

GOVERNMENT OF YOBE STATE

GENERAL CONDITIONS OF CONTRACT

FOR THE

PROCUREMENT OF NON-CONSULTANCY SERVICES

2019

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Note to users

These General Conditions of Contract for the Procurement of Non-Consultancy Services govern all contractual provisions for this category of procurement and should be read by all bidders before submitting their bids.

A. General Provisions

Definitions

1.1 The following words and expressions shall have the meaning hereby assigned to them. Boldface type is used to identify the defined term:

- (a) **“Bureau” means the Yobe State Bureau on Public Procurement established under the Public Procurement Law of Yobe State;**
- (b) **“Completion Schedule” means the fulfillment of the Related Services by the Contractor in accordance with the terms and conditions set forth in the Contract;**
- (c) **“Contract Agreement” means the Agreement entered into between the Procuring Entity and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;**
- (d) **“Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto;**
- (e) **“Contract Price” means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract;**
- (f) **“Contractor” means the natural person, private or government entity, or a combination of the above, whose Bid to perform the Contract has been accepted by the Procuring Entity and is named as such in the SCC and the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor;**
- (g) **“Day” means calendar day;**
- (h) **“Delivery” means the transfer of ownership of the Goods incidental to the non-consultancy services from the Contractor to the Procuring Entity in accordance with the terms and conditions set forth in the Contract;**
- (i) **“GCC” mean the General Conditions of Contract;**
- (j) **“Government” means the Government of Yobe State of Nigeria;**
- (k) **“Guidelines” means the subsisting Public Procurement Guidelines, a copy of which can be found on the Bureau on Public Procurement’s website.**
- (l) **“Law” means the Public Procurement Law of Yobe State**

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- (m) **“Procuring Entity” means the entity purchasing the Services, as specified in the SCC (Ministry, Department, Agency, Parastatal or Unit from any arm of the Yobe State Government;**
- (n) **“Related Services” means the incidental services, such as insurance, training and other similar obligations of the Contractor under the Contract;**
- (o) **“SCC” means the Special Conditions of Contract;**
- (p) **“Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, who has a Contract with the Contractor to carry out a part of the services in the Contract, or a part of the Related Services of the Contract;**
- (q) **“Writing” means any hand-written, type-written, or printed communication including e-mails and other electronic communication.**

Contract Documents

2.1 Subject to the order of precedence set forth in the GCC Sub-Clause 5.1, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

Corrupt, Fraudulent, Collusive or Coercive Practices

3.1 The Government requires that Procuring Entities, as well as Contractors, observe the highest standard of ethics during the implementation of procurement proceedings and the execution of Contracts under public funds.

3.2 In pursuance of this requirement, the Procuring Entity shall:

- (a) exclude the Contractor from participation in the procurement proceedings concerned or reject a proposal for award; and
- (b) declare a Contractor ineligible, either indefinitely or for a stated period of time, from participation in procurement proceedings under public funds; if it at any time determines that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Contract under public funds.

3.3 Should any corrupt, fraudulent, collusive or coercive practice of any kind referred to in GCC Sub-Clause 3.4 hereunder come to the knowledge of the Procuring Entity, it shall, in the first place, allow the Contractor to provide an explanation and shall, take actions as stated in GCC Sub-Clause 3.2 and GCC Sub-Clause 38.1(c) only when a satisfactory explanation is not received. Such exclusion and the reasons thereof shall be recorded in the record of the procurement proceedings and promptly communicated to the Contractor concerned. Any communications between the Contractor and the Procuring Entity related to matters of alleged corrupt, fraudulent, collusive or coercive practices shall be in writing.

3.4 The Government defines, for the purposes of this provision, the terms set forth below as follows:

- (a) **“corrupt practice”** means offering, giving, or promising to give, directly or indirectly, to any officer or employee of a Procuring Entity or other governmental/private authority or individual a gratuity in any form, an employment or any other thing or service of value, as an inducement

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with respect to an act or decision of, or method followed by, a Procuring Entity in connection with the procurement proceeding;

- (b) “*fraudulent practice*” means a misrepresentation or omission of facts in order to influence a procurement proceeding or the execution of a Contract to the detriment of the Procuring Entity;
- (c) “*collusive practice*” means a scheme or arrangement among two or more Bidders with or without the knowledge of the Procuring Entity (prior to or after Bid submission) designed to establish Bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free, open and genuine competition; and
- (d) “*coercive practice*” means harming or threatening to harm, directly or indirectly, persons or their property to influence the procurement proceedings or affect the execution of a contract.

3.5 The Contractor shall permit the Procuring Entity to inspect the Contractor’s accounts and records and other documents relating to the submission of the Bid and Contract performance.

B. The Contract

Interpretation

4.1 In interpreting the GCC, singular also means plural, male also means female, and the other way around. Headings in the GCC shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof of the Contract. Words have their normal meaning under the English language unless specifically defined.

Entire Agreement

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

Authorized Representative

- 4.3 (a) The authorized representative of each Party shall be specified in the SCC.

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Amendment

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

Non-waiver

4.5 (a) Subject to GCC Sub-Clause 4.4 (b), no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

4.5 (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

Severability

4.6(a) If any provision or Condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and the Conditions of the Contract.

Documents Forming the Contract and Priority of Documents

5.1 The following documents forming the Contract shall be interpreted in the following order of priority:

- (a) the signed Contract Agreement;
- (b) the letter of Notification of Award;
- (c) the completed Bid Submission Sheet as submitted by the Bidder;
- (d) the completed Price Schedules as submitted by the Bidder;
- (e) the Special Conditions of Contract;
- (f) the General Conditions of Contract;
- (g) the Statement of Requirements;
- (h) the Technical Specifications;
- (i) the Drawings if any, and;
- (j) any other document listed in the SCC as forming part of the Contract.

Eligibility and Qualification

6.1 The Contractor and its Sub-Contractors shall be qualified for the proposed contract. They must therefore:

1. have the legal capacity to enter into a contract;
2. not be insolvent, in receivership, bankrupt or being wound up, not have had business activities suspended and not be the subject of legal proceedings for any of these circumstances;
3. have fulfilled their obligations to pay taxes and social security contributions;
4. not have a conflict of interest in relation to this procurement requirement;
5. not be debarred from participation in public procurement owing to commission of corrupt and fraudulent practices or for poor or non-performance of previously awarded contract of Yobe State Government; and
6. have the nationality of an eligible country other than those specified in the SCC.

In addition to these eligibility requirements, Bidders shall demonstrate that they have the qualifications, resources and experience to perform the contract to satisfactory standards, as indicated in the Statement of Requirements.

Governing Language

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

7.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

Governing Law

8.1 The Contract shall be governed by and interpreted in accordance with the laws of Yobe State and the Federal Republic of Nigeria.

Gratuities / Agency fees

9.1 No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the Bid or the contract, shall be given or received in connection with the procurement process or in the Contract execution.

Joint Venture, Consortium or Association (JVA)

10.1 If the Contractor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

Confidential Information

11.1 The Procuring Entity and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any confidential or proprietary information, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its services under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under GCC Clause 11.

11.2 The Procuring Entity shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

11.3 The obligation of a party under GCC Sub-Clauses 11.1 and 11.2 above, however, shall not apply to information that:

- (a) the Procuring Entity or Contractor needs to share with institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- (e) either party is required by law to disclose.

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11.4 The above provisions of GCC Clause 11 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

11.5 The provisions of GCC Clause 11 shall survive completion or termination, for whatever reason, of the Contract.

Communications and Notices

12.1 Communications between Parties (notice, request or consent required or permitted to be given or made by one party to the other) pursuant to the Contract shall be in writing to the authorized representatives specified in the SCC.

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

12.3 A Party may change its address for notice hereunder by giving the other Party notice of such change to the address.

Assignment

13.1 The Contractor shall not assign, in whole or in part, its obligations under the Contract, except with the Procuring Entity's prior written consent.

Sub-contracting

14.1 The Contractor shall obtain approval of the Procuring Entity in writing of all Sub-Contracts to be awarded under the Contract if not already specified in the Bid. Sub-Contracting shall in no event relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract.

14.2 Subcontractors shall comply with the provisions of GCC Clause 3.

C. Performance of Contract

Scope of Services and Time of Commencement and Completion

15.1 The Services to be provided shall be as specified in the Statement of Requirements.

15.2 The Services shall be performed at such locations as are specified in the Statement of Requirements.

15.3 The date or period of time for commencement of the Services and the date for completion of Services or the period within which the Services are required to be performed shall be stated in the Statement of Requirements.

Professional Practices

16.1 The Contractor shall perform the Services under the contract with due care, efficiency and diligence, in accordance with best professional practices.

16.2 The Contractor shall respect and abide by all laws and regulations in force. The Contractor shall indemnify the Procuring Entity against any claims and proceedings arising from any infringement by the Contractor, its subcontractors or their employees of such laws and regulations.

16.3 The Contractor shall ensure that services conform to applicable environmental and quality standards, that no chemical or other product/equipment is used in such a way as to cause negative impact on the environment in general and occupational health hazards for the personnel of the Procuring Entity in particular, and shall employ safe and effective equipment, machinery, materials and methods, as necessary. The Contractor shall always act, in respect of any matter relating to this Contract, to safeguard the Procuring Entity's legitimate interests, pursuant to Conditions of this Contract

16.4 The Contractor shall furnish the Procuring Entity with any personnel data or information required by the Procuring Entity to arrange the provision of any documentation required.

Conduct of Contractor

17.1 The Contractor shall at all times refrain from making any public statements concerning the Services without the prior approval of the Procuring Entity, and from engaging in any activity which conflicts with its obligations towards the Procuring Entity under the contract. It shall not commit the Procuring Entity without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.

Indemnification

18.1 At its own expense, the Contractor shall indemnify, protect and defend the Procuring Entity, its agents and employees, from and against all actions, claims, losses or damages arising out of the Contractor's failure to perform its obligations provided that:

- (a) the Contractor is notified of such actions, claims, losses or damages not later than 30 days after the Procuring Entity becomes aware of them;
- (b) the ceiling on the Contractor's liability shall be limited to an amount equal to the contract value, but such ceiling shall not apply to actions, claims, losses or damages caused by the Contractor's wilful misconduct;
- (c) the Contractor's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.

18.2 The Contractor shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

- (a) the Procuring Entity omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Contractor, or requiring the Contractor to implement a decision or recommendation with which the Contractor disagrees or on which it expresses a serious reservation; or

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(b) the improper execution of the Contractor's instructions by agents, employees or independent suppliers of the Procuring Entity.

18.3 The Contractor shall remain responsible for any breach of its obligations under the contract for such period after the Services have been performed as may be determined by the law governing the contract.

Insurance to be Taken Out by the Contractor

19.1 The Contractor shall take out, maintain and shall cause any Subcontractors to take out and maintain, at their own cost insurance coverage against the risks and on terms and conditions approved by the Procuring Entity as shall be specified in the SCC.

19.2 The Contractor shall at the Procuring Entity's request, provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained.

Accounts and Records

20.1 The Contractor shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs.

Contractor's Personnel

21.1 The Contractor shall employ and provide such qualified and experienced Personnel and Subcontractors as are required to carry out the Services. The Contractor shall be responsible for the performance of the Personnel.

21.2 If required by the Statement of Requirements, the Contractor shall ensure that a manager, acceptable to the Procuring Entity, takes charge of the performance of the Services.

21.3 Any Key Personnel assigned to performance of the Services shall be listed in the Contract, stating their name, title, job description, and estimated period of engagement.

Working hours of the Personnel

22.1 Where the Services are performed on a regular basis at the premises of the Procuring Entity, the Contractor shall work the hours agreed with the Procuring Entity and specified in the Statement of Requirements.

Replacement of Personnel

23.1 If the Procuring Entity requests the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the services in the Contract.

Performance Security

24.1 If required as specified in the SCC, the Contractor shall, within twenty-one (21) days of the notification of contract award or, in the event of Challenge procedures under section 55 of the Law, within twenty-one (21) days of the resolution of the Challenge, provide a security for the performance

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of the Contract, in the form provided under the SBD for Non-Consultancy Services, in the amount specified in the **SCC**.

24.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

24.3 The Performance Security shall be discharged by the Procuring Entity and returned to the Contractor immediately following the date of Completion of the Contractor's performance obligations under the Contract, including any warranty obligations.

Extensions of Time

25.1 If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely completion of Services, the Contractor shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Contractor's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Contract.

25.2 Except in the case of Force Majeure, as provided under GCC Clause 30, a delay by the Contractor in the performance of its obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GCC Clause 28, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 27.1.

Liquidated Damages

26.1 Except as provided under GCC Clause 30, if the Contractor fails to perform any or all of the Services within the period specified in the Contract, the Procuring Entity may, without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the Contract Price of the delayed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 33.1.

Limitation of Liability

27.1 Except in cases of criminal negligence or wilful misconduct,

(a) the Contractor shall not be liable to the Procuring Entity, whether in Contract, Tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Procuring Entity, and

(b) the aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in Tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Procuring Entity with respect to patent infringement.

Force Majeure

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

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

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

Payment

29.1 The Procuring Entity shall pay the Contractor, in consideration of the performance of the stipulated Services, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and manner prescribed in the Contract Agreement.

29.2 The Contract Price shall be as specified in the Contract Agreement subject to any additions and adjustments thereto, or deductions there from, as may be stated in the **SCC**.

29.3 Prices charged by the Contractor for the Services performed under the Contract shall not vary from the prices quoted by the Contractor in its Bid, with the exception of any authorized price adjustments.

Terms of Payment

30.1 The Contract Price, including any Advance Payments, in the form provided under the SBD for Non-Consultancy Services, if applicable, shall be paid in the manner as specified in the **SCC**.

30.2 The Contractor’s request for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Services performed, and any other documentation specified in the **SCC**.

30.3 Payments shall be made promptly by the Procuring Entity, no later than the dates indicated in the **SCC**.

30.4 In the event that the Procuring Entity fails to pay the Contractor any payment by its respective due date, the Contractor may raise a complaint with the Bureau, which may, subject to the approval of the State Executive Council, order the Procuring Entity to settle the outstanding invoice immediately or to pay to the Contractor interest on the amount of such delayed payment at the interest rate set by the Central Bank of Nigeria for the period of delay until payment has been made in full, whether before or after judgment or arbitral award.

Termination

Termination for Default

- 31.1 (a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by giving twenty-eight (28) days written notice of default, may terminate the Contract in whole or in part:
- (i) If the Contractor fails to perform any or all of the Services within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 27; or
 - (ii) if the Contractor fails to perform any other obligation under the Contract.
- (b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Sub-Clause 33.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Services similar to those not performed, and the Contractor shall be liable to the Procuring Entity for any additional costs for such similar Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.
- (c) If the Contractor, in the judgment of the Procuring Entity has engaged in corrupt, fraudulent, collusive or coercive practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

Termination for Insolvency

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

Termination for Convenience

- 31.3(a) The Procuring Entity, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.

Settlement of Disputes

Amicable Settlement

- 32.1 The Procuring Entity and the Contractor shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

Arbitration

- 32.2 If the dispute, claim or controversy cannot be settled through negotiation within 21 days of arising, such dispute shall be referred to and be finally determined by arbitration in accordance with provisions of the Arbitration and Conciliation Act Cap A18 Laws of The Federation of Nigeria 2004 or any similar law in force.

32.3. The Arbitral Tribunal shall consist of three arbitrators, one each appointed by the procuring entity and Contractor and a third appointed by the first two, and failing agreement on a third arbitrator he or she shall be appointed by the Chairman for the time being of the Nigerian Chapter of the Chartered Institute of Arbitrators or the most senior presiding Judge at the High Court sitting at Damaturu, Yobe State, in which case an application shall be made on Notice for the appointment of an arbitrator of the Court's choice, and the court baring any exigencies shall appoint the third Arbitrator within two weeks or such other time as is convenient.

32.4 Reference of a dispute arising from this agreement to arbitration shall not affect or diminish due performance of obligations acquired by this contract.