

Annexure B: Pro-forma Tender Document

This is a sample RfT using a notional solar project as an example

1.6 Purpose of this Document

This document is a request for tender (RfT) provided to pre-qualified candidates who have submitted expressions of interest (EOIs) to Malawi's ESCOM SB and have been invited to participate in the tender of up between 20 and 60 MW of Solar Photo Voltaic (PV) made up of a minimum of [1] and maximum of [4] sites with a minimum of [10] MW and a maximum of [20] MW at each site.

1.7 Background to the Project

Malawi has one of the lowest electrification rates in Sub-Saharan Africa; its 351 MW installed capacity, mostly from hydroelectric power plants on the Shire River, provides electricity to less than 10% of Malawi's population. The Malawian government (GoM) has indicated that it will attempt to increase installed electricity capacity to 1,851 MW by 2020 and increase access to electricity to 30% of the population by 2030.

The GoM believes that private sector participation in the power sector is a critical piece of expanding access to electricity in Malawi. In this context the Millennium Challenge Account (MCA) Malawi is supporting the Ministry of Natural Resources, Energy and Mining (MNREM) in seeking to encourage private sector investment in new electricity generation in Malawi. The MNREM is therefore actively seeking out developers who might be willing to become or fund independent power producers (IPPs). Encouragingly Malawi already has received a variety of unsolicited proposals for IPPs.

MCA and the MNREM believe that in order to provide the environment necessary to encourage IPPs a key component is the development of an IPP framework to define the rules of engagement for all participants in the power sector.

1.8 Request for Tender

The SB invites fully documented bids from eligible and qualified companies, joint ventures and associations with suitable experience in the provision of generation capacity.

The bids received in response to the RfT will be evaluated by the SB on the basis of their ability to demonstrate the necessary financial, legal, technical, environmental soundness, management expertise, project references, insurability, compliance, quality assurance, time frame and other requirements as detailed in this RfT. Only parties that submit responses to this RfT and meet the minimum requirements of this RfT will be considered eligible to supply power to Malawi as part of this tranche of procurement.

- Issue date []
- Closing Date []
- Written clarifications will only be provided to queries submitted before. Any clarification request received seven (7) days or less before the closing date and time stated above will not be considered.

- A voluntary clarification meeting will be held on [] at the following address []. Tenders are required to notify ESCOM SB of their intention to attend and the number of their representatives attending by no later than []. The SB will provide letters of invitation on request to facilitate any application for a visa by persons attending the clarification meeting.
- Site visits will be arranged to coincide with the clarification meeting.
- Bidders will be advised by [] of the results of their bids.
- No reasons shall be given for the decision.

1.9 Scope

More detail provided on nature of generation type sought if applicable

1.10 Sites

Site detail (if applicable)

1.11 Malawian Legislative Framework

Bidder should make themselves familiar with the following Malawian legislative and regulatory instruments which are available via the following link []:

- a) Malawian IRP
- b) ESCOM SB Annual Generation Procurement Plan
- c) IPP Framework 2017
- d) Electricity Act 2004
- e) Energy Regulation Act 2004.
- f) Electricity Amendment Act 2016
- g) Malawian Grid Code
- h) Electricity Generation Licence Application

1.12 The Procurement Process

Tenderers have been selected after prequalification via a response to the SB's RFI. Tenders must be received by [] and will then be evaluated over the period [].

Bidders will be contacted for clarification as necessary and negotiations are scheduled to be held with a selection of preferred bidders by [].

Contracts are scheduled to be signed with successful bidder (s) by []

1.13 Instructions to Bidders

1.13.1 Bids by Joint Ventures, Consortiums and Associations

Joint venture, consortium or association respondents must comply with the following requirements:

- a) Any tender shall be signed so as to legally bind all joint venture partners, jointly and severally, and any tender shall be submitted with a copy of the joint venture agreement providing for joint and several liability with respect to the contract.

- b) The selection of a joint venture, consortium or association does not necessarily imply selection of any of its partners individually or as a partner in any other joint venture, consortium or association. In case of dissolution of a joint venture, consortium or association the SB reserves the right to reject a bid that had been accepted from that joint venture, consortium or association.

1.13.2 Probity

The SB requires that clients as well as tenderers, suppliers, contractors, concessionaires and consultants, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the SB:

- 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 of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; and
 - ii. "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition;
- b) will reject a proposal for pre-qualification if it determines that a respondent recommended for pre-qualification has engaged in corrupt or fraudulent practices in competing for the contract in question;
- c) will declare a firm ineligible indefinitely or for a stated period of time, to be pre-qualified if it at any time determines that:
 - i. the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract; or
 - ii. the firm has been found by a judicial process or other official inquiry to have engaged in corrupt or fraudulent practices.

1.13.3 Evaluation Process

Evaluation of bids will be performed by the SB on the basis of companies meeting the necessary financial, legal, technical, environmental soundness, management expertise, project references, insurability, compliance, quality assurance, time frame, and other requirements as detailed in this RfT.

1.13.4 SB Reservations

The SB reserves the right to:

- a) amend the scope and value of any contract(s) to be negotiated;
- b) reject or accept any response;
- c) cancel the procurement process and reject all applications;
- d) not accept and not award the lowest priced or highest scoring response;

- e) waive any minor irregularities or informalities in the pre-qualification and RFI process;
- f) meet and/or negotiate with any respondent to the exclusion of others without being under any obligation to involve any other bidders or inform any other bidders of the negotiations and without incurring any obligations to any respondent;
- g) amend this RfT, or any associated documents;
- h) request any bidder to re-submit a response on a revised or alternative basis.

The SB shall neither be liable nor be under any obligation to inform the bidders of the grounds for such action.

1.13.5 Costs of Preparing Bids

Any and all costs incurred by respondents in preparing their responses to this RfT shall be borne by the respondents, and the SB shall have no liability for such costs.

The SB will not bear any expenses or losses incurred by respondents in compiling and submitting their bids.

1.13.6 Contact Details:

The SB's designated contact person for any queries in association with this RfT is:

[The Tender Administrator,

Tel:

Fax:

Email:]

1.13.7 Confidentiality

All RfT documents obtained by prospective respondents shall be considered as their personal documents and shall not be transferred to a third party.

Information contained in the RfT documentation shall be regarded as confidential and may not be divulged to third parties except as reasonably required for preparation of a response, irrespective of whether a response is submitted or not.

All RfT responses shall be treated as confidential and their contents shall not be disclosed to any third party, other than to:

- a) any regulatory bodies that may require such information for the purposes of providing regulatory consents; or
- b) as required by the execution of a court order by a competent Malawian court.

1.13.8 Addenda

Any amendments, interpretations or modifications to this RfT will only be made by formal written addenda issued by the SB no later than 7 days prior to the due date for submission of responses.

Each addendum issued will be distributed to all the firms or organisations that have registered with the retrieval/collection of the RfT. All addenda issued will be considered part of the RfT.

1.13.9 Requests for Clarifications by Prospective Respondents

Should prospective respondents be in doubt as to the true meaning or understanding of any part of the Pre-qualification and Request for Information document, they should seek clarification, in writing, from the SB„s designated representative, identified in Section 1.13.6 above.

The SB will respond by email to all requests for clarifications received in the period ending seven (7) days prior to the closing date, and such clarifications shall be distributed to all registered respondents.

The SB will not divulge the identity of the respondent requesting any clarification.

1.13.10 Tender language

All information, data and documents constituting any part of bids shall be in English.

1.13.11 Number of copies

The response documents shall be prepared in one original, two photocopy sets and one set on an USB memory stick of the fully completed RfT response document. The documents shall be marked „Original“ and „Copy“ as appropriate.

1.13.12 Format

Response documents should be submitted in typescript format.

Respondents may reproduce the standard forms which are required to be submitted as per the requirements set out in this document, provided that the wording of these standard forms are not changed in any way, except where these forms provide for the respondents to modify the text to reflect their particulars.

1.13.13 Currency of Financial Information

Except where explicitly stated to the contrary, financial information in respect of company performance submitted by respondents must be submitted in USD, Euro, PDS, or Malawian kwacha

1.13.14 Contents and Structure of Response Documents

Bids shall provide the information set out in Section 1.14 Contents of Bids. Failure to supply information requested, or in the form requested, may result in disqualification of a bid.

1.13.15 General and Financial Responses in Separate Envelopes

Response Documents should be submitted in two envelopes:

- a) Responses to the Sections 2.1 (Letter of Application), 2.2 (Probity), 2.3 (General Company Information), 2.4 (Reference Sites), 2.5 (Technical Information), 2.6 (Commercial Information), and 2.7 (Implementation Timeline) should be on one envelope, labelled “[Bid for the Provision of Solar PV Power Supply to Malawi: Technical Response]”, and
- b) Responses to Section 2.8 (Pricing) should be in a separate envelope, labelled “[Bid for the Provision of Solar PV Power Supply to Malawi: Financial Response]”.

1.13.16 Submission of Response Documents

At the SB's discretion, the submission date may be extended. Should the SB deem it necessary to grant such an extension an announcement via the same media as the release of this RfT shall be made at least seven (7) days before the submission date.

1.13.17 Delivery of Bids

Bid documents should be provided in a sealed envelope marked "[**Bid for the Provision of Solar PV Power Supply to Malawi**]" and addressed to the Tender Administrator, at the address given in Clause 1.13.6.

The submission is to be deposited into the SB's tender box located at [].

Each copy of each bound file that forms part of the bid documents shall be clearly marked with the name of the respondent.

1.13.18 Opening of Bids

There will be a public opening of Response documents.

1.13.19 Clarification of the Contents of Bids

The SB reserves the right to seek clarification from individual bidders on aspects of their bids.

1.13.20 Selected Bids

The successful bidder(s) will receive notification from the SB with a request to acknowledge. Only companies who acknowledge receipt of the notification and confirm their intention to participate further in the procurement process will be invited to do so.

Unsuccessful respondents will be informed that they have been unsuccessful.

1.14 Contents of Bids

1.14.1 Letter of Application

All bids shall be accompanied by a signed Letter of Application in the form set out in A.1.

1.14.2 Probity

All bids shall be accompanied by a signed Covenant of Integrity.

1.14.3 General Company Information

For each company associated in a bid whether individually or as part of a consortium, joint venture or partnership please provide the following information:

1.14.3.1 Contact Details

- a) Address to which any correspondence / documentation should be sent:
- b) Company Official to whom any query regarding this questionnaire and related matters should be directed:

1.14.3.2 Organisation Details

- a) Company Name;
- c) Registered Office;
- d) Registered Number;
- e) A copy of the company registration certificate;
- f) Legal Form of Organisation;
- g) Country of Incorporation;
- h) Date of Incorporation; and

To the extent relevant:

- a) Parent Company Name;
- b) Registered Office of Parent Company;
- c) If part of a Group of Companies, an organisation chart of the group.

1.14.3.3 Financial Details

- a) A statement is enclosed from your external auditors (or equivalent) certifying that the company is a going concern.
- b) One copy of the audited accounts in English for the last financial year is enclosed.
- c) Confirmation that the company has a liquidity ratio (current assets/current liabilities) of not less than 1.02.
- d) Confirmation that the company has a solidity ratio (equity/total assets) of not less than 0.3.
- e) Please indicate the annual turn-over for the last three years for services/works of a similar nature to your potential supply in this tender.
- f) Evidence is enclosed as to your financial rating as rated by an internationally recognised rating agency or similar evidence of your financial strength and nature of credit standing.
- g) A certificate of good standing from the Malawian Revenue Authority (or equivalent) is enclosed as evidence that your company has fulfilled its obligations in relation to payment of taxes in Malawi (if applicable) and country of registration.

1.14.3.4 Resourcing

In respect of the organisation carrying out the Works:

- a) Details of the organisation structure;
- b) Details of the management expertise, legal, technical, financial and economic capacity/resources to carry out the Works;
- c) Details of the total manpower resource availability that will be committed to the Project, together with current manpower commitments to demonstrate their ability to carry out the Works. This is to be presented in the form of a histogram showing current and projected work load and available capacity to carry out the Works;

²Financial ratios shall be rounded up to this level of precision.

- d) Information on numbers of appropriately trained qualified and experienced ex-patriate personnel that will be located in Malawi during the provision of the Works;
- e) An indication of the level to which work would be subcontracted or carried out through affiliates or associates;
- f) A statement of the experience and expertise of subcontractors or affiliates in similar services provided.

1.14.3.5 Quality Assurance

- a) Copies of the certificates of approval for ISO 9000 (or equivalent) and ISO 14001 (or equivalent) quality and environmental assurance systems applicable to the delivery of the Works.
- b) Evidence that all major equipment will satisfy internationally recognised certification such as CE marking, ASME standards, or equivalent requirements.

1.14.3.6 Environmental Performance

1.14.3.7 Health and Safety

1.14.3.8 Guarantees

- a) A statement confirming willingness to offer guarantees to meet delivery schedules and output and to accept liquidated damages for failure to meet the guarantees.

1.15 Reference Sites

Respondents shall provide the following details on not less than two (2) reference sites each with an installed capacity in excess of 10 MW.

- a) Location of site (at a minimum, country, region, nearest city/town);
- b) Site area (m²);
- c) Installed capacity (MW);
- d) Supply conditions (kV, Hz);
- e) Fuel (including minimum specification thereof);
- f) Date of installation;
- g) Time from contract signature to completion of commissioning (days);
- h) Hours of operation per month (typical);
- i) Availability of station over operating life;
- j) Generation equipment manufacturer;
- k) Employer (and power off-taker, if different);
- l) Contact details of two representatives that can be contacted at Employer and/or power off-taker (name, position, phone number, email); and
- m) Confirmation that SB staff can visit the site in the twelve (12) week period immediately following submission of the Respondent's response.

1.16 Technical Information

1.16.1 Site

Bidders are to provide the following site information:

- a) Conceptual layout of site, showing location of generators, transformers, switchgear, control room and amenities.
- b) Required site conditions: ground preparation; drainage system; trenching, fencing.
- c) Utilities

Bidders are to provide details of:

- a) Quantities of raw water required and proposed on-site raw water storage and water treatment facilities; and
- d) External power supply required during construction and operation.

1.16.2 Generation Equipment and Output

The bidder shall install PV panels, inverters and other components that meet international standards. In addition the PV panels that meet a minimum performance of [] kWh/m² per year, assuming the total insolation is not less than [1,800] kWh/m²/year

Bidders are to provide:

- a) Manufacturers specifications and performance data including claimed energy output and availability underpinning the offer with detail of assumptions made about
- e) Total solar panel Area (m²);
- f) Solar panel yield (%);
- g) Annual average solar radiation on tilted panels; and
- h) Performance ratio, coefficient for losses.
- i) Confirmation the plant will satisfactorily operate in the environmental conditions reasonably envisaged at the sites provided, including a temperature range from 0°C to 45°C.

1.16.3 Electrical System

Bidders are to provide:

- a) A single-line diagram for the installation;
- b) Manufacturer's specifications for transformers, generators and engines;
- c) Manufacturer's specifications for switchgear, protection, monitoring and control.
- d) Confirmation that the electrical system will satisfactorily operate in the environmental conditions reasonably envisaged at the sites provided, including a temperature range from 0°C to 45°C.

1.16.4 Installation Information

Please identify:

- a) Method of delivery of generation equipment to Malawi site e.g. ship, rail, truck;
- b) Minimum specifications of trucks required for equipment delivery to site;
- c) Specifications of any crane required for installation;
- d) Indicative commissioning regime (MW generated, frequency and duration on in-feed);
- e) Standard connection tests required by supplier.

1.16.5 Environmental Information

If available, please provide a typical Environmental Management Plan.

1.16.6 Commercial Information

Commercial Agreements

The SB anticipates that the minimum contractual arrangements shall consist of a Power Purchase Agreement (PPA) (counterparty SB), a Transmission Connection Agreement (TCA) (counterparty ESCOM), a Land Lease Agreement (LLG) (Counterparty MLHUD) and an Implementation Agreement (IA) (Counterparty Ministry of Finance).

- a) A pro-forma form of contract for the PPA is attached
- b) A pro-forma form of contract for the TCA is attached. To this contract would be appended a formal Offer Letter from ESCOM setting out site-specific requirements for connection to the Malawian grid.
- c) A pro-forma form of contract for the LLA is attached.
- d) A pro-forma form of contract for the IA is attached.

Bidders are requested to provide, by mark-up or otherwise, an indication of changes that they would seek to the standard terms and conditions set out in these pro-forma agreements.

General issues for which the SB seeks comment from bidders are:

- a) The acceptability of English Law as governing any contract awarded;
- b) The nature of insurance cover proposed or held for equipment delivery and during operations;
- c) The acceptability of dispute resolution Specific values in the PPA for which the SB is seeking a proposal from the Bidder are:
- d) Delay liquidated damages ;
- e) the aggregate Delay Liquidated Damages ;
- f) the threshold for application of any Change in Cost remedy and the cost elements that should be considered;
- g) the Indemnity cap.

1.16.7 Government Support

Bidders must identify any requirements for governmental support not identified in the pro-forma IA, or which are identified in the IA but are not required by the bidder. Bidders are advised to minimise any GoM support required.

1.16.8 Implementation Timeline

1.16.9 Pricing

Bidders are required to provide a firm bid for power pricing. Pricing should be on the basis of the operating regime as set out in Section 1.16.2 above.

Prices should be valid until [].

1.16.10 Tariff Structure

Bidders should present the proposed pricing in accordance with Annexure C of the pro-forma PPA.

- a) Energy Payment
- b) Transmission use of System Payment
- c) Levies

1.16.11 Tariff Escalation

The bidder should consider and comment on the proposed mechanism for price escalation in Annexure C of the pro-forma PPA.

The tariffs will only escalate once per year, to coincide with annual tariff increases granted by MERA.

1.17 Additional Information

Please provide any further information that you consider relevant to the evaluation of your bid.

1.18 Evaluation Criteria and Methodology

The relative weighting for the purposes of evaluating bids shall be:

- a) Weighting for technical evaluation: 70%
- b) Weighting for financial evaluation: 30%.

Bids shall be assessed as follows.

1.18.1 Step 1: Mandatory Requirements and Fatal Floor Evaluation

Any bid that fails to meet the following mandatory requirements shall be discarded. Each item listed in this section 1.13.1 constitutes a mandatory requirement, and all such requirements must be met.

The SB reserves the right to waive minor deviations, if they do not materially affect the capability of a respondent to perform the contract. In general subcontractors' experience and resources shall be taken into account in determining the respondent's compliance with the qualifying criteria.

If the SB becomes aware that any of the information provided by a bidder is deliberately false, incomplete or misleading, then it shall be grounds for the bid to be discarded.

1.18.1.1 Compliance with Tender

The bid documents include:

- a) A valid executed copy of the Letter of Application;
- b) A valid executed copy of the Covenant of Integrity;
- c) A copy of the bidder's company registration certificate;
- d) A copy of the bidder's audited accounts in English for the last financial year.

1.18.1.2 Corporate Viability

- a) The bidder must provide a commitment that it accepts sole contract liability or if a consortium, it includes a service provider with the ability which accepts joint and several contract liability;
- b) Where a bidder is dependent on another company (e.g. parent company) to meet financial commitments the bidder includes a copy of evidence of the agreement of the other company to provide financial support to the bidder;
- c) The bidder accepting contract liability has a liquidity ratio (current assets/current liabilities) of not less than 1.0;
- d) The bidder accepting contract liability has a solidity ratio (equity/total assets) of not less than 0.3;
- e) The bidder accepts joint and several liability with suppliers of other services required to implement and operate the power supply;
- f) Confirmation that the bidder is willing to conduct all business in English and to provide all documents in the English language.

1.18.1.3 Reference Sites

Details of at least two (2) similar projects with installed capacity of not less than 10 MW performed by your company or consortium in the last five (5) years, and which can be visited by the SB.

1.18.2 Step 2: Technical Evaluation

The technical details of the bids shall be evaluated as follows:

Criteria	Comment	Maximum score
Experience and Expertise	Preference will be given to bidders able to demonstrate successful implementation in sub-Saharan Africa, and less to remote implementation experience.	[30]
Site	Proposals for each site shall be assessed separately for the detail and adequacy of site layout and information provided.	[10]
Implementation Timetable	Where assessed to be credible, faster implementation timelines will be preferred.	[30]
Environmental Approvals	Preference shall be given to bids for which the environmental approval process is adjudged to be more rapid.	[10]
Extent of Governmental Support Required	Preference shall be given to bids that require less explicit support from the Government.	[20]

1.18.3 Step 3: Calculation of Financial Score

The tariffs (including transmission UOS charges and levies) shall be used to determine a levelised unit cost of electricity (LCOE) on the basis of a range of potential dispatch scenarios.

The LOCE values of each bid shall be ranked and the minimum LCOE bid value determined. The score for each bid shall then be determined where the lowest LCOE value is allocated 30 points, and other bids are scored proportionally.

1.18.4 Step 4: Composite Score

The composite score for each bid shall be determined by site. The SB reserves the right to select any combination of bidders and sites.

A.1 Form of Letter of Application

[Letterhead of the Respondent, or partner responsible for a joint venture, including full postal address, telephone no., fax no., and e-mail address]

Date: [insert date]

To:

ESCOM SB

[address]

Attention:

Dear Sir/Madam,

Request for Tender: Power Supply for Malawi

1. Being duly authorised to represent and act on behalf of [insert name] (hereinafter referred to as “the Respondent”), and having reviewed and fully understood all the information provided in the Request for Tender (RfT), the undersigned hereby submit the following bid for the design, supply, operation, maintenance, decommissioning and removal of a [Solar PV Power Supply Project] for Malawi.
2. The SB and its authorised representatives are hereby authorised to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this bid, and to seek clarification from our clients regarding any financial and technical aspects. This Letter of Application will also serve as authorisation to any individual or authorised representative of any institution referred to in our supporting information, to provide such information deemed necessary and requested by yourselves to verify statements and information provided in this application, or with regard to resources, experience, and competence of the respondent.
3. The SB and its authorised representatives may contact the following persons for further information: [insert names and details]
4. The application is made with full understanding that:
 - the evaluation of the bid may be based only on the information submitted;
 - only the firms or joint ventures selected on the basis of this RfT will be invited to finalise the terms and conditions for the implementation of a Power Supply Project for Malawi; and
 - the SB reserves the right to reject any bid in the event that it is unable to establish contractual conditions of supply satisfactory to the SB

5 ^{Note 1} Appended to this application we give details of the participation of each party, including the professional input, profit/loss agreements, and the liability to the joint venture or association. We also specify on a preliminary basis the commitment in terms of percentage of the input value of each party.

6. ^{Note 2} We confirm that in the event that we further participate in the procurement process, any submission as well as any resulting contract will be:
- signed as to legally bind all partners, jointly and severally, and
 - submitted with a joint venture agreement providing the joint and several liability of all partners in the event the contract is awarded to us.
7. The undersigned declare[s] that the statements made and the information provided in the duly completed and signed application (including the forms and attachments thereto) are complete, true, and correct in every detail.

For and behalf of: *[insert name of Respondent]*

Name: *[insert name with company stamp]*

Signed: *[signature]*

For and behalf of: *[insert name of Partner(s)]*

Name: *[insert name with company stamp(s)]*

Signed: *[signature(s)]*

[Note 1: Respondents who are not joint ventures should delete the paragraphs number 5 and 6 and the partner signatures in their Letter of Application.]

Form of Covenant of Integrity

[Letterhead of the Respondent, or partner responsible for a joint venture, including full postal address, telephone no., fax no., and e-mail address]

Date: *[insert date]*

To:

ESCOM SB

[address]

Attention

Dear Sir/Madam,

**Covenant of Integrity:
Power Supply for Malawi**

We declare and covenant that neither we nor anyone, including any of our directors, employees or agents, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practice (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for the [Solar PV Power Supply Project] (the "Contract") and covenant to so inform you if any instance of any such

Prohibited Practice shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

"Prohibited Practice" means:

- (i) the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; or
- (ii) a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If:

- (i) we have been, or any such director, employee or agent acting as aforesaid has been, convicted in any court of any offence involving a Prohibited Practice in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or
- (ii) any such director, employee or agent has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Practice,
- (iii) we give details of that conviction, dismissal or resignation below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Practice in connection with the Contract.

[Give details if necessary].

In the event that we are awarded the Contract, we grant the SB and auditors appointed by them, as well as any authority having competence under Malawian law, the right of inspection of our records. We accept to preserve these records generally in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

For and behalf of: *[insert name of Respondent]*

Name: *[insert name with company stamp]*

Signed: *[signature]*