <tr> <td>Live Insects</td> <td>Free</td> </tr> </table>	Origin	Malawi	Production Year	2019	Moisture content	Max. 12.50%	Broken	Max 3%	Shrivelled	1%	Weeviled grain	1%	Grain of other colour	2%	Extraneous Matter and Trash	Max 0.3%	Rotten / Moulded	Max 1%	Germinated grain	0%	Aflatoxin	Max 3 ppb	Contaminants	None	Live Insects	Free	M	
Origin	Malawi																													
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Rotten / Moulded	Max 1%																													
Germinated grain	0%																													
Aflatoxin	Max 3 ppb																													
Contaminants	None																													
Live Insects	Free																													
2	<b>Packing</b>	<p>The maize shall be supplied in 50kg net uniform strong polypropylene woven bags. The bags shall have a sewn single folded bottom, be 62cm x 95cm in dimension, with a fabric of 105gsm to give a bag mass of at least 120g. Construction of the fabric shall be a minimum of 10 x 10 per square inch. The bags shall be properly closed by folding the top on 7cm only and by stitching points every 4cm.</p>	M																											

The detailed technical evaluation will examine the technical specification of the items offered in column c and determine or verify whether this meets the minimum specification required in column b. **Bidders must complete column E specifying what they are offering or the bid will be rejected. Bidders are required to include technical literature to support the details provided in column c.**

**Note to Bidders:** *The National Food Reserve Agency would like to procure this maize quickly. The Agency is therefore urging all individuals and organizations that have a spread of network of depots and or are operating a warehousing receipt system, to tender for the supply of maize to the Agency.*

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<sup>1</sup> Genetically Modified Organism.

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#### 4. Drawings - NOT APPLICABLE

Procurement Reference Number:

<b>List of related Drawings</b>		
<b>Drawing number</b>	<b>Drawing name</b>	<b>Purpose</b>
	N/A	N/A

# Section 7. General Conditions of Contract

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## **Section 7 General Conditions of Contract**

### **1. Definitions**

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (b) “Contract” means the Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (c) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.
- (d) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- (e) “Day” means calendar day.
- (f) “Delivery” means the transfer of the Goods from the Supplier to the Procuring Entity in accordance with the terms and conditions set forth in the Contract.
- (g) “Completion” means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (h) “Eligible Countries” means the countries and territories eligible as listed in Section 5 of the Bidding Document.
- (i) “GCC” means the General Conditions of Contract.
- (j) “Goods” means all of the commodities, raw materials, machinery and equipment, and/or other materials that the Supplier is required to supply to the Procuring Entity under the Contract.
- (k) “Procuring Entity” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (l) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.
- (m) “SCC” means the Special Conditions of Contract.
- (n) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (o) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid 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.
- (p) “The Site,” where applicable, means the place named in the SCC.

### **43. Contract Documents**

43.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

### **44. Fraud and Corruption**

44.1 The Government requires that Procuring Entities, as well as Bidders and Suppliers under public financed contracts, observe the highest standards of ethics during the procurement and execution of such contracts. The Procuring Entity is governed by the same guidelines. 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 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.

#### **45. Interpretation**

45.1 If the context so requires it, singular means plural and vice versa.

45.2 Incoterms

- (a) Unless otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) CIF, CIP, DDP, EXW, and other similar terms, shall be governed by the rules prescribed in the 2015 edition of Incoterms, published by the International Chamber of Commerce.

45.3 Entire Agreement

The Contract constitutes the entire agreement between the Procuring Entity and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

45.4 Amendment

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

45.5 Non waiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party’s rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

45.6 Severability

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.

#### **46. Language**

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

#### **47. Joint Venture, Consortium or Association**

47.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or

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association shall not be altered without the prior consent of the Procuring Entity.

#### **48. Eligibility**

**48.1** All Goods and Services supplied under the Contract shall have their origin in the countries and territories eligible under the rules and regulations of the Government of Malawi. **(MALAWI ONLY)**

48.2 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.

#### **49. Notices**

49.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.

49.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

#### **50. Governing Law**

50.1 The Contract shall be governed by and interpreted in accordance with the laws of the Republic of Malawi.

#### **51. Settlement of Disputes**

51.1 The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

51.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

#### **52. Scope of Supply**

52.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in the Statement of Requirements.

52.2 Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.

#### **53. Delivery**

53.1 Subject to GCC Sub-Clause 3.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Statement of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

#### **54. Supplier’s Responsibilities**

54.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.

#### **55. Procuring Entity’s Responsibilities**

**55.1** Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Procuring Entity shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner. **NOT APPLICABLE.**

55.2 The Procuring Entity shall pay all costs involved in the performance of its responsibilities, in

accordance with GCC Sub-Clause 14.1.

### **56. Contract Price**

- 56.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions there from, as may be made pursuant to the Contract.
- 56.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorised in the SCC.

### **57. Terms of Payment**

- 57.1 The Contract Price shall be paid as specified in the SCC.
- 57.2 The Supplier's request for payment shall be made to the Procuring Entity in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfilment of all the obligations stipulated in the Contract.
- 57.3 Payments shall be made promptly by the Procuring Entity, no later than **seven (7) days** after submission of an invoice or request for payment by the Supplier, and the Procuring Entity has accepted it.
- 57.4 The currency in which payments shall be made to the Supplier under this Contract shall be specified in SCC- **MALAWI KWACHA**

### **58. Taxes and Duties**

- 58.1 For goods supplied from outside the Republic of Malawi, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Republic of Malawi. **NOT APPLICABLE AS PROCUREMENT IS LOCAL.**
- 58.2 For goods supplied from within the Republic of Malawi, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Procuring Entity.

### **59. Performance Security**

- 59.1 The Supplier shall, within thirty (7) days of the notification of contract award, provide a performance security for the due performance of the Contract in the amount and currency specified in the SCC.
- 59.2 The proceeds of the performance security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 59.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring Entity, and shall be in one of the forms stipulated by the Procuring Entity in the SCC, or in another form acceptable to the Procuring Entity.
- 59.4 The performance security shall be discharged by the Procuring Entity and returned to the Supplier not later than five (5) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

### **60. Copyright - NOT APPLICABLE IN THIS PROCUREMENT**

- 60.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Procuring Entity directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party

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## 61. Subcontracting

61.1 The Supplier shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

61.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## 62. Specifications and Standards

62.1 Technical Specifications and Drawings

(a) The Supplier shall ensure that the Goods and Related Services comply with technical specifications and other provisions of the Contract.

(b) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in the Statement of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.

## 63. Packing and Documents

63.1 The Supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

63.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Procuring Entity.

## 64. Insurance

64.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC. **NOT APPLICABLE**

## 65. Transportation

65.1 Unless otherwise specified in the SCC, responsibility for transportation of the Goods shall be in accordance with the **Incoterms 2015 Edition** specified in the Statement of Requirements.

## 66. Inspections and Tests

66.1 The Supplier shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Statement of Requirements.

66.2 The Supplier shall provide the Procuring Entity with a report of the results of any such test and/or inspection.

66.3 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity.

66.4 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 25.2, shall release the Supplier from any warranties or other obligations under the Contract.

### **67. Liquidated Damages**

67.1 Except as provided under GCC Clause 30, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 33.

### **68. Warranty**

68.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract. **COVERED BY MAIZE QUALITY SPECIFICATIONS IN THIS INVITATION**

68.2 Subject to GCC Sub-Clause 21.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in Malawi. **COVERED BY MAIZE QUALITY SPECIFICATIONS IN THIS INVITATION**

68.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier. **NOT APPLICABLE**

68.4 The Procuring Entity shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect such defects.

68.5 Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.

68.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

### **69. Patent Indemnity**

69.1 The Supplier shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 28.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in Malawi; and
- (b) the sale in any country of the products produced by the Goods.

69.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 28.1, the Procuring Entity shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

69.3 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees,

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officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

## **70. Limitation of Liability**

70.1 Except in cases of criminal negligence or wilful misconduct,

- (a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity and
- (b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the Procuring Entity with respect to patent infringement

## **71. Force Majeure**

71.1 The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

71.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

71.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **72. Change Orders and Contract Amendments**

72.1 The Procuring Entity may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

72.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Procuring Entity's change order.

## **73. Extensions of Time**

73.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Procuring Entity in writing

of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

73.2 Except in case of Force Majeure, as provided under GCC Clause 30, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 32.1.

#### **74. Termination**

##### **74.1 Termination for Default**

- (a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by notice of default sent to the Supplier, may terminate the Contract in whole or in part:
  - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 32; or
  - (ii) if the Supplier fails to perform any other obligation under the Contract.
- (b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 33.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- (c) if the Supplier, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

##### **74.2 Termination for Insolvency**

- (a) The Procuring Entity may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity.

##### **74.3 Termination for Convenience**

- (a) The Procuring Entity, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

#### **75. Assignment**

75.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## 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 reference	Special Conditions
GCC 1.1(j)	The Procuring Entity is: <b>National Food Reserve Agency (NFRA)</b>
GCC 1.1 (o)	The Sites are: <b>Kanengo Silos (Lilongwe), Mangochi Silos, Bangula Warehouse, Nsanje and Kazomba Warehouse (Mzimba)</b>
GCC 4.2 (a)	The meaning of the trade terms shall be as prescribed by <b>International Chambers of Commerce</b>
GCC 4.2 (b)	The version of Incoterms shall be: <b>2015 Edition</b>
GCC 5.1	The language shall be: <b>English</b>
GCC 8.1	<p>For <b><u>notices</u></b>, the Procuring Entity's address shall be:</p> <p><b>National Food Reserve Agency</b>            Attention: <b>The Chairperson,</b>  <b>Internal Procurement and Disposal of Assets Committee (IPDC),</b>            Street Address: <b>Kanengo Industrial Area, Kanengo Silos Complex</b>            Floor/ Room number: <b>Administration Block</b>            City: <b>Lilongwe</b>            ZIP Code: <b>Private Bag B450, Capital City, Lilongwe 3</b>            Country: <b>Malawi</b>            Telephone : <b>+265 (0) 887082356</b>            Facsimile number : <b>+265 01 712131</b>            Electronic mail address : <a href="mailto:nfra@nframw.com">nfra@nframw.com</a> For</p> <p><b><u>notices</u></b>, the Supplier's address shall be:</p> <p>Attention: <b>ALL IN THIS SECTION AS ABOVE</b>            Street Address:            Floor/ Room number:            City:            Post Code:            Country:            Telephone:            Facsimile number:            Email address:</p>
GCC 9.1	The governing law shall be: Laws of <b>Malawi</b>
GCC 10.2	The formal mechanism for the resolution of disputes shall be:

GCC clause reference	Special Conditions
	<b>Arbitration.</b>
GCC 11.1	The scope of supply shall be defined in : <b>List of Goods and Related Services</b>
GCC 15.2	The price adjustment <b>Shall Not be Allowed</b>
GCC 16.1	<p>The terms of payment:</p> <p style="text-align: center;">(a) <b>On part tonnage delivered or</b>  (b) <b>On whole tonnage delivered.</b></p> <p><b>Payment</b> shall be within seven days (7) from receipt of the Supplier's invoice.</p>
GCC 16.4	The currency for payments shall be: <b>Malawi Kwacha</b>
GCC 17.1	The Supplier <b>shall be</b> responsible for all import duties and taxes <b>NOT APPLICABLE</b>
GCC 17.2	The Supplier <b>shall be</b> responsible for all import duties and taxes imposed by law in Malawi on the Goods <b>NOT APPLICABLE</b>
GCC 18.1	The amount of the Performance Security shall be: <b>1% of the total contract price from a reputable bank, acceptable to the Purchaser</b> The currency shall be: <b>Malawi Kwacha. NOT APPLICABLE</b>
GCC 18.3	The types of acceptable Performance Securities are: <b>Bank Guarantee issued by a reputable bank acceptable to the purchaser. NOT APPLICABLE</b>
GCC 18.4	Discharge of Performance Security shall take place: <b>28 (Twenty Eight days) upon completion of the Supplier's obligations under the contract. NOT APPLICABLE</b>
GCC 22.2	The packing, marking and documentation within and outside the packages shall be: <b>N/A</b>
GCC 23.1	The insurance coverage shall be: <b>NOT APPLICABLE</b>
GCC 24.1	Responsibility for transportation of the Goods shall be <b>with the Supplier.</b>
GCC 26.1	The liquidated damages shall be: <b>0.5 % per week. NOT APPLICABLE</b>
GCC 26.1	The maximum total percentage for liquidated damages shall be: <b>10% of the contract price. NOT APPLICABLE</b>

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<b>GCC clause reference</b>	<b>Special Conditions</b>
<b>GCC 27.3</b>	The period of validity of the Warranty shall be: <b>NOT APPLICABLE</b>
<b>GCC 27.5</b>	The repair or replace period will be: <b>2 weeks. NOT APPLICABLE</b>

## Section 9. Contract Forms

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# Agreement

THIS AGREEMENT made the     day of             , 20   , between .....  
..... of..... (hereinafter called “the Procuring  
Entity”) the one part, and ..... of .....  
(hereinafter called “the Supplier”), of the other part:

WHEREAS the Procuring Entity invited bids for certain Goods and Related Services, viz.,  
..... and has accepted a Bid by the Supplier  
for the supply of those Goods and Related Services in the sum of .....  
..... (hereinafter “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1.     In this Agreement words and expressions shall have the same meanings as are  
       respectively assigned to them in the Contract referred to.
2.     The following documents shall be deemed to form and be read and construed as part  
       of this Agreement, viz.:
  - (a)    the General Conditions of Contract;
  - (b)    the Special Conditions of Contract;
  - (c)    the Statement of Requirements;
  - (e)    the Bid Submission Sheet and the Price Schedules submitted by the Supplier;
  - (f)    the Procuring Entity’s Notification to the Supplier of award of Contract; and
  - (g)
3.     In consideration of the payments to be made by the Procuring Entity to the Supplier  
       as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to  
       provide the Goods and Related Services and to remedy defects therein in conformity  
       in all respects with the provisions of the Contract.
4.     The Procuring Entity hereby covenants to pay the Supplier in consideration of the  
       provision of the Goods and Related Services and the remedying of defects therein,  
       the Contract Price or such other sum as may become payable under the provisions of  
       the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in  
accordance with the laws of .....on the day, month and year indicated  
above.

Name ..... in the capacity of .....

Signed by ..... for the Procuring Entity

Name ..... in the capacity of .....

Signed by ..... for the Supplier

# Performance Security

Date: .....

Procurement Reference Number: .....

To: .....

WHEREAS ..... (hereinafter called “the Supplier”) has undertaken, pursuant to Contract No. .... dated ....., ..... 20 to supply .....(hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Supplier shall furnish you with a security ..... issued by a reputable guarantor for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

AND WHEREAS the undersigned ....., legally domiciled in ....., (hereinafter called “the Guarantor”), have agreed to give the Supplier a security:

THEREFORE, WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of ..... and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, without cavil or argument, any sum or sums within the limits of ..... as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This security is valid until the ..... day of ....., 20....

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

Name ..... In the capacity of .....

Signed .....

Duly authorised to sign the authorisation for and on behalf of .....

Dated on ..... day of ....., 20....

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# Advance Payment Security

Date: .....

Procurement Reference Number: .....

To: .....

In accordance with the payment provision included in the Contract, in relation to advance payments, ..... (hereinafter called “the Supplier”) shall deposit with the Procuring Entity a security consisting of ....., to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of .....

We, the undersigned ....., legally domiciled in ..... (hereinafter “the Guarantor”), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Procuring Entity on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding .....

This security shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until ....., ..... 20 ...

Name ..... In the capacity of .....

Signed .....

Duly authorised to sign the authorisation for and on behalf of .....

.....

Dated on ..... day of .....; 20.....