



GENERAL TERMS AND CONDITIONS [APPENDIX 3]

SCOPE

The following Standard Terms and Conditions forms part of each Tender, Proposal, Contract, Quotation (TPCQ) and they apply in like force for the purchase of materials, supplies, equipment and services. All bid documents called for by the Humanity Care Initiative (HCI) will bind bidders to the terms and conditions herein set forth. Any alleged oral agreement or arrangements made by a bidder or contractor with any HCI procurement, or employee of the HCI will be disregarded.

SUBMISSION OF TENDERS/PROPOSALS/CONTRACTS/QUOTATIONS

- Bids must be submitted on and in accordance with the instructions and forms supplied by the Procurement Department of the HCI. **Alterations, erasures, or modification** by any means to this original document is not permitted under any circumstances. Tampering with these original documents will result in bid disqualification.
- Submissions or amendments received by facsimile, telephone or any other kind of electronic transmission WILL NOT be accepted unless otherwise specified in the procurement document.
- Submissions must be received in a sealed envelope if it's Hand Delivery, properly addressed to the HCI using the preprinted label supplied in the document. Envelopes should clearly indicate the contents, the name and address of the bidder.
- Submissions received by the HCI later than the submission deadline specified **WILL NOT BE CONSIDERED** and will be returned unopened only at the bidder's request and expense.
- Submissions must be in **English only**. Submission documents received by HCI not in the English language will be **disqualified**.
- By submission of a clear and detailed written notice, the bidder may amend or withdraw its submission prior the submission deadline. Upon closing time, all submissions become irrevocable.
- All information required on the TPCQ forms is to be included in your offer. Failure to do so may result in disqualification of your offer. Minor omissions maybe accepted at the sole discretion of the HCI.
- Submissions must be signed by an authorized official of the bidder's organization. **Unsigned** submissions will be **non-compliant**.
- Unless stated "No Substitute", the use of the name of a manufacturer, brand, make or catalogue designation in specifying an item does not restrict bidders to that manufacturer, brand, make or catalogue designation identification. This may be used simply to indicate the character, quality, and/or performance equivalent of the commodity desired, but the commodity on which offers are submitted must be of such character, quality, and/or performance equivalent that it will serve the purpose for which it is to be used equally as well as that specified.
- In submitting a TPCQ on a commodity other than as specified, the bidder must furnish complete data and identification with respect to the alternate commodity proposed. Consideration will be given to offers submitted on alternate commodities to the extent that such action is deemed to serve the best interests of the HCI.
- If the bidder does not indicate that the commodity proposes to furnish is other than as specified, it will be construed to mean that the bidder proposes to furnish the exact commodity as described in the TPCQ specifications.
- Prices indicated shall be net prices, including delivery charges prepaid by the supplier to the specified delivery location. Terms of payment/prompt payment discount (cash discount) will be taken into consideration as part of the award. Prices must be in **USD**, quoted separately for each item stipulated on the forms provided. Prices quoted must be in accordance with the specified unit of measure.
- In the event of any discrepancy between the unit price and the extension, the unit price shall govern..
- The bidder will be required to sign a "Declaration of Conflict of Interest" to indicate whether there is a perceived, actual, or potential conflict. If at the sole and absolute discretion of the HCI, the bidder is found to be in a conflict of interest, HCI may disqualify the bid. Where HCI discovers a bidder's failure to disclose an actual or potential conflict of interest, HCI may disqualify the bidder or terminate any contract award to that bidder pursuant to this procurement process.
- The bidder declares that their submission is not made in connection with any other bidder submitting an offer for the same commodity or commodities, and is in all respects fair and without collusion and fraud



- Accordance with established international codes as they relate to child labour as stipulated on International Labour Organization convention. The Contractor shall forfeit all claims under the Contract as well as refund to the HCI funds paid to him/her, beyond his actual proven expenses for work done, if this declaration is shown to be false.
- HCI may request a Criminal Background Check. The successful bidder will be required to provide this document if so requested by the HCI.
- Tenders which are received by the stated submission deadline may be opened and read publicly. The disclosure of information will be limited to the names of the bidders, and only if applicable, the total price.
- Request for Proposal (RFP) submissions will not be opened publicly.
- Performance Surety binding the contractor faithfully to fulfill the obligations of his/her submission may be required. Such surety, when requested, should be submitted in the form of a performance bond, satisfactory to the HCI or certified cheque as stated in the document.
- The HCI is obligated to release information that is not exempt according to the Freedom of Information and Protection of Privacy Act, unless specific areas of the bidder's document are identified by the bidder to the HCI.
- The HCI is not responsible for any costs incurred by the bidders in the preparation of their response to the TPCQ or attendance at any selection interviews.
- HCI will not open and consider bids received from such parties with whom the Procurement unit is in litigation, pending litigation, or has been in litigation in the past five (3) years, unless approval allowing such is obtained by the bidder, in writing, from the Health Unit prior to the close of the bid.
- The HCI reserves the right to remove from eligibility to submit bids for an indeterminate period, the name of any bidder for failure to accept a contract, or the name of any supplier for unsatisfactory performance of contract.

SAMPLES

- Samples, when requested, are to be submitted strictly in accordance with instructions; otherwise, the offer may not be considered. If samples are requested subsequent to the opening of submissions, they shall be delivered within three (3) working days following the request unless additional time is granted. Samples must be furnished free of charge and be accompanied by a letter advising whether the bidder desires their return, provided they have not been used or made useless by tests. Samples may be held for comparison with deliveries.
- Delivered items must have the same identity and quality as the accepted sample submitted, unless approved by the HCI prior to delivery. The HCI reserves the right to reject any materials that differ from our specifications or differ from the samples submitted. Rejected materials will be returned at the supplier's expense.
- When the TPCQ indicates that an item to be purchased is to be equivalent to a sample, failure on the part of the bidder to examine samples shall not entitle him to any relief from the conditions imposed by the bid.

EVALUATION AND AWARDS

The HCI, unless it otherwise states, reserves the following rights, if in so doing, the best interests of the HCI will be served:

- to award the items of the TPCQ in whole or in part to one or more suppliers
 - to award contracts to one or more suppliers submitting identical TPCQs pricing
 - to accept the submission(s) deemed the most favourable based upon the greatest value of quality, service and price
 - to reject any and all submissions in whole or in part
 - to waive informalities
 - to negotiate minor changes or variations to a TPCQ with the successful supplier without reissuing the TPCQ
 - to not accept the lowest or any submission
- Each offer submitted will be evaluated by HCI to determine which one provides the best combination of product capability and life cycle cost effectiveness.
 - A bidder must be prepared, if requested, to present evidence of experience, ability, service facilities and financial standing necessary to meet satisfactorily the requirements set forth or implied in the TPCQ specifications.
 - The HCI shall not be obligated to any bidder whatsoever until a written agreement in the form of a Notice of Award or Purchase Order has been executed.





- Prices are to remain firm for the duration of the contract term which unless otherwise noted will be for a **minimum period of one year** from the initial contract date. Prices will not be considered firm if the conditions "subject to manufacturers'" or "other increases beyond our control" are indicated. In the event of a significant cost change based on a situation that was clearly unpredictable at the time of offer, prices may be subject to a negotiated adjustment to reflect such an increase or decrease. Such negotiated adjustments will be considered only upon written request, documented with cost data, and filed with the HCI **thirty (30) days prior to the requested price adjustment**.
- Price increases must be acknowledged in writing by HCI before becoming effective. If not acknowledged within (30) thirty days, it is the supplier's responsibility to contact the HCI to assure the price increase request was received.
- The HCI reserves the right to accept or reject any request for price increases. If the price increase is rejected, the specific item(s) and/or contract(s) will be cancelled. If the price increase is approved, the price must remain firm for the remainder of the contract period.

TIE BID PROCESS

- If identical low bids are received the following options as deemed appropriate by the HCI Finance Manager, may be considered to break the tie:
 - (a) Prompt payment discount;
 - (b) Best delivery;
 - (c) Environmental Initiatives offered; or
 - (d) Coin Toss facilitated by the HCI Finance Manager – **the submission received earliest will call the draw**



- The method to resolve a tie score on an RFP may differ for each procurement depending on what is most appropriate. Tie breaking process may include: **supplier presentations and demonstrations, reference checks, site visits to supplier locations, and negotiations.**
- For all procurement valued at **\$50,000** or more, all unsuccessful suppliers are entitled to a **debriefing**.
- In the event of a bid dispute regarding the procurement process, bidders must document the concern in writing, and submit it to the Finance Manager, for appropriate review and resolution in accordance with HCI's Procedures.

CONTRACT

- Each submission will be received with the understanding that a Notice of Award, a Purchase Order or Contract which states acceptance of the offer to furnish all or any part of the commodities described therein shall constitute a contract between the bidder and the HCI. This contract shall bind the bidder on their part to furnish and deliver the commodities at the prices given and in accordance with the conditions and specifications of said accepted offer, these Standard Terms and Conditions as provided with the TPCQ, and the Terms and Conditions of the HCI on its part to take delivery of and pay for the commodities at the contract price.
- In the case of a discrepancy between the HCI Standard Terms and Conditions for Tenders & Proposals, the General/Standard Terms and Conditions of the HCI shall take precedence, except in the case where an item is not included in the member's Terms & Conditions document; in that event the HCI document shall prevail.
- NO alterations or variations of the terms of the contract shall be valid or binding upon the HCI unless authorized in writing by the HCI.
- It is mutually agreed and understood that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of his contract or his right, title or interest therein, or his power to execute such contract, to any other person, firm, company or corporation without the previous written consent of the HCI.
- The contract may be cancelled by the HCI upon non-performance of contract terms within fourteen (14) days from date of notification of same unless otherwise stated in the TPCQ documents, or if service or product is deemed unsatisfactory or the supplier becomes insolvent or is adjudicated as bankrupt.



- Failure of a contractor to deliver within the time specified, or failure to make replacements of rejected commodities when so requested, will constitute authority for the HCI to immediately purchase in the open market to replace the commodities rejected or not delivered. On all such purchases the contractor agrees to promptly reimburse the HCI for excess costs occasioned by such purchases. Such purchases will be deducted from contract quantities. However, should public necessity demand it, the HCI reserves the right to use or consume commodities which are sub- standard in quality, subject to an adjustment in price to be determined by the HCI.
- When commodities are rejected, they must be removed by the vendor from the premises of the HCI within five (5) days after notification by the HCI, health and safety requires immediate destruction or other disposal of such rejected delivery in which case the HCI may take such actions as it deems necessary. Such costs shall be the responsibility of the supplier. Rejected items left longer than five (5) days will be considered as abandoned, and the HCI shall have the right to dispose of them as its own property.
- Shipment of goods or commencement of work shall be at risk of the bidder, if undertaken in advance of his receipt of a properly executed Purchase Order, Notice of Award or Contract.
- If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the HCI and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.
- The supplier shall indemnify and save harmless the HCI from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description made, brought or recovered against the HCI by reasons of any act or omission of the supplier, their agents or employees, in the execution of their service.
- Supplier performance will be evaluated either by periodic audits during the contract term or upon completion of the contract. Where the standard is not met, the HCI will conduct an investigation and follow up with the supplier.
- The supplier must comply with relevant authorities, provincial and municipal statutes, regulations and by-laws pertaining to the work and its performance. The contract shall be governed by and interpreted in accordance with the laws of the Province of South Sudan

CONTRACT GUARANTEES

- The supplier hereby covenants and agrees:
 - (e) To perform Contract in accordance with the specifications under which the Contract is awarded;
 - (f) To save the HCI, its agents, or employees harmless from liability of any kind for the use of any composition, secret process, invention, article or appliance furnished or used in the performances of the contract of which the contractor is not the patentee, assignee or licensee;
 - (g) To guarantee products against defective material or workmanship and to repair or replace any damage or marring occasioned in transit;
 - (h) To furnish adequate protection from damage for all work and to repair damage of any kind for which he or his workers are responsible, to the premises or equipment, to his own work or the work of other contractors;
 - (i) To pay for all permits, licenses and fees, and to give all notices and comply with all by- laws and regulations of the HCI, unless otherwise specified;
 - (j) To carry such insurance as may be required by the HCI, and to furnish satisfactory proof thereof when required by the HCI.





- The supplier shall obtain and maintain Comprehensive General Liability Insurance against Bodily Injury and Property Damage claims. Such insurance shall:
 - (a) Be in the joint names of the supplier and the purchaser,
 - (b) Contain a cross liability clause,
 - (c) Include coverage for:
 - i. Completed operation
 - ii. Non-owned automobile liability
 - iii. Occurrence property damage
 - (d) Be subject to an inclusive limit of not less than \$200,000.00,
 - (e) Contain a clause stating that such insurance shall remain in force and not be amended, cancelled or allowed to lapse without thirty (30) days prior written notice being given to each of the named insured.
- The supplier shall insure and maintain against liability for Bodily Injury and Property Damage caused by automobiles owned or leased by the supplier. Such insurance shall be subject to an inclusive limit of not less than \$200,000.00.



DELIVERY

- Delivery must be made as ordered and in accordance with the TPCQ. If no delivery instructions appear on an order it will be interpreted to mean prompt delivery. Burden of proof of delay in receipt of order shall rest with the supplier.
- No minimum order quantities will be required for delivery.
- Items shall be securely and properly packed for shipment according to accepted commercial practice, without extra charge for packing materials or containers. Containers will remain the property of the HCI unless otherwise stated in the TPCQ.
- Where materials are furnished for a specified price per unit of weight, the HCI reserves the right to require such materials to be weighed on scales designated by it, in which case payment shall be made on the basis of the net weight of the materials furnished.
- Multiple delivery points may be required, including district sites. Deliveries must be FOB the various destinations, unloaded. Each bidder shall ensure that the delivery requirements for each agency are fully understood and reflected in the prices offered. No minimum order size will be required for delivery. FOB destination unloaded means items are to be delivered to any specified delivery location

ALL DELIVERIES to any specified delivery location **MUST** include the cost of **OFFLOADING OF GOODS** at the designated receiving location, unless otherwise indicated in the procurement document.

INSPECTIONS AND TESTS

- Any equipment delivered must be standard new equipment of the latest model except as otherwise specifically stated in the TPCQ. Where any parts of the equipment are not described, it shall be understood that all the equipment and parts which are usually provided in the manufacturer's stock model shall be furnished.
- Materials and supplies must be new except as otherwise specifically stated in the specifications.
- The inspection of all commodities and the making of chemical and physical tests to determine whether or not the specifications are being complied with shall be made in the manner prescribed by the HCI.
- Any item which fails in any way to meet the terms of the contract is subject to rejection or on an adjusted price basis, upon mutual agreement.
- All electrical and mechanical equipment must be approved for use in South Sudan, with markings such as CSA, ULC and/or Electrical Safety Authority approved.



PAYMENT

- Where a question of non-performance is involved, payment in whole or in part against which to charge back any adjustment required will be withheld. In the event a cash discount is involved, the withholding of payment as provided herein shall not deprive the HCI from taking such discount.
- All charges against a contractor shall be deducted from current obligations that are due or may become due. In the event that collection is not made in this manner the contractor shall pay the HCI, on demand, the amount of such charges. Such obligations may include returned products, invoice adjustments, or any other monies owed to the HCI.
- The beginning date of the prompt payment term is calculated from the date the HCI receives the invoice, or the date the goods/services are found to be acceptable by the HCI, or the date when a discrepancy on an invoice is adjusted to the HCI's satisfaction, whichever is the later date. The HCI will consider the date of their cheque to be the payment date, and when that date is within the prompt payment terms, the agencies' obligation to meet the prompt payment terms is fulfilled.

FORCE MAJEURE

- It is understood and agreed that the supplier shall not be held liable for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, or for any other cause not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent. Should the performance of any contract be delayed or prevented herein set forth, the contractor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay and to provide written notice as to when Contract obligations resume. In any case, such delay shall not exceed the length of time of the interruption/disruption.





ACCESSIBILITY FOR SOUTH SUDANESE WITH DISABILITIES ACT

- Successful supplier (s) shall ensure that all its employees, agents, volunteers, or others for whom the contractor is legally responsible receive training regarding the provision of goods and services contemplated herein to persons with disabilities in accordance with South Sudan Regulation as may be amended from time to time.

SECURITY CLEARANCES

- If required, the successful contractors and sub-contractors will be required to provide a list of employees who will be working on or within the premises of the facilities of the HCI, for this contract. These individuals will be subject to a security review. Only employees screened through the security review will be permitted on the premises. No work shall commence prior to the completion of the security review. The cost of the security review will be borne by the contractor or sub-contractor.

TOBACCO FREE POLICY

- All activities formally sponsored by the HCI, including those held off-site, are designated as tobacco-free. Individuals who wish to use tobacco products must leave the HCI venue and observe the rules of the off-site facility.

OWNERSHIP OF WORK PRODUCT

- Except for items that have pre-existing copyrights, all exhibits, drawings, plans, specifications, notes, reports, data, recommendations, artwork, memoranda and any other information prepared or furnished by the Supplier to HCI in the performance of this contract (collectively "Work Product") shall become the property of HCI, shall be provided in a format approved by the HCI, and may be used by HCI for any other purpose without additional compensation to the Supplier. Supplier hereby grants HCI an irrevocable, perpetual, royalty-free, fully assignable license (with full sublicense rights) to make, use and sell all proprietary and confidential information, trade secrets, patent rights, copyrights, and other intellectual property that may be partially or completely, directly or indirectly, incorporated into, integrated with or used in any of the Supplier's Work Product for HCI. Should HCI elect to reuse said Work Product, HCI shall indemnify, hold harmless and defend Supplier and its subcontractors against any damages or liabilities arising from said reuse. When Work Product produced by the Supplier and its Subcontractors under this contract are reused by HCI, the Supplier's and Subcontractor's signatures, professional seals, and dates shall be removed. If such Work Product requires professional signature and seal, it will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for the new project for which such Work Product is being reused.
- Supplier shall defend, indemnify and hold harmless HCI, its successors and assigns, and their respective representative, agents and employees from and against, any and all claims, defenses, obligations and liabilities which they may have or acquire under or with respect to any patent, copyright, trade secret, proprietary or confidential information, or any other form of intellectual property that may be asserted by Supplier or any other person which arises out of, results from or is based upon the manufacture, use or sale by HCI or any of its successors or assigns of any of Supplier's Work Product for HCI.





ENVIRONMENTAL STEWARDSHIP

- The HCI will endeavour to support environmentally positive initiatives, and supports products and services that support environmental integrity and sustainability, and that are consistent with HCI programming, where available.

SPECIFIC CONDITIONS

- Where conditions within a procurement document are contrary to these Standard Terms and Conditions for Procurement Requests, the conditions specified in the procurement document will prevail.

[Handwritten NOT ACCEPTED]

Name: _____

Signature: _____

On behalf of: _____

Position: _____

Date: _____

