REQUEST FOR PROPOSAL

FOR THE LILONGWE CITY COUNCIL FLAGSHIP PROJECT – INTERNATIONAL BUS TERMINAL

MAY 2022

REF No.: PPPC/NCS/59/50-2021

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DISCLAIMER

The information contained in this Request for Proposal document (the "**RFP**") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of Lilongwe City Council (LCC) or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by LCC to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers pursuant to this RFP. This RFP contains salient information pertaining to the subject PPP project for purposes of providing background information and the broad historical, technical and operational context to the interested bidders. The RFP does not purport to contain all the information that each Bidder may require. This RFP may not be responsive to the needs of all investors and in any event, it is not possible for LCC, its employees or advisors to address the specific circumstances, investment objectives, financial situation and particular needs of each investor. While every effort has been made to ensure accuracy of the facts, the RFP has been prepared on the basis that each bidder will undertake their own detailed financial and technical due diligence reviews of the project in order to arrive at a decision to invest. LCC and its agents are therefore unable to guarantee the accuracy of assumptions, assessments, statements and information contained in the Bidding Documents, especially in RFP and Draft PPP Agreement. Each Bidder should, therefore, conduct its own investigations and analysis of information for purposes of supporting a decision to invest. For this purpose, the bidders are encouraged to engage independent professional specialists to provide professional advice and come up with accurate and reliable information and assumptions to support the technical and financial proposals expected. Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. LCC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

LCC, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Process. LCC also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

LCC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions

contained in this RFP. The issue of this RFP does not imply that LCC is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the Project and the PPPC reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by LCC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and LCC shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation for submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

1 PROJECT INFORMATION MEMORANDUM

1.1.1 INTRODUCTION

1.1.1 Country & Economic Overview

Located in Southern Africa, Malawi is landlocked, sharing its borders with Mozambique, Zambia and Tanzania. The country has an estimated population of 18.6 million (2019), which is expected to double by 2038.

Malawi remains one of the poorest countries in the world despite making significant economic and structural reforms to sustain economic growth. The economy is heavily dependent on agriculture, employing nearly 80 per cent of the population, and it is vulnerable to external shocks, particularly climatic shocks. Generally, the country's economic performance has historically been constrained by policy inconsistency, macroeconomic instability, poor infrastructure, lack of governance transparency & corruption, high population growth, and poor health and education outcomes that limit labor productivity.

Revenue and grants totaled 10.3% of GDP through December 2019, which was below the target of 12.2% of GDP. Total expenditure and net lending were below budgeted levels as the government spent 0.9% of GDP below the mid-year target of 14.0%, due to under-spending on development expenditure which was partially offset by recurrent expenditure overruns of 0.6 percent of GDP.

Repeated high fiscal deficits have contributed to an accumulation of domestic debt such that the stock of domestic debt increased from 28.2 to 29.7% of GDP between 2018 and 2019.

1.1.2 Overview of Lilongwe City Council (LCC)

The Lilongwe City Council (LCC) is a corporate body established under the Local Government Act No. 42 of 1998 and within the National Decentralization Policy 1998. The Council is composed of both a political and an administrative structure. The political structure features a Mayor who is elected by the 27 city councilors, who are each elected by the wards of Lilongwe's approximately 1.1 million residents in addition to 4 Members of Parliament. LCC's Administrative Structure is headed by the Chief Executive Officer who oversees the Secretariat which comprises technical departments, including: Administrative Services; Human Resources; Parks, Recreation and Environment; Engineering Services, Health and Social Services; Financial Services, Town Planning and Estates Management Services; Education; and Trade, Commerce and Industry, Education, and other devolved sectors.

Lilongwe is the largest city in Malawi. It began as small fishing village on the banks of the River Lilongwe, when boma (fort) was first built in 1902. In 1975 the national capital was moved to Lilongwe, from Zomba. The aim was to concentrate Government administration

in one city and to stimulate development in the Central and Northern Regions by establishing a major growth point in the centre of the country. With the relocation of all government head offices from Blantyre completed in 2005, Lilongwe has encountered a high rate of urbanization.

As a planned city, Lilongwe is divided into 4 sectors: Old Town, Capitol Hill, Kanengo, and Lumbadzi. This design clusters residential, employment and service areas around each centre, in order to optimize travel distances and avoid congestion. The city is further divided into 58 areas. The numbers are assigned chronologically, not geographically. Lilongwe is located on a plateau in Central Malawi, forming part of the East African Rift Valley, and situated at an altitude of 1,050 meters above sea level. It has a land area of 474 square kilometres. Lilongwe is situated at the centre of a large agricultural region, and since the 1920s has served as a major agricultural market hub for the Central Plateau Region.

While Blantyre is the commercial market centre of Malawi, Lilongwe's local economy is dominated by public institutions and associated services. Kanengo, in the north, is the main industrial area, where agro-processing, tobacco storage and sales, maize storage, and other activities related to light industry are centred. Public administration, services, finance, banking, retail trade, construction, transport, tourism, and tobacco manufacturing are the main economic activities in Lilongwe. Kamuzu International Airport is located to the north of the city and has a capacity of 600,000 passengers per year. The civil service employs about 27% of the city's work force while the private sector employs about 40%. The remaining 24% are self-employed, typically in small informal sector activities. Lilongwe's population stands at approximately 1.1 Million and is growing at a rate of almost 4% per year. However, about 76% of our population lives in informal settlements, and poverty stands at roughly 25% with unemployment estimated at 16%.

2.0 Overview of the project sector

The Bus Terminal and Parkade project is one of the project concepts emanating from the Lilongwe City Council Strategic Plan 2020/21 to 2024/ 25. This is in response to one of the strategic objectives, namely, "to create a conducive environment for the growth and development of trade and industry in the City." Currently, the operations are overly-focused on revenue raised from the markets, commercial properties and the issuing of business licenses. The impact of these activities on the local economy is negligible.

The private sector development strategy is mainstreamed throughout this plan. For instance, strategic objective #2.2 defines our approach to use public private partnership to provide different services, including Infrastructure development. Then solid waste management is described in strategic objectives #3.3 focusing on improved collection and proper disposal of 70 percent of all solid waste generated. The project also partly touches on easing traffic congestion as stated strategic objective #3.4. Lastly, strategic plan #3.6 on land and town planning, requires partnerships for optimal use of available space.

3.0. PROJECTS BACKGROUND

The Lilongwe City Master Plan (Master Plan) was developed in 1968 and this followed the development of an Outline Zoning Scheme for the City in 1969. The Scheme was aimed at promoting regulated urban development and appropriate land use for transport among several others. In the Master plan, the rail and road network were designed in such a way that they serve city residents and Government business with excellence. However, implementation has been slow such that almost forty-seven years down the line, very important links are still missing on the network. The increase of population and traffic has led to inadequate public car parking facilities and terminal(s) for both local and international buses following improved regional trade.

An international bus terminal is a main depot where buses going outside Malawi to neighboring countries will be departing and arriving while the local bus terminal where buses moving within Malawi will be departing and arriving. Meanwhile, the City has fragmented depots in private plots that are being used by both local and international buses.

LCC has a depot near the Central Market which is used by local buses. The place is very congested with vehicles and people seeking services in the market, the depot and other businesses. The market and depot infrastructures are very old and largely dilapidated. The Council has since embarked on a mission to transform the city and one of the areas to be upgraded is Malangalanga area. The current central market will be transferred to Wenela complex and the bus depot will be leveled to allow the development of the international bus depot with a parkade to serve passengers in transit and other users.

In its quest to realize its vision, mission and objectives, LCC proposes to develop an imposing local and international bus terminal that will replace the existing depot at Old Town and become an icon in the Southern African region.

We are excited about the prospects of offering extraordinary local and international bus services to the residents of and visitors to Lilongwe City by embarking on a journey to enhance and maintain the development of imposing bus terminal structure with a parkade and associated amenities.

This will entail establishing an institutional structure and sustained financing mechanism that will support the overall success of the bus depot and parkade. Thus, a Special Purpose Vehicle (SPV) will be established to ensure the success of the project. Public infrastructure has hampered the promotion of tourism in Malawi and the Council recognizes how this project will attract tourists' and business peoples' travel in Malawi.

The current situation for the area is very unhygienic and highly polluted due to several factors such as poor solid and liquid waste management practices. The project is therefore designed to prevent the degradation of the environment and providing a healthy living and working environment for the people of Malawi.

LCC is geared to accord full recognition to the rights of future generations by means of modern transport facility and provision of a safe, effective and efficient passenger environment.

The project is also designed to establish a secure and aesthetically pleasing areas. Thus, enhancing the outlook of the areas to execute its beauty than an eye sore we have at the moment.

The Council recognizes the importance of the Sustainable Development Goals (SDGs) and Malawi's Growth and Development Strategies (MGDS) pillars. The strategic focus areas have been aligned to pillars which include corporate governance; revenue collection; financial management; human resource management; information and communication; civic participation in municipal governance and development.

Lilongwe has a participatory and democratic system of governance. Councilors are elected by city residents while the Mayor is elected from among the Councilors. The Secretariat comprises of appointed staff members and together with the civil society groups make the governance system.

One of the service departments is the Directorate of Commerce, Trade and Industry mandated to manage commercial public amenities like bus depot and markets.

4.0. PROJECT DESCRIPTION

The project name is the Flagship Project for Lilongwe City Council – International Bus Terminal. The Council proposes to invite reputable local and international organizations to provide proposals for the development of Lilongwe City Flagship Project on a revenue sharing basis. The service provider shall design, build, finance, operate, maintain and transfer to the Council upon expiry of the contract period. The design has to take into consideration the green technology.

5.0. PROJECT LOCATION

The new three-story bus terminal and a five-story parkade project is located in area 1, along Malangalanga road, replacing the central market and bus depot. The location of the project is quite strategic as it is easily accessible through the road network. It is in the CBD, Old town built up sector, close to the City Malls, Game Stores and Shoprite, Lilongwe Police station, Cross Roads Hotel, lodges and Villas. It has direct connection points to international corridors for example Mchinji road that connects Malawi to Zambia through Chipata.

6.0. MARKET ANALYSIS

There are many scattered bus terminals in the City because the Council lacks a proper one where transporters can ply their trade. Business people have resorted using carparks of mega stores in such places as the Game Complex, Gate Way Mall, City Mall or other

places such as Akulenje Inn, Filling Stations like the one opposite the Lilongwe Hotel and along the Paul Kagame Road before the Road Traffic Directorate. There are so many bus companies that are failing to take off because they don't have offices and places to pick or drop customers.

7.0. REGULATORY FRAMEWORKS

A PPP contract, as a legally enforceable document, does not operate in a vacuum. It operates within the precincts of relevant laws. A PPP contract that is not backed by robust legal framework is not only difficult to implement, but also difficult to control the operations of the private partner. A general description of the relevant laws in the proposed projects from a PPP point of view are discussed below. The conclusion that can be drawn from this general description is that the legal and regulatory framework is generally sufficient for a proper implementation of a PPP project.

7.1 The Constitution of the Republic of Malawi 1994

The Constitution is the supreme law of the Country. Laws must therefore always be consistent with the Constitution for their validity. An analysis of the legal framework must first start with the constitution to demonstrate conducive environment for private sector investment generally and specifically, private sector investment in the delivery of public service. This must align well with the human rights approach and the free market economy as enshrined in the Constitution of Malawi. Further, it is the Constitution that mandates the local authorities, like Lilongwe City Council, with the responsibility to promotion of infrastructural and economic development, through the formulation and execution of local development plans and the encouragement of business enterprise. The proposed projects have to be implemented within the confines of the said mandate.

7.2 The Local Government Act Cap 22:01

The Act establishes local government authorities and regulates activities done by the local government authorities. In particular, section 38(1) of the Local Government Act authorizes the Council to enter into contracts with any person for the provision or management of any service by that person which the Council is empowered by this Act to provide or manage. Further, clause 12 of the First schedule to the Local Government Act, while authorizing the Council to pursue commercial undertakings require that no new undertaking shall be commenced until the Council shall have received a report from the Chief Executive Officer of the Council upon the financial viability and the business plan for the proposed enterprise, and encourages contracting out undertakings that do not

return a reasonable net profit for two successive years. These, and the other general guidelines from the Act, will have to inform the proposed projects.

7.3 The Public Private Partnership Act 2022

The objective of the Act is to provide for partnerships between the public sector and private sector for the supply of infrastructure and delivery of services as means of contributing towards sustaining economic growth, social development and infrastructure development. It also provides for the development and implementation of public private partnership arrangements in Malawi for the delivery of infrastructure and services, and for the establishment of the Public Private Partnership Commission, and for private sector participation in state-owned enterprises, among others. In relation to the proposed projects, since they will be in the nature of a Public Private Partnership, the procedure of commencement, undertaking of feasibility studies, selection of a successful bidder, and the principle to guide the arrangement shall all be guided by the PPP Act.

7.4 The Customs and Excise Act and the Taxation Act

The Customs and Excise Act makes provision for the administration, management and control of customs and excise and the imposition and collection of customs, excise and other duties and for matters connected therewith. All material importation for the project will have to comply with the statutory requirements. On the same issue of tax obligations, The Taxation Act to provide for the taxation of incomes and for purposes ancillary thereto which have to be taken into account when planning for the project to factor in compliance as well as implications thereof.

7.6 The Companies Act 2013

This is an Act that consolidates the law relating to the incorporation, administration and regulation of companies, and to provide for matters incidental thereto and connected therewith. The PPP Act and the policy advocates for the formation of a single purpose company by the private sector responsible for the implementation of a PPP project. Depending on the option adopted, this Act will become a point of reference.

7.7 Road Traffic Act 1998

The Act that consolidates the law relating to road traffic and vehicles

7.8 The Physical Planning Act 2016

The objective of this Act is to make provision for physical planning and the orderly and progressive development of land in both urban and rural areas; to preserve and improve

amenities thereof; for the grant of permission to develop land and for other powers of control over the use of land; for the establishment of the Physical Planning Council; for the establishment of the Physical Planners Board; for the registration and regulation of physical planners and for matters connected therewith and incidental thereto. All the developments in the projects will have to comply with the statute.

7.9 Lilongwe City Council By-Laws

These are the Laws that regulate certain activities within the jurisdiction of a local government authority. Each local authority applies its detailed unique rules or by laws regarding operations such as waste management and construction standards.

7.10 The Environment Management Act of 2017

An Act to make provision for the protection and management of the environment; the conservation and sustainable utilization of natural resources and for matters connected therewith and incidental thereto. The projects will inevitably touch on issues of environment. From the outset, environmental issues stipulated in the Act must be complied with. Environmental management is a continuous process which means that the law will continuously be a reference point throughout the life cycle of the project.

7.11 The National Construction Industry Act 1997

The Act was promulgated to provide for, inter alia the establishment of the National Construction Industry Council of Malawi, for the promotion and development of the construction industry in Malawi and for the registration of persons engaged in the construction industry. The law that regulates the construction industry.

7.12 The Architects and Quantity Surveyors Act 1992

An Act that provides for matters relating to the professions of architecture and quantity surveying

7.13 The Malawi Engineering Institution Act 2019

An Act that provides for matters relating to the professions of engineers in Malawi. The Act was put in place to regulate the qualifications, registration and control of engineers. The Act further establishes the Board of Engineers as the qualifying, registering and disciplinary authority of the professions. Engineers working on the projects will have to be registered with the Board. Matters of discipline if any, will have to be handled by the Board in accordance with the law

7.14 The Public Procurement and Disposal of Assets Act, 2016

The Act provides for, and regulate, a decentralized institutional structure for the public procurement and disposal of· public assets; and provides for matters connected with or incidental thereto. It aims at promoting transparent, competitive and fair procurement process in the public service. Procurement of goods and services by public institutions with regard to the project will have to be in accordance with the provisions of this Act

8.0. DEVELOPMENT AND OPERATION PLAN

The Central Market which is located around the bus depot area has infrastructure which are dilapidated which do not add beauty to the surrounding. The buildings have roofs that are leaking and need replacement. The walls to the market buildings have been eroded with rainy. This does not bring beauty.

The market has a shed where people sell their goods, it also has some shops which are privately owned by people. The Central Market has also a car park which needs constant maintenance or rehabilitation.

The bus depot which has waiting shelters needs serious maintenance as they can cause body harm to people boarding or alighting from buses. The depot has also pavements which are dilapidated and needs maintenance as they increase the wear and tear of a vehicle. The shops which are privately owned by people are not periodically maintained and do not add beauty to the surrounding.

There will be need to demolish the existing structures to pave way for the modern bus terminal. Below is a demonstration of the vision of the bust terminal. The investors may adopt and improve on it or come up with a completely new design fit for the purpose but innovative enough to change the face of the area.

The drawings below demonstrate the concept and vision of the market. However, the investor has to come up with his innovative design that will fit the purpose but creative enough to inspire other investors. And most of all it has to meet the green technology standards.





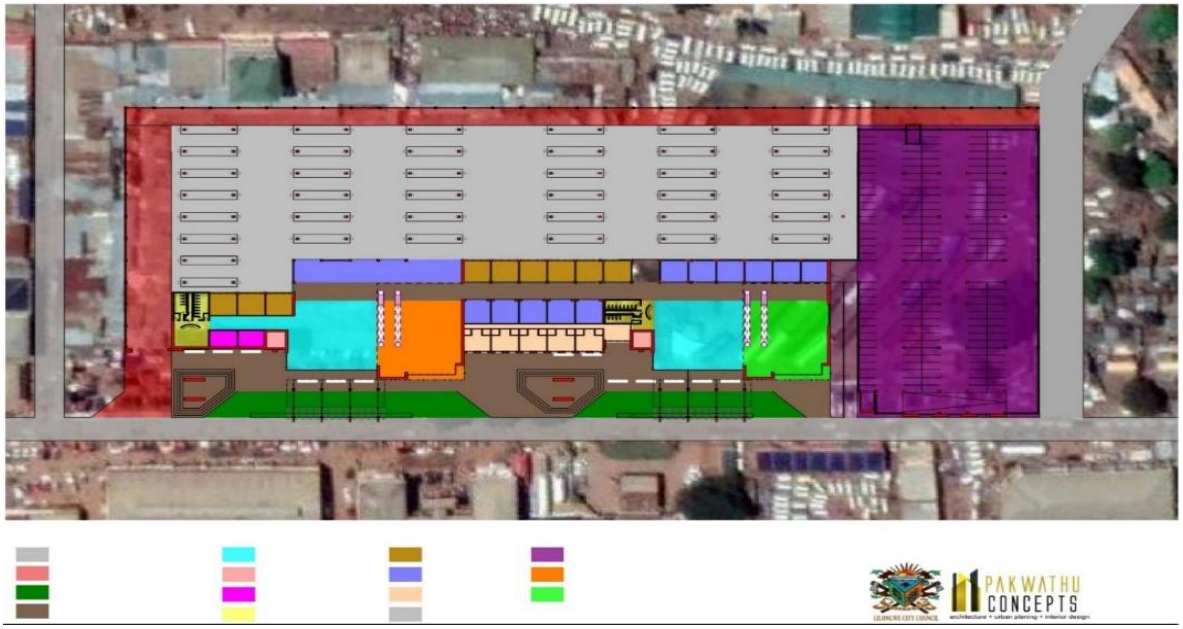

MZUZU
LILONGWE
MULANJE


ENTRANCE
LILONGWE
BUS
STATION
tnm
airtel


KFC
STEERS
airtel
tnm
NBS Bank


CAR PARK
BE SEEN CAMPAIGN
TO ADVERTISE HERE CONTACT LILONGWE CITY ASSEMBLY


NBS Bank
LILONGWE CITY HOTEL
STEERS



8.2.1. Health and Safety

The dilapidation of the infrastructure at Central Market makes the place not to be a good habitable place. The infrastructure needs to be improved to meet required minimum standards to be habitable by people. The place poses a huge risk if an accident happens at a time when people are selling and buying goods.

The bus waiting shelters in the depot are a hazard to people within the depot. These require maintenance to avoid people being hurt.

The potholes within the depot poses a risk to vehicle going into the depot. This reduces the durability of the vehicles.

The improvement of infrastructure around the depot area makes the place habitable for people; suitable for people to carry out businesses; and safe for people to travel around the depot area with their vehicles without the risk of having accidents that are a result of poor pavement conditions. Improving infrastructure around the depot area also reduces the chances of having accidents arising from damaged waiting shelters in the depot.

8.2.2 Technology

Currently there are no technologies that have been put in place to enhance services around the depot. However, measures have been put in place to control and minimize the congestion around the depot.

The development of constructing new infrastructure around the depot area brings in room for improved technologies to be incorporated to harmonize mobility of people and vehicles around this area. This makes better use of the area provided compared to the current state..

By constructing a multi-storey car park creates more space where vehicles can park, this eliminates the chances where vehicles park along the road, as a result reducing congestion. This makes the place safe for pedestrians around the depot area since they have space (walkways) which can be used by pedestrians not as car parking space for vehicles.

8.2.3 Furnishing and Fitting

The current infrastructure does offer inspiration to people doing construction works around the area. New and modern infrastructure which are to be furnished around the area are going to bring beauty and also inspire other developers around the area to construct infrastructures that incorporate modern technologies.

The possibility of having a multi-storey car parking area adds value to the land around the depot area. This will motivate other developers to consider all possibilities when making designs in cases where land is scarce. The multi-storey car parking area increases the use of land since the same space which a vehicle could park will be used for parking by more than five vehicles.

8.2.4 Construction Repair and Maintenance

The repairs and maintenance to the existing infrastructure is high due to the condition at which the infrastructures are. The bringing in of new infrastructure relieves the burden of repairs and maintenance costs and shifts the burden several years ahead. This gives the Council time to focus on other developments with the city.

The cost of maintaining the infrastructure is low on a short time basis but becomes bigger with the longer period of time. The costs of rehabilitating the infrastructure is high compared to that of maintenance on a short period of time. But this become lower when analyzed on a longer period compared to the maintenance costs.

The idea of constructing new infrastructure of a high quality is preferable compared to maintenance and rehabilitation works. This idea becomes cheaper during the longer period of time as it removes the maintenance or rehabilitation costs over a long period of time.

8.2.5 Operational and Support Service

The successful investor will be required to form a new company which in the Council's term is called a 'Special Purpose Vehicle'(SPV) through which the contractual terms of the partnership will be implemented. The SPV will be responsible for management of the bus terminal, maintenance and revenue collection. After the agreed period, the Company will hand over the terminal to the Council.

The Council may support the company with sanitation and hygiene activities such as garbage collection at a fee if the Company so wishes.

INVITATION FOR PROPOSAL

9.0. INTRODUCTION

9.1.1. Project Background

9.1.1 The Lilongwe City Council is a corporate body established under the Local Government Act No. 42 of 1998 alongside the National Decentralization Policy 1998. The Council is composed of the political and administrative structure. On the one hand, the Mayor heads the political structure which comprises 27 elected councilors representing each of the Council's wards and 4 Members of Parliament. On the other hand, the Chief Executive Officer heads the Secretariat which comprises technical departments, like: Administrative Services; Human Resources; Parks, Precreation and Environment; Engineering Services, Health and Social Services; Financial Services, Town Planning and Estates Management Services; Education; and Trade, Commerce and Industry, Education, and other devolved sectors

Lilongwe is the largest city in Malawi. It began as small fishing village on the banks of the River Lilongwe. A boma (fort) was built in 1902. In 1975 it was decided to shift the capital to Lilongwe, relocating from Zomba. The aim was to concentrate Government administration in one city and to stimulate development in the Central and Northern Regions by establishing a major growth point in the centre of the country. With the relocation of all government head offices from Blantyre completed in 2005, Lilongwe has encountered a high rate of urbanization.

As a planned city, Lilongwe is divided into 4 sectors: Old Town, Capitol Hill, Kanengo, and Lumbadzi. This design clusters residential, employment and service areas around each centre, in order to reduce travel distances and avoid congestion. The city is further divided into 58 areas. The numbers are assigned chronologically, not geographically. Lilongwe is located on a plateau in Central Malawi, forming part of the East African Rift Valley, and situated at an altitude of 1,050 meters above sea level. It has a land area of 474 square kilometres. Our city is situated at the centre of a large agricultural area, and since the 1920s has served as a major agricultural market centre for the Central Plateau Region.

To address the challenges of lack of recreation facilities, the Council intends to transform the City with sound public infrastructure in the form of uplifting the city through the development of the Council's Flagship Projects. The need for revitalization of the city is further supported by the need to increase the revenue base of the Council. The Council intends to develop the Lilongwe City Flagship Projects through Public-Private Partnership (the "**PPP**") arrangement. The Council has decided to carry out the bidding process for the selection of a private investor/operator as the bidder to whom the Project may be awarded. The private party is expected to develop the Flagship Project under design, build, finance, operate, maintain and eventually transfer through a Public Private Partnership

agreement. The PPP agreement will have a concession period of fifteen (15) years. The proposed flagship Project – International Bus Terminal is situated in Area 4 and it is bordered by the Plant & Vehicle Hire Organization – PVHO, Immigration and Design Printers to the East. Originally, the area was 9.870 acres of land

9.1.2 The Selected Bidder may undertake to incorporate a Special Purpose Vehicle ("**SPV**") (the "**Successful bidder/investor**") and shall be responsible for designing, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the PPP Agreement (the "**PPP Agreement**") to be entered into between LCC and the Successful bidder/investor in the form provided as part of the Bidding Documents pursuant hereto.

9.1.3 The scope of work will broadly include development of the Flagship Project – International Bus Terminal to high class standards with efficient operation and maintenance thereof as per the PPP Agreement.

9.1.4 The PPP Agreement sets forth the detailed terms and conditions for grant of the Development, Financing, Management and Operation right to the Successful bidder/investor, including the scope of the Successful bidder/investor's services and obligations (the "**Development & Operation Right**").

9.1.5 The statements and explanations contained in this Request For Proposal (**the "RFP" document**) are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Successful bidder/investor set forth in the PPP Agreement or LCC's rights to amend, alter, change, supplement or clarify the scope of work, the Development and Operation right to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by LCC.

9.1.6 The LCC shall receive bids pursuant to this RFP in accordance with the terms set forth in this RFP (the "**Bid**") and other documents to be provided by the LCC pursuant to this RFP, as modified, altered, amended and clarified from time to time by the LCC (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Table 1, Schedule of Bidding Process for submission of Bid (the "**Bid Due Date**").

9.1.7 LCC nor its agents will not facilitate the successful bidder/investor in seeking grants/subsidies from the Government or any other Financial Institutions.

9.2. Brief description of bidding Process

9.2.1 LCC acting through the Public Private Partnership Commission, has adopted a single stage two envelop bidding process for the selection of the Bidder for

award of the Project. The first part (the **"Technical Evaluation**") of the Bidding Process involves assessing interested party and/or parties/ consortium on the basis of their Technical and Financial Capacity in accordance with the provisions of Clause 11.1. At the end of the Technical Evaluation, only those Bidders whose Technical Evaluation Score has met the minimum required evaluation points shall qualify to have their Financial Bids opened for the financial evaluation (the "**Financial Evaluation**") in accordance with the provisions of Clause 11.2. The Bid shall be valid for a period of not less than 180 days (one hundred and eighty days) from the Bid Due Date as specified in Table 1.

9.2.2 For the purpose of Technical Evaluation, Bidders would be required to furnish all the information as specified in this RFP and any other documents provided by the PPP Commission. Only those Bidders declared as qualified at the technical evaluation stage shall be eligible to have their financial bids opened for financial evaluation.

9.2.3 During the financial evaluation stage, the financial offer (the "**Financial Offer**") submitted by the Bidders as hard copy (Appendix-V) will be evaluated.

9.2.4 Bids are invited based on the **Quality and Cost Based Selection (QCBS) method**. The concession period is fixed at 15 years with the provision that the Agreement will be reviewed every three years. After Technical Evaluation Stage and subject to requirements of the RFP, the concession fee shall constitute the sole criteria for evaluation of Bids and the selection of the Highest Bidder.

9.2.5 The Bidder with the highest combined technical and financial evaluated score shall be declared the Preferred Bidder. The remaining qualifying Bidders shall be kept in reserve and may be considered accordingly to their financial scores in case the preferred Bidder declines. In the event that none of the other Bidders is willing to take the offer, the PPP Commission may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.

9.2.6 As part of the Bidding Documents, the PPP Commission will provide any other information pertaining/ relevant to the Project.

9.2.7 Further and other details of the Bidding Process to be followed and the terms thereof are spelt out in the subsequent sections of this RFP.

9.2.8 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax or e-mail to the officer designated in Clause 9.3. The envelopes/communications shall clearly bear the following identification/title:

Queries/ Request for Additional Information: RFP for "**Development of Lilongwe City Council Flagship Project – International Bus Terminal through a Public Private Partnership Arrangement".**

Table 1: Schedule of Bidding Process

SCHEDULE OF BIDDING PROCESS NO.	EVENT DESCRIPTION	DATE
1	ISSUE OF RFP TO APPLICANTS	22 SEPTEMBER, 2022
2	SITE VISIT AND PROJECT BRIEF	AS ADVISED IN 10.1.1.5
3	LAST DATE OF RECEIVING QUERIES	26 OCTOBER, 2022
5	LAST DATE FOR SUBMISSION OF BID (BID DUE DATE)	9 NOVEMBER 2022 AT 2:00PM LOCAL TIME
7	DATE FOR OPENING TECHNICAL PROPOSALS	9 NOVEMBER 2020 AT 2:00PM LOCAL TIME
8	INFORMING THE QUALIFIED BIDDERS	6 DECEMBER 2022
9	DATE OF OPENING FINANCIAL PROPOSAL FOR TECHNICALLY QUALIFIED BIDS	20 DECEMBER 2022
10	ISSUE OF LETTER OF AWARD (LOA)	WITHIN 3 MONTHS OF THE DATE OF OPENING OF FINANCIAL OFFER
11	ACCEPTANCE BY THE SUCCESSFUL BIDDER OF THE LETTER OF AWARD	WITHIN 21 DAYS FROM THE ISSUE OF LOA
12	SIGNING OF CONCESSIONING AGREEMENT	WITHIN 45 DAYS FROM THE ISSUE OF LOA

LCC will endeavor to adhere to the dates indicated above. However, it reserves the right to effect changes to the above dates, if the need arises. Such change, if any, will be communicated to all Bidders and would also be uploaded at PPPC's website (www.pppc.mw) from time to time.

9.3. Any queries or request for clarifications should be addressed to:

The Chief Executive Officer
Public Private Partnership Commission
P.O. Box 937
Blantyre

Fax: +265 1 821 248
E-Mail: info@pppc.mw

10.0. INSTRUCTIONS TO BIDDERS

10.1.1. GENERAL

10.1.1.1. Scope of Bids

10.1.1.1 The PPPC wishes and invites Bids from experienced and capable Bidders in the format and within the specified date and time as described in this RFP.

10.1.1.2. Eligibility of Bidders

10.1.2.1 For determining the eligibility of Bidders for their qualification hereunder, the following shall apply:

(a) The Bidder to qualify may be a single entity or a group of entities (the "**Consortium**"), coming together to develop the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder.

(b) A Bidder should be a private entity, or entities with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in the RFP.

(c) A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (twenty five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject**

Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

(ii) a constituent of such Bidder is also a constituent of another Bidder; or

(iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

(iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

(v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or

(vi) such Bidder or any Associate thereof has participated as a consultant to LCC in the preparation of any documents, design or technical specifications of the Project.

Notwithstanding anything stated herein a conflict of interest situation arising at the Qualification will be considered to subsist only, as between such Applicants attracting conflict of interest provisions on account of shareholdings, who submit bids under this document.

Explanation:

In case a Bidder is a Consortium, then the term Bidder shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder / Consortium Member (the "**Associate**"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

(d) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of LCC and the PPPC in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of the Letter of Award (LOA) or (ii) execution of the PPP Agreement. In the event that any such adviser is engaged by the Successful bidder/investor, as the case may be, after issue of the LOA or execution of the PPP Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the PPP Agreement and without prejudice to any other right or remedy of LCC, the LOA or the PPP Agreement, as the case may be, shall be liable to be terminated without LCC being liable in any manner whatsoever to the Successful bidder/investor for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 1 (one) year from the date of signing of the PPP Agreement.

10.1.2.2 For the Technical Evaluation, the technical bids will be assessed in the following areas:

(A) **Technical Capacity**: For demonstrating technical capacity and experience (the **"Technical Capacity"**), the Bidder shall, over the past 10 (Ten) financial years preceding the Bid Due Date, have:

(i) Operated, managed and maintained a bus terminal and hotel; and

(ii) Developed or enhanced and financed a public infrastructure with demonstration of qualified staff on the ground.

(B) **Financial Capacity**: The Bidder shall have a minimum Net Worth (the **"Financial Capacity"**) of US$200,000 (United States Dollars Two Hundred Thousand) at the close of the preceding financial year.

(*In case an Applicant has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Applicants assessed Net-Worth*.)

In case of a Consortium, the combined technical capacity and net worth of those Members, who have and shall continue to have an equity share of at least 26% (Twenty Six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each Member shall, for a period of 5 (five) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (Twenty Six per cent) of the subscribed and paid up equity of the SPV.

10.1.2.3 **Operation and Management (O&M) Experience**: The bidder shall demonstrate competence in O&M of bus terminal and hotel facilities in conformity with the provisions of the PPP agreement.

10.1.2.4 The Bidder shall enclose with its Bid, audited financial statements of the past 5 years. In case a particular job / contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job / contract by producing a certificate from its client; and

10.1.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

10.1.2.6 Bidders will be required to pay a non-refundable fee of **US$1,000.00 (One thousand US Dollar**) for foreign-based entities or **MK500 000 (Five Hundred Thousand Kwacha)** for local entities. The payment, through a bank certified cheque, should be made to The Public Private Partnership Commission within seven days of receipt of RFP

10.1.2.7 A Bidder is required to deposit, along with its Bid, a bid security of **US$150,000 (the** "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Validity Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PPP Agreement. The Bidders will have to provide Bid Security in the form of a bank guarantee acceptable to the PPP Commission and in such event, the validity period of the bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the PPP Commission and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security

10.1.2.8 Where the Bidder is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act (the "**SPV**"), to execute the PPP Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

(a) Number of members in a consortium shall not be limited;

(b) Subject to the provisions of sub clause (a) above, the Bid should contain the information required for each member of the Consortium;

(c) Members of the consortium shall nominate one member as the Lead Member (the **'Lead Member')** who shall have an equity shareholding of at least 26% (Twenty Six percent) of the paid up and subscribed equity of the SPV. The lead member shall hold such equity at least for five years from the commercial operation date of the project. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix III: Format for Power of Attorney for Lead Member of Consortium signed by all the other members of the Consortium;

(d) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;

(e) An individual Bidder cannot at the same time be member of a Consortium applying for the Bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for the Bid;

(f) The members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;

(g) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the "**Joint Bidding Agreement**"), for the purpose of making the Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:

(i) convey the intent to form an SPV with shareholding / ownership equity commitment(s) in accordance with this RFP, which would enter into the PPP Agreement and subsequently perform all the obligations of the Successful bidder/investor in terms of the PPP Agreement, in case the Development & Operation right to undertake the Project is awarded to the Consortium;

(ii) clearly outline the proposed roles and responsibilities, if any, of each member;

(iii) commit the minimum equity stake to be held by each member;

(iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (Twenty Six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 5 (Five) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (Twenty Six per cent) of the subscribed and paid up equity share capital of the SPV; and

(v) members of the consortium undertake that they shall collectively hold at least 51% (fifty one percent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the project

(vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Successful bidder/investor in relation to the Project until the Financial Close of the Project is achieved in accordance with the PPP Agreement; and

(h) Except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the PPPC.

10.1.2.9 Any entity which has been barred by the Government of Malawi, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Bid would not be eligible to submit a Bid, either individually or as member of a Consortium.

10.1.2.10 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial PPPC or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.

10.1.2.11 In computing the Technical Capacity and Net Worth of the Bidder / Consortium Members, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder. It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Applicant or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Applicant or the Consortium as the case may be.

10.1.2.12 The following conditions shall be adhered to while submitting a Bid:

(a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

(b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;

(c) in responding to the qualification phase, Bidders should demonstrate their capabilities in accordance with Clause 11.1.1; and
(d) in case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein.

10.1.1.3. Change in composition of the Consortium

10.1.3.1 Change in the composition of a Consortium will not be permitted by LCC during the Bidding Process.

10.1.1.4. Number of Bids and costs thereof

10.1.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

10.1.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bid Process. The LCC, the PPP Commission and its agents will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

10.1.1.5. Site visit and verification of information

10.1.5.1 Bidders are encouraged to visit the Project site(s) and ascertaining for themselves the site conditions, construction materials, state of the infrastructure, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them before submitting their respective Bids. The LCC has however organized a site visit as follows:

Date:	28th September 2022
Time:	9:00am
Assembling Point:	Lilongwe City Council Offices

10.1.1.6. Acknowledgement by Bidder

10.1.6.1 It shall be deemed that by submitting the Bid, the Bidder has:

(a) made a complete and careful examination of the RFP;

(b) received all relevant information requested from LCC;

(c) accepted that they have not had to rely on the RFP or information furnished by or on behalf of LCC relating to any of the matters referred to in Clause 9.1.5 above;

(d) agreed to be bound by the undertakings provided by it under and in terms hereof;

(e) satisfied itself about all matters, things and information including matters referred to in Clause 5.1.5 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under; and

10.1.1.7. Right to accept or reject any or all Bids

10.1.7.1 Notwithstanding anything contained in this RFP, the PPPC reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the PPPC rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder. Further, the PPPC reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons

10.1.7.2 The PPPC reserves the right to reject any Bid if:

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Bidder does not provide, within the time specified by the PPPC, the supplemental information sought by LCC for evaluation of the Bid.

If the Bidder is a Consortium, then the entire Consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then LCC reserves the right to:

(i) invite the remaining qualified highest Bidders; or

(i) take any such measure as may be deemed fit in the sole discretion of LCC, including annulment of the Bidding Process.

10.1.7.3 In case it is found during the evaluation or at any time before signing of the PPP Agreement or after its execution and during the period of subsistence thereof, including the Development & Operation right thereby granted by the PPPC, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Successful bidder/investor either by issue of the LOA or entering into of the PPP Agreement, and if the Bidder/SPV has already been issued the LOA or has entered into the PPP Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by LCC to the Bidder, without LCC being liable in any manner whatsoever to the Bidder.

10.1.7.4 The PPPC reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the PPPC shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of LCC there under.

10.1.7.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

10.1.7.6 The documents including this RFP and all attached documents, provided by the PPPC are and shall remain or become the property of LCC and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and LCC will not return to the Bidders any Bid, document or any information provided along therewith.

10.1.2. DOCUMENTS

10.1.2.1. Contents of the RFP

10.2.1.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 10.2.3.

Invitation for Bids

Section 1. Introduction
Section 2. Instructions to Bidders
Section 3. Criteria for Evaluation
Section 4. Fraud & Corrupt Practices
Section 5. Pre- Bid Conference
Section 6. Miscellaneous

Appendices

I. Letter comprising the Bid
II. Power of Attorney for signing of Bid
III. Power of Attorney for Lead Member of Consortium
IV. Joint Bidding Agreement for Consortium
V. Financial Offer
VI. Rehabilitation Plan
VII. Bid Security

10.1.2.2. Clarifications

10.2.2.1 Bidders requiring any clarification on the RFP may notify the PPPC in writing or by fax and e-mail in accordance with Clause 9.2.8. They should send in their queries before the date specified in the schedule of Bidding Process contained in Table 1. The PPP Commission shall endeavor to respond to the queries within the period specified therein, but no later than 14 (fourteen) days prior to the Bid Due Date. The responses will be sent by fax and/or e-mail. The PPPC will forward all the queries and its responses thereto, to all purchasers of the RFP without identifying the source of queries.

10.2.2.2 The PPPC shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the PPPC reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the PPPC to respond to any question or to provide any clarification.

10.2.2.3 The PPP Commission may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the PPPC shall be deemed to be part of the RFP. Verbal clarifications and information given by LCC or its employees or representatives shall not in any way or manner be binding on LCC.

10.1.2.3. Amendment of RFP

10.2.3.1 At any time prior to the Bid Due Date, LCC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

10.2.3.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFP. Bidders are advised to keep watch on PPPC website (www.pppc.mw) for any modification in RFP and other updates about the Project.

10.2.3.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the PPPC may, in its sole discretion, extend the Bid Due Date.

10.1.3. PREPARATION AND SUBMISSION OF BID

10.1.3.1. Language

10.3.1.1 The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

10.1.3.2. Format and signing of Bid

10.3.2.1 The Bidder shall provide all the information sought under this RFP. The PPP Commission will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.

10.3.2.2 The Bidder shall prepare 1 (one) original set of the Bid (together with originals / copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”. In addition, the Bidder shall submit Four (4) copies of the Bid, along with documents required to be submitted along therewith pursuant to this RFP, marked “COPY”. The Bidder shall also provide 2 (two) soft copies on Compact Disc (CD) or memory stick. In the event of any discrepancy between the original and the copy, the original shall prevail.

10.3.2.3 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers and shall be submitted in a hard-bound form (hard bound implies binding between two covers through stitching whereby it may not be possible to replace any paper without disturbing the document - spiral bound form, loose form, etc. will be not accepted).

10.1.3.3. Sealing and Marking of Bids

10.3.3.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified this RFP and seal it in an envelope and mark the envelope as "**Technical Bid**". The Bidder shall submit the Financial Offer in the format specified at Appendix-V and seal it in another envelope and mark the envelope as "**Financial Bid**". Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as "**Bid –Lilongwe City Council Flagship Project – International Bus Terminal under a PPP Arrangement**". The Bidder shall seal the original and the copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope which shall also be marked

10.3.3.4 (A)Each Technical Bid envelope shall contain:

(i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;

(ii) Power of Attorney for signing the Bid as per the format at Appendix-II;

(iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;

(iv) copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;

(v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;

(vi) copies of Bidder's duly audited balance sheet and profit and loss account for the preceding five years;

(vii) Bid Security as specified in 10.1.2.7

(vii) Payment Receipt towards the cost of the Bidding Documents;

(viii) A copy of the Instruction to Bidders, Draft PPP Agreement with each page stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (ii) hereinabove.

(B) Each Financial Bid envelope shall contain:

(i) Financial Offer in the prescribed format (Appendix-V);

10.3.3.3 The final outer envelopes having the Original and Copy shall clearly bear the following identification:

Bid for: **"Development of Lilongwe City Council Flagship Project – International Bus Terminal through a Public Private Partnership Arrangement" and** shall clearly indicate the name and address of the

Bidder. In addition, the Bid Due Date should be indicated on the right-hand corner of each of the envelopes.

Each of the envelopes shall be addressed to:

ATTN. TO:	The Chief Executive Officer
INSTITUTION:	The Public Private Partnership Commission
ADDRESS:	2nd Floor, Livingstone Towers, Glyn Jones Road, P.O. Box 937, Blantyre, Malawi
E-MAIL ADDRESS:	info@pppc.mw
WEBSITE:	www.pppc.mw
PHONE NO:	+265 1 823 655
FAX NO:	+265 1 821 248

10.3.3.4 If the envelopes are not sealed and marked as instructed above, LCC, the PPP Commission and its agents assume no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

10.3.3.4 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

10.1.3.4. Bid Due Date

10.3.4.1 Applications should be submitted at or before **14:00 pm Local Time** on the Application Due Date, at the address provided in Clause 10.3.3.3 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified in Clause 10.3.3.3 or his authorised representatives.

10.3.4.2 LCC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum

10.1.3.5. Late Bids

10.3.5.1 Bids received by LCC after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

10.1.3.6. Modifications/ substitution/ withdrawal of Bids

10.3.6.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the PPPC prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

10.3.6.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 10.3.3, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

10.3.6.3 Any alteration / modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the PPPC, shall be disregarded.

10.1.4. EVALUATION PROCESS

10.1.4.1. Opening and Evaluation of Bids

10.4.1.1 The PPPC shall open the Technical Bids at 14:00 hours Local Time on the Bid Due Date, at the **2nd Floor, Livingstone Towers, Public Private Partnership Commission Boardroom** and in the presence of the Bidders who choose to attend.

10.4.1.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 10.3.6 shall not be opened.

10.4.1.3 The PPPC will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 11.

10.4.1.4 Bidders are advised that qualification of Bidders will be entirely at the discretion of the PPPC. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

10.4.1.5 Any information contained in the Bid shall not in any way be construed as binding on LCC, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

10.4.1.6 The PPP Commission reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

10.4.1.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the PPP Commission may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Bidder.

10.4.1.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the PPP Commission as incorrect or erroneous, the PPP Commission shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Bidder, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the PPPC reserves the right to reject the Bid.

10.1.4.2. Confidentiality

10.4.2.1 Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the PPPC in relation to or matters arising out of, or concerning the Bidding Process. The PPPC will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The PPPC may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the or as may be required by law or in connection with any legal process.

10.1.4.3. Tests of Responsiveness

10.4.3.1 Prior to evaluation of Bids, the PPPC shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

(a) it is received as per format at Appendix-I.

(b) it is received by the Bid Due Date including any extension thereof;

(c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 10.3.2 and 10.3.3;

(d) it is accompanied by the Power of Attorney

(e) it contains all the information and documents (complete in all respects) as requested in this RFP;

(f) it contains information in formats same as those specified in this RFP;

(g) it is accompanied by the Payment Receipt towards the cost of the Bidding Documents;

(h) it is accompanied by the Joint Bidding Agreement (for Consortium)

(i) it does not contain any condition or qualification; and

(j) it is not non-responsive in terms hereof;

10.4.3.2 The PPPC reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the PPPC in respect of such Bid.

10.1.4.4. Clarifications

10.4.4.1 To facilitate evaluation of Bids, the PPPC may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the PPPC for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

10.4.4.2 If a Bidder does not provide clarifications sought within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the PPPC may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of LCC.

10.1.5. QUALIFICATION AND BIDDING

10.1.5.1. Technical Evaluation and Notification

10.5.1.1 After the technical evaluation of Bids, the PPPC would announce a list of bidders as qualified for the financial evaluation. The PPP Commission will not entertain any query or clarification from Bidders who fail to qualify.

10.1.5.2. Proprietary Data

10.5.2.1 All documents and other information supplied by the PPPC, LCC and its agents or submitted by a Bidder to LCC and its associates shall remain or become the property of LCC. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. LCC will not return any Bid or any information provided along therewith.

10.1.5.3. Correspondence with the Bidder

10.5.3.1 Save and except as provided in this RFP, LCC and the PPPC shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

10.1.5.4. Validity of Bids

10.5.4.1 The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the PPPC.

11.0. CRITERIA FOR EVALUATION

11.1.1. QUALIFICATION STAGE

11.1.1.1. Evaluation Parameters

11.1.1.1 Bidders have to meet the eligibility criteria and the evaluation would be as per this Section 3. Bids of entities/ consortia who do not meet these criteria shall be rejected.

11.1.1.2 The Bidder's competence and capability is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

11.1.1.2. Technical Capacity for purposes of Evaluation

11.1.2.1 Subject to the provisions of Clause 10.1.2, the following categories of experience would be assessed under the Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to technical experience of the Bidder (*figures shown in the brackets are maximum points eligible for that category*):

a. Professional qualifications of the Bidder and their previous experience in financing, designing, constructing and operating and maintaining Public Infrastructures such as Bus Terminals (20%)

b. Demonstrate experience in successfully sourcing finance for at least three (3) previous projects (5%)

c. Experience of the Bidder in managing Public facilities and its associated services (15%)

d. The professional qualifications of the proposed personnel team, and their previous experience in providing the requested services (25%)

e. Proposed concepts, development plan and construction schedule of the project (25%)

f. Demonstrate prior experience in execution and management of a Private Sector Participation project (5)

g. Evidence of commitment by the team members (architects, engineers, contractors, facility managers etc) of the bidder, demonstrated by written commitment to be part of this project. (5)

Minimum Technical score: 70%

11.1.1.3. Financial Information for purposes of Evaluation

11.1.3.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.

11.1.3.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

11.1.3.3 The Bidder must establish the minimum Net Worth specified in Clause 10.1.2.2 (B), and provide details as per format at Annex-III of Appendix-I. (*maximum points 10%)*

11.1.3.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Applicant or the Consortium Member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

11.1.1.4. Eligibility for Financial Proposal Opening

11.1.4.1 The Bidders who meet the eligibility criteria set forth in above and attain a minimum score of 80% will be eligible for the Financial Proposal Evaluation Phase.

11.1.2. FINANCIAL OPENING

11.1.2.1. Opening and Evaluation of Financial Proposal

11.2.1.1 The Bidders who qualify and are shortlisted will be informed about the opening date of the Financial Proposal in writing and the Financial Offer shall be opened in the presence of the qualified Bidders who choose to attend.

11.2.1.2 To facilitate evaluation of Bids, the PPPC may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

Given that the selection method is Quality and Cost Based Selection (QCBS), the lowest evaluated Financial Proposal (Fm) will be given the maximum financial

score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated below and will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as indicated below:: S = St x T% + Sf x P%. The firm achieving the highest combined technical and financial score will be invited for negotiations.

The formula for determining the financial scores is the following:

Sf = 100 x Fm / F, in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration.

The weights given to the Technical and Financial Proposals are:
T = 0.8, and
P = 0.2

11.1.2.2. Selection of Bidder

11.2.2.1 The Bidder achieving the highest combined technical and financial score will be invited for negotiations and shall be declared as the selected bidder (the "**Selected Bidder**").

11.2.2.2 In the event that the Highest evaluated Bidder withdraws or is not selected for any reason in the first instance, the PPPC may invite the second highest evaluated Bidder for negotiation.

11.2.2.3 In the event that no qualified Bidder is willing to take the offer, the PPPC may cancel the whole process.

11.2.2.4 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the PPPC to the Successful Bidder and the Successful Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Successful Bidder is not received by the stipulated date, the PPP Commission may, unless it consents to extension of time for submission thereof, issue the LOA to the next eligible Bidder.

11.2.2.5 After acknowledgement of the LOA as aforesaid by the Successful Bidder, it shall cause the Successful bidder/investor to execute the PPP Agreement within the period prescribed in Table 1. Schedule of Bidding Process. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the PPP Agreement.

11.2.2.6 The Successful Bidder shall pay the PPPC an **entry fee** of US$50,000 on execution of the PPP Agreement for each Lot

11.1.2.3. Contacts during Bid Evaluation

11.2.3.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the PPPC makes official intimation of award /

rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, LCC, the PPPC and / or their employees / representatives on matters related to the Bids under consideration.

11.1.2.4. Best and Final Offer (BAFO)

The PPPC in conjunction with Lilongwe City Council (LCC) and other government stake holders **may** enter into a structured negotiation with all the Bidders if their proposals have material deficiencies requiring clarification. This may lead to the submission of Best and Final Offer (BAFO) before selecting an apparent preferred Bidder. The selection of an apparent preferred Bidder does not necessarily mean the Lilongwe City Council accepts all aspects of the Bidder's Proposal. After the initial selection of an apparent preferred Bidder, should the PPPC/LCC fail to reach an agreement as to all points of the final award, the PPPC/LCC may reject the Proposal, consider other Proposals, or undertake such other actions as deemed to be in the best interest of the LCC.

11.1.2.5. Payment Terms

11.2.4.1 The payment terms for entry fee and annual concession fee to be paid have been detailed in the PPP agreement.

12.0. FRAUD AND CORRUPT PRACTICES

12.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the PPP Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the PPP Agreement, the PPP Commission may reject a Bid, withdraw the LOA, or terminate the PPP Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Successful bidder/investor, as the case may be, if it determines that the Bidder or Successful bidder/investor, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.

12.2 Without prejudice to the rights of LCC and the rights and remedies which LCC may have under the LOA or the PPP Agreement, or otherwise if a Bidder or Successful bidder/investor, as the case may be, is found by LCC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the PPP Agreement, such Bidder or Successful bidder/investor shall not be eligible to participate in any tender or RFP issued by LCC during a period of 2 (two) years from the date such Bidder or Successful bidder/investor, as the case may be, is found by LCC to have directly or

indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

12.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Government of the Republic of Malawi, LCC, PPPC and associated entities who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PPP Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of LCC or the PPPC, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 5.1.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PPP Agreement and till the period of 1 (one) years from the date of signing of the PPP Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PPP Agreement, who at any time has been or is a legal, financial or technical adviser of LCC in relation to any matter concerning the Project;

(b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) **"coercive practice"** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the PPP Commission with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(d) **"restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

13.0. MISCELLANEOUS

13.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of Malawi and the Court system in Malawi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

13.2 The PPP Commission in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Bidder in order to receive clarification or further information;

(c) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;

(d) retain any information and/ or evidence submitted to LCC and the PPPC by, on behalf of, and/ or in relation to any Bidder; and/ or

(e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

13.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the PPPC and LCC, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

13.4 The Bidders are required to submit a concept report with financial, operation, management and investment plan for the project.

APPENDICES

14.0. APPENDIX I

14.1.1. Letter Comprising the Bid

(Refer Clause 5.3.3.2 A)

Dated: [ ]

The Chief Executive Officer
The Public Private Partnership Commission
2nd Floor, Livingstone Towers
Glyn Jones Road
P O Box 937
Blantyre
Malawi

Sub: Bid for "**Development of Lilongwe City Council Flagship Project – International Bus Terminal through a Public Private Partnership Arrangement"**

Dear Sir,

With reference to your RFP document dated [●], I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

1. I/ We acknowledge that LCC will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the service provider for the aforesaid project, and we certify that all information provided in the Bid and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

2. This statement is made for the express purpose of our selection as Investor for the development, financing, operation and maintenance of the aforesaid Project.

3. I/ We shall make available to LCC any additional information it may find necessary or require supplementing or authenticate the Bid.

4. I/ We acknowledge the right of LCC to reject our Bid without assigning any reason or otherwise and hereby waive to the fullest extent permitted by applicable law our right to challenge the same on any account whatsoever.

5. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

6. I/ We declare that:

(a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by LCC;

(b) I/ We do not have any conflict of interest in accordance with Clauses 5.1.2.1(c) and 5.1.2.1(d) of the RFP document;

(c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 8.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with LCC or any other public sector enterprise or Government; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

(e) the undertakings given by us along with the Application in response to the RFP for the Project were true and correct as on the date of making the Application.

7. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 5.4.1.6 of the RFP document.

8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.

9. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the project.

10. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

11. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

12. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.

13. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate LCC of the same immediately.

14. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.

15. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.

16. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

17. I/ We certify that in terms of the RFP, my/our Net worth is US$. …….. (United States Dollars…….. in words).

18. I/ We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity in accordance with this RFP, of those of its Members who shall, for a period of 5 (five) years from the date of full commercial operation of the Project, hold equity share capital not less than 26% (Twenty Six per cent) of the subscribed and paid-up equity of the Investor;. I/We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the PPP Agreement in respect of Change in Ownership.

19. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity is taken into consideration for the purposes of qualification in accordance with this RFP, I/We shall inform LCC forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the PPP Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the PPP Agreement shall be liable to be terminated without LCC being liable to us in any manner whatsoever.

20. I/ We understand that the selected Bidder shall incorporate an SPV prior to execution of the PPP Agreement and any other addendums thereof.

21. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a PPP Agreement in accordance with the Draft PPP Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

22. I/ We have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly set forth in the PPP Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by LCC or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.

23. I/ We offer a Bid Security of US$ 150,000 (United States Dollars One hundred and Fifty thousand only) to the PPPC in accordance with Clause 16.3 of the RFP Document

24. The Bid Security in the form of a Bank Guarantee is attached.

25. The Payment Receipt towards the cost of Biding Documents as specified in Clause 10.1.2.6 is attached.

26. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Development is not awarded to me/us or our Bid is not opened or rejected.

27. The entry fee and annual concession fee have been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft PPP Agreement, our own estimates of cost and traffic and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.

28. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Investor under the PPP Agreement till occurrence of Financial Close in accordance with the PPP Agreement.}

29. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.

In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature, name and designation of the Authorised Signatory)

Place:

Name and seal of the Bidder/ Lead Member

14.1.2. ANNEX-I

Details of Bidder

1. (a) Name:

   (b) Country of incorporation:

   (c) Address of the corporate headquarters and its branch office(s),:

   (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:

   (a) Name:

   (b) Designation:

   (c) Company:

   (d) Address:

   (e) Telephone Number:

   (f) E-Mail Address:

   (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:

   (a) Name:

   (b) Designation:

   (c) Address:

   (d) Phone Number:

   (e) Fax Number:

5. In case of a Consortium:

   (a) The information above (1-4) should be provided for all the Members of the Consortium.

   (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 5.1.2.6 (g) should be attached to the Bid.

   (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	**Name of Member**	**Role** {Refer Clause 5.1.2.6 (d)}[$]	**Percentage of equity in the Consortium** {Refer Clauses 5.1.2.6 (a), (c) & (g)}
1.			
2.			
3.			

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

14.1.3. Annex - II

Technical Capacity of the Bidder

(Details of Investors Experience)

1. List only previous similar assignments successfully completed in the last *5* years.

2. List only those assignments for which the investor or team member was legally contracted by the Client as a company or was one of the joint venture partners. Assignments completed by the investor's individual experts working privately or through other investing firms cannot be claimed as the relevant experience of the investor, or that of the investor's partners, but can be claimed by the Experts themselves in their CVs.

The Investor must be prepared to support the claimed experience by giving copies of relevant documents.

Duration	**Assignment name/& brief description of main deliverables/outputs**	**Name of Client & Country of Assignment**	**Approx. value invested (in US$ equivalent)/ Amount paid to your firm**	**Role on the Assignment**
{e.g., Jan.2009–Apr.2019}	{e.g., "Improvement quality of.....": designed master plan for rationalization of .....; }	{e.g., PPPC of ....., country}	{e.g., US$1 mill/US$0.5 mill}	{e.g., Lead partner in a JV A&B&C}
{e.g., Jan 2008-May 2028}	{e.g., "Support to sub-national government....." : drafted secondary level regulations on.....}	{e.g., municipality of....., country}	{e.g., US$0.2 mil/US$0.2 mil}	{e.g., sole investor}

14.1.4. Annex -III

Financial Capacity of the Bidder

(*Refer to Clauses 5.1.2.2(B), 5.1.2.4 (ii) and 7.1.3 of the RFP*)

Applicant type[$]	**Member Code[£]**	**Proposed Equity Shareholding in Consortium (%)**	**Net Cash Accruals**					**Net Worth**
			Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 1**
(1)	(2)		(4)	(5)	(6)	(7)	(8)	(9)
Single entity Applicant								
Consortium Member 1								
Consortium Member 2								
Consortium Member 3								
TOTAL								

Name & address of Bidder's Bankers:

A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 5.1.2.9.

For conversion of other currencies into rupees, see note below Annex-II of Appendix-I.

Instruction:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:

   (a) reflect the financial situation of the Bidder or Consortium Members and its / their Associates where the Bidder is relying on its Associate's financials;

   (b) be complete, including all notes to the financial statements; and

   (c) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.

3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).

4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 5.1.2.12.

5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 5.1.2.6 (g) of the RFP document.

6. The Bidder shall also provide the name and address of the Bankers to the Bidder.

7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 5.1.2.4 (ii) of the RFP document.

14.1.5. Annex -V Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref. Date:

To,

The Chief Executive Officer
The Public Private Partnership Commission
2nd Floor Livingstone Towers
Glyn Jones Road
P O Box 937
Blantyre
Malawi

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that …… (insert member's name) will act as the Lead Member of our consortium. *

We have agreed that …….. (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized signatory) For and on behalf

of…….

**Please strike out whichever is not applicable.*

15.0. APPENDIX II

Power of Attorney for signing of Bid

(Refer Clause 5.1.2.5)

Know all men by these presents, We…… (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms. (name), …… son/daughter/wife of …… and presently residing at ……., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ……., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the "**Development of Lilongwe Flagship Project – International Bus Terminal through a Public Private Partnership Arrangement"** the Project proposed by **LCC** including but not limited to signing and submission of all bids and other documents and writings, participate in pre-bids and other conferences and providing information/ responses to LCC, presenting us in all matters before LCC, signing and execution of all contracts including the PPP Agreement and undertakings consequent to acceptance of our bid, and generally dealing with LCC in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the PPP Agreement with LCC.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ……., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS …… DAY OF ……. 2….

(Signature, name, designation and address) Witnesses:

1.

2.

For ……..

(Notarised) Person identified by me/ personally appeared before me / signed before me/ Attested / Authenticated* (* Notary to specify as applicable) (Signature, Name and Address of the Notary)

Seal of the Notary

Registration Number of the Notary

Date: _____

Accepted

……
(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure*.

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

16.0. APPENDIX III

Power of Attorney for Lead Member of Consortium

(Refer Clause 5.1.2.5)

Whereas LCC has invited Bids from interested parties for the ""**Development of Lilongwe City Council Flagship Project – International Bus Terminal through a Public Private Partnership Arrangement""** (the "Project") and

Whereas, ……., ……., ……. and …….. (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution and be held responsible for the same.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, …….. having our registered office at ……., M/s. …….. having our registered office at ……., M/s. …….. having our registered office at ……., and …….. having our registered office at ……., (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s …….. having its registered office at ……., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all , bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with LCC, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's

bid for the Project and/ or upon award thereof till the PPP Agreement is entered into with LCC.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ……. DAY OF ……. 2..…

For ……..
(Signature)

……..
(Name & Title)

For ……..
(Signature)

……..
(Name & Title)

For ……..
(Signature)

……..
(Name & Title)

Witnesses:

1.

2.

……
(Executants)

(To be executed by all the Members of the Consortium)

(Notarised
) Person identified by me/ personally appeared
before me / signed before me/ Attested /
Authenticated*

(* Notary to specify as applicable) (Signature, Name and Address of the Notary)

Seal of the

Notary Registration Number of

the Notary Date : ___

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure*.

- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

17.0. APPENDIX IV

Joint Bidding Agreement

(Refer Clause 5.3.3.2 A)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the …… day of
…… 20…

AMONGST

1. {…… Limited, a company incorporated under the Companies Act, 1956} and having its registered office at …… (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {…… Limited, a company incorporated under the Companies Act,} and having its registered office at …… (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {…… Limited, a company incorporated under the Companies Act, and having its registered office at …… (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

WHEREAS,

A. L C C having its principal office at Livingstone Towers, Blantyre has invited Bids (the **Bids**") by its Request for Proposal No. …… dated ……(the "**RFP**") for ""**Development of Lilongwe City Council Flagship Project – International Bus Terminal through a Public Private Partnership Arrangement""** (the "Project").

B. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

C. It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "**SPV**") under the Companies Act for entering into a PPP Agreement with the PPPC and for performing all its obligations as the Investor in terms of the PPP Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding process and until the Agreement Date under the Development Agreement when all the obligations of the SPV shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium;}

(c) Party of the Third Part shall be the Financial Member of the Consortium/ Operation and Maintenance Member/ Other Member; and

5. Joint and Several Liabilities

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the PPP Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Development Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that a minimum of 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of full commercial operation of the Project, be held by the Parties of the First,{Second and Third} Part whose experience and net worth have been reckoned for the purposes of qualification and short-listing of Bidders for the Project in terms of the RFP.

6.3 The Parties undertake that they shall comply with all equity lock-in and any other requirements set forth in the PPP Agreement and RFP.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

(iv) violate any clearance, permit, Development, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the PPP Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of Malawi.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of LCC.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of LEAD MEMBER by:	SECOND PART
(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Designation (Address)
SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of THIRD PART	For and on behalf of **FOURTH PART**
(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Designation (Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
FIFTH PART

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
SIX PART

(Signature)
(Name)
(Designation
(Address)

In the presence of:

1.

2.

(Notarised)
Person identified by me/ personally appeared before me / signed before me/ Attested / Authenticated* (* Notary to specify as applicable)
(Signature, Name and Address of the Notary)

Seal of the Notary

Registration Number of the Notary

Date : _____

Notes:

1. *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

2. *Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*

18.0. APPENDIX V

Letter Comprising the Financial Offer
(Refer Clause 5.3.3.2B)

To,

The Chief Executive Officer
The Public Private Partnership Commission
2nd Floor, Livingstone Towers
Glyn Jones Road
P O Box 937
Blantyre
Malawi

Sub Bid for "**Development of Lilongwe City Council Flagship Project – International Bus Terminal through a Public Private Partnership Arrangement" – Financial Offer**

Dear Sir,

With reference to your RFP document dated ----------, I/we, having examined the Bidding Documents and understood their contents; hereby submit my/our Financial proposal for the aforesaid Project. The Financial Proposal is unconditional and unqualified.

1. I/We hereby submit our Bid and we agree to pay a rate of 7% of annual revenue as the fixed annual concession fee for undertaking the aforesaid Project in accordance with the Bidding Documents and the PPP Agreement.

2. I/We hereby declare that the annual concession fee quoted above is fixed, inclusive of all applicable taxes and shall be interpreted and evaluated as per the other clauses of the Bidding Document

3. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms and conditions of the PPP Agreement and the Bidding documents.

In witness thereof, I/we submit this Financial Proposal under and in accordance with the terms of the RFP and the Bidding documents.

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)

Place:
Name and seal of Bidder/Lead Member

19.0. Appendix VI

Bank Guarantee for Bid Security

Bid Security

[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]**

Alternative No: **[insert identification No if this is a Bid for an alternative]**

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

Whereas [**insert complete name of Bidder**] (hereinafter "the Bidder") has submitted its bid dated [**insert date (as day, month and year) of bid submission**] for Procurement reference Number [**insert Procurement Reference Number**] for the provision of [**insert brief description of the Services and Related Goods**], hereinafter called "the Bid."

KNOW ALL PEOPLE by these presents that WE [**insert complete name of institution issuing the Bid Security**], of [**insert city of domicile and country of nationality**] having our registered office at [**insert full address of the issuing institution**] (hereinafter "the Guarantor"), are bound unto [**insert complete name of the Procuring Entity**] (hereinafter "the Procuring Entity") in the sum of [**specify in words the amount and currency of the bid security**] (**specify the amount and currency in figures**), for which payment well and truly to be made to the aforementioned Procuring Entity, the Guarantor binds itself, its successors or assignees by these presents. Sealed with the Common Seal of this Guarantor this [**insert day in numbers**] day of [**insert month**], [**insert year**].

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Submission Sheet, except where the bid security validity has expired which is after 28 days after the bid validity; or

2. If the Bidder, having been notified of the acceptance of its bid by the Procuring Entity, during the period of bid validity, fails or refuses to:

    (a) execute the Contract; or
    (b) furnish the Performance Security, in accordance with the agreed terms of this RFP; or
    (c) accept the correction of its bid by the Procuring Entity, as agreed in the terms of the RFP.

We undertake to pay the Procuring Entity up to the above amount upon receipt of its first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity states that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred conditions.

This security shall remain in force up to and including sixty (60) days after the period of bid validity, and any demand in respect thereof should be received by the Guarantor no later than the above date.

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**]

[This form should be signed by a person with the proper authority to sign documents for the Bidder. It should be included by the Bidder in its bid. The Bidder may reproduce this in landscape format but is responsible for its accurate reproduction