



REQUEST FOR PROPOSALS

RFP No.:
MCM51 OF 2023/2024

Selection of Consulting Services for:
PROVISION OF EXTERNAL AUDIT SERVICES

Procuring Entity: MUNICIPAL COUNCIL OF MANZINI

ESWATINI

Issued on:
22 JANUARY 2024

SUMMARY DESCRIPTION

STANDARD REQUEST FOR PROPOSALS

PART I – SELECTION PROCEDURES AND REQUIREMENTS

Section 1: Letter of Invitation (LOI)

This Section is a template of a letter from the Procuring Entity addressed to a shortlisted consulting firm inviting it to submit a proposal for a consulting assignment. The LOI includes a list of all shortlisted firms to whom similar letters of invitation are sent, and a reference to the selection method and applicable regulations or policies of Government that govern the selection and award process.

Section 2: Instructions to Consultants and Data Sheet

This Section consists of two parts: “Instructions to Consultants” and “Data Sheet”. “Instructions to Consultants” contains provisions that are to be used without modifications. “Data Sheet” contains information specific to each selection and corresponds to the clauses in “Instructions to Consultants” that call for selection-specific information to be added. This Section provides information to help shortlisted consultants prepare their proposals. Information is also provided on the submission, opening and evaluation of proposals, contract negotiation and award of contract. Information in the Data Sheet indicates whether a Full Technical Proposal (FTP) or a Simplified Technical Proposal (STP) shall be used.

Section 3: Terms of References

This Section describes the scope of services, objectives, goals, specific tasks required to implement the assignment, and relevant background information; provides details on the required qualifications of the key experts; and lists the expected deliverables. This Section shall not be used to over-write provisions in Section 2.

Section 4: Technical Proposal – Standard Forms

This Section includes the forms for FTP and STP that are to be completed by the shortlisted consultants and submitted in accordance with the requirements of Section 2.

Section 4: Financial Proposal – Standard Forms

This Section includes the financial forms that are to be completed by the shortlisted consultants, including the consultant’s costing of its technical proposal, which are to be submitted in accordance with the requirements of Section 2.

Section 5: Corrupt and Fraudulent Practices

This Section provides shortlisted consultants with the reference to the Public Procurement Act in regard to corrupt and fraudulent practices applicable to the selection process. This Section is also incorporated in the standard forms of contract (Section 8) as Attachment 1.

Letter of Invitation

RFP No. MCM51 OF 2023/2024

22 January 2024

Dear Mr. /Ms.:

1. The Municipality invites reputable audit firms which are registered with the Swaziland Institute of Accountants for the provision of External Audit Services to the Municipal Council of Manzini for **three (3) financial years ending 31st March 2024, 2025, and 2026, respectively**. More details on the Services are provided in the Terms of Reference (Section 3).
2. The purpose of this Request for Proposals (RFP) is to establish a Service Level Agreement with a reputable audit firm to cover a period of three (3) years.
3. A firm will be selected under **Quality and Cost Based Selection Method** procedures and in a **Full Technical Proposal (FTP)** format as described in this RFP.
4. Tenderers may obtain further information from www.esppra.co.sz and www.mzcitycouncil.sz about the requirements of the tender document.
5. The RFP includes the following documents:
 - Section 1 - Letter of Invitation
 - Section 2 - Instructions to Consultants and Data Sheet
 - Section 3 – Terms of Reference
 - Section 4 - Technical Proposal - Standard Forms
 - Section 5 - Financial Proposal - Standard Forms
 - Section 6 – Corrupt and Fraudulent Practices
 - Section 7 - Standard Forms of Contract **Lump-Sum**
6. A complete set of Tendering Documents in English may be purchased by Tenderers upon payment of a non-refundable fee of **E500.00 (Five hundred emalangenani only)**. The method of payment will be physical, at the Municipal Council of Manzini Civic Offices, Rates Hall or ETF
 - A/C Name: Municipal Council of Manzini
 - Bank: Ned Bank (Manzini)
 - Account: 40000431593
 - Branch Code: 360264 (Manzini)
 - Type: Current Account
 - REF: Company name & Tender _____
7. Tenders must be delivered to and placed in the tender box at the Manzini Civic Offices on or before **1200 hours local time on 21st February 2024**. Tenders must be appropriately bound, sealed and labelled. Late Tenders will be rejected. Tenders will be opened in the presence of the Tenderers' representatives, who choose to attend in person at the address below immediately after **1215 hours local time on 21st February 2024**. All Tenders must be accompanied by a Tender Securing Declaration.

The addresses referred to above are:

Municipal Council of Manzini
CIVIC Offices, P.O. Box 418
Between Ngwane & Nkoseluhlaza Street, Manzini

ESWATINI

<http://www.mzcitycouncil.sz>

For Submission of Tenders

The Proposal submission address is: The Chief Executive Officer, Municipal Council of Manzini, Ngwane/Nkoseluhlaza Street, Manzini, Eswatini at **1200hrs, 21st February 2024**

For Opening of Tenders

The submitted proposal (s) shall be opened at the Municipal Council of Manzini, Civic Offices, Ngwane/Nkoseluhlaza Street, Manzini, Eswatini at **1215hrs, 21st February 2024**

**Municipal Council of Manzini
Chief Executive Officer**

Instructions to Consultants and Data Sheet

A. General Provisions

1. Definitions

- (a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- (b) “Applicable Regulations” means the Public Procurement Regulations, 2022 governing the selection and Contract award process as set forth in this RFP.
- (c) “Applicable Law” means the Laws of Eswatini and any other instruments having the force of law in Eswatini as they may be issued and in force from time to time.
- (d) “Procuring Entity” means the Procuring Entity or implementing agency that signs the Contract for the Services with the selected Consultant.
- (e) “Consultant” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.
- (f) “Contract” means a legally binding written agreement signed between the Procuring Entity and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- (g) “Data Sheet” means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- (h) “Day” means a calendar day.
- (i) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- (j) “Government” means the government of the Kingdom of Eswatini, any Procuring Entity or the relevant approvals authority as defined in the Public Procurement Act of 2011.
- (k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the

authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.

- (l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Consultant’s proposal.
- (m) “ITC” (this Section 2 of the RFP) means the Instructions to Consultants that provides the shortlisted Consultants with all information needed to prepare their Proposals.
- (n) “LOI” (this Section 1 of the RFP) means the Letter of Invitation being sent by the Procuring Entity to the shortlisted Consultants.
- (o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (p) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- (q) “RFP” means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants, based on the SRFP.
- (r) “SRFP” means the Standard Request for Proposals, which must be used by the Procuring Entity as the basis for the preparation of the RFP.
- (s) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- (t) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Procuring Entity during the performance of the Contract.
- (u) “TORs” (this Section 7 of the RFP) means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective

responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

2.1 The Procuring Entity named in the **Data Sheet** intends to select a Consultant from those listed in the Letter of Invitation, in accordance with the method of selection specified in the **Data Sheet**.

2.2 The shortlisted Consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the **Data Sheet**, for consulting services required for the assignment named in the **Data Sheet**. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

2.3 The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is optional and is at the Consultants' expense.

2.4 The Procuring Entity will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the **Data Sheet**.

3. Conflict of Interest

3.1 The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Procuring Entity's interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.

3.2 The Consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of its Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract and/or sanctions by ESPPRA.

3.2.1 Without limitation on the generality of the foregoing, and unless stated otherwise in the **Data Sheet**, the Consultant shall not be hired under the circumstances set forth below:

a. Conflicting activities

(i) Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Procuring Entity to provide

goods, works, or non-consulting services for a project shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

b. Conflicting assignments

(ii) Conflict among consulting assignments: a Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant for the same or for another Procuring Entity.

c. Conflicting relationships

(iii) Relationship with the Procuring Entity's staff: a Consultant that has a close business or family relationship with a professional staff of the Procuring Entity (or of the Procuring Entity, or of implementing agency, or of a recipient of a part of the Government's financing) who are directly involved in any part of (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Government throughout the selection process and the execution of the Contract.

4. Unfair Competitive Advantage

4.1 Fairness and transparency in the selection process require that the Consultants or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all shortlisted Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

5. Corrupt and Fraudulent Practices

5.1 The Government requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section 6.

5.2 In further pursuance of this policy, Consultant shall permit and shall cause its agents, Experts, Sub-consultants, sub-contractors, services providers, or suppliers to permit the Government to inspect all accounts, records, and other documents relating to the

submission of the Proposal and contract performance (in case of an award), and to have them audited by auditors appointed by the Government.

6. Eligibility

6.1 The Act permits consultants (individuals and firms, including Joint Ventures and their individual members) from all countries to offer consulting services for Government-financed projects.

6.2 Furthermore, it is the Consultant’s responsibility to ensure that it’s Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by the Government.

6.3 As an exception to the foregoing Clauses 6.1 and 6.2 above:

a. Sanctions

6.3.1 A firm or an individual sanctioned by ESPPRA in accordance with Sections fifty-five (55), fifty-six (56) and fifty-seven (57) of the Public Procurement Act of 2020 and in accordance with regulations 16, 17 and 18 of the Public Procurement Regulations of 2020., shall be ineligible to be awarded a Government-financed contract, or to benefit from a Government-financed contract, financially or otherwise, during such period of time as ESPPRA shall determine. The list of debarred firms and individuals is available at the electronic address specified in the **Data Sheet**.

b. Prohibitions

6.3.2 Firms and individuals of a country or goods manufactured in a country may be ineligible if so indicated in Section 5 (Eligible Countries) and:

- (a) as a matter of law or official regulations, the Government prohibits commercial relations with that country, provided that Cooperating Partners involved are satisfied that such exclusion does not preclude effective competition for the provision of Services required; or

c. Restrictions for Government-owned Enterprises

6.3.3 A statutory corporation or body or company in which Government has a majority or controlling interest shall be eligible only if they meet the provisions of Section 92 of the Public Procurement Regulations 2020.

To establish eligibility, the government-owned enterprise or institution should provide all relevant documents (including its charter) sufficient to demonstrate that it meets the

provisions of Section 92 of the Public Procurement Regulations 2020

d. Restrictions for public employees

6.3.4 Public Officials of Eswatini are not eligible to be included as Experts in the Consultant's Proposal unless such engagement does not conflict with any employment or other laws, regulations, or policies of Eswatini, and they:

(i) are on leave of absence without pay, or have resigned or retired;

(ii) are not being hired by the same agency they were working for before going on leave of absence without pay, resigning, or retiring

(in case of resignation or retirement, for a period of at least 6 (six) months, or the period established by statutory provisions applying to civil servants or government employees in Eswatini, whichever is longer. Experts who are employed by the government-owned universities, educational or research institutions are not eligible unless they have been full time employees of their institutions for a year or more prior to being included in Consultant's Proposal.; and

(iii) their hiring would not create a conflict of interest.

B. Preparation of Proposals

1. General Considerations

1.1 In preparing the Proposal, the Consultant is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

2. Cost of Preparation of Proposal

2.1 The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Procuring Entity is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultant.

3. Language

3.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Municipal Council of Manzini, shall be written in **English**.

**4. Documents
Comprising the
Proposal**

4.1 The Proposal shall comprise the documents and forms listed in the **Data Sheet**.

4.2 If specified in the **Data Sheet**, the Consultant shall include a statement of an undertaking of the Consultant to observe, in competing for and executing a contract, the Procuring Entity country's laws against fraud and corruption (including bribery).

4.3 The Consultant shall furnish information on commissions, gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal submission form (Section 4).

**5. Only One
Proposal**

5.1 The Consultant (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude a Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the **Data Sheet**.

6. Proposal Validity

6.1 **The Data Sheet** indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.

6.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.

6.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation, and may be subject to sanctions in accordance with Clause 5 of this ITC.

**a. Extension of
Validity Period**

6.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

6.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original

Proposal and with the confirmation of the availability of the Key Experts.

6.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

b. Substitution of Key Experts at Validity Extension

6.7 If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Procuring Entity together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original Key Expert.

6.8 If the Consultant fails to provide a replacement Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

c. Sub-Contracting

6.9 The Consultant shall not subcontract the whole of the Services.

7. Clarification and Amendment of RFP

7.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the **Data Sheet** before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the **Data Sheet**. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all shortlisted Consultants. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:

7.1.1 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all shortlisted Consultants and will be binding on them. The shortlisted Consultants shall acknowledge receipt of all amendments in writing.

7.1.2 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the shortlisted Consultants reasonable time to take an amendment into account in their Proposals.

7.2 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

8. Preparation of Proposals – Specific Considerations

8.1 While preparing the Proposal, the Consultant must give particular attention to the following:

8.1.1 If a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if permitted in the **Data Sheet**. In all such cases a shortlisted Consultant must obtain the written approval of the Procuring Entity prior to the submission of the Proposal. When associating with non-shortlisted firms in the form of a joint venture or a sub-consultancy, the shortlisted Consultant shall be a lead member. If shortlisted Consultants associate with each other, any of them can be a lead member.

8.1.2 The Procuring Entity may indicate in the **Data Sheet** the estimated Key Experts’ time input (expressed in person-month) or the Procuring Entity’s estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Consultant’s own estimates for the same.

8.1.3 If stated in the **Data Sheet**, the Consultant shall include in its Proposal at least the same time input (in the same unit as indicated in the **Data Sheet**) of Key Experts, failing which the Financial Proposal will be adjusted for the purpose of comparison of proposals and decision for award in accordance with the procedure in the **Data Sheet**.

8.1.4 For assignments under the Fixed-Budget selection method, the estimated Key Experts’ time input is not disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the **Data Sheet**, and the Financial Proposal shall not exceed this budget.

9. Technical Proposal Format and Content

9.1 The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

15.1.1 Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert

position. Failure to comply with this requirement will make the Proposal non-responsive.

9.2 Depending on the nature of the assignment, the Consultant is required to submit a Full Technical Proposal (FTP), or a Simplified Technical Proposal (STP) as indicated in the **Data Sheet** and using the Standard Forms provided in Section 3 of the RFP.

10. Financial Proposal

10.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the **Data Sheet**.

a. Price Adjustment

10.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates applies if so stated in the **Data Sheet**.

b. Taxes

10.3 The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the **Data Sheet**. Information on taxes in Eswatini is provided in the **Data Sheet**.

c. Currency of Proposal

10.4 The Consultant may express the price for its Services in the currency or currencies as stated in the **Data Sheet**. If indicated in the **Data Sheet**, the portion of the price representing local cost shall be stated in the national currency.

d. Currency of Payment

10.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. Submission, Opening and Evaluation

11. Submission, Sealing, and Marking of Proposals

17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with Clause 10 (Documents Comprising Proposal). The submission can be done by mail or by hand. If specified in the **Data Sheet**, the Consultant has the option of submitting its Proposals electronically.

17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and, if applicable, the Financial Proposal and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.2.1 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.3 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.4 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the **Data Sheet**. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

17.5 The original and all the copies of the Technical Proposal shall be placed inside of a sealed envelope clearly marked "**TECHNICAL PROPOSAL**", "[Name of the Assignment]", reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN UNTIL [INSERT THE DATE AND THE TIME OF THE TECHNICAL PROPOSAL SUBMISSION DEADLINE].**"

17.6 Similarly, the original Financial Proposal (if required for the applicable selection method) shall be placed inside of a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" followed by the name of the assignment, reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**"

17.7 The sealed envelopes containing the Technical and Financial Proposals shall be placed into one outer envelope and sealed. This outer envelope shall bear the submission address, RFP reference number, the name of the assignment, Consultant's name and the address, and shall be clearly marked "**DO NOT OPEN BEFORE** [insert the time and date of the submission deadline indicated in the Data Sheet]".

17.8 If the envelopes and packages with the Proposal are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement, loss, or premature opening of the Proposal.

17.9 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Procuring Entity no later than the deadline indicated in the **Data Sheet**, or any extension to this deadline. Any Proposal or its

modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

12. Confidentiality

18.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

18.2 Any attempt by shortlisted Consultants or anyone on behalf of the Consultant to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal, and may be subject to the application of prevailing sanctions procedures.

18.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Procuring Entity or ESPPRA on any matter related to the selection process, it should do so only in writing.

13. Opening of Technical Proposals

19.1 The Procuring Entity's evaluation committee shall conduct the opening of the Technical Proposals in the presence of the shortlisted Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the **Data Sheet**). The opening date, time and the address are stated in the **Data Sheet**. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored with a reputable public auditor or independent authority until they are opened in accordance with Clause 23 of the ITC.

19.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the **Data Sheet**.

14. Proposals Evaluation

20.1 Subject to provision of Clause 15.1 of the ITC, the evaluators of the Technical Proposals shall have no access to the

Financial Proposals until the technical evaluation is concluded and approved.

20.2 The Consultant is not permitted to alter or modify its Proposal in any way after the proposal submission deadline except as permitted under Clause 12.7 of this ITC. While evaluating the Proposals, the Procuring Entity will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

15. Evaluation of Technical Proposals

21.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet**. Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the **Data Sheet**.

16. Financial Proposals for QBS

22.1 Following the ranking of the Technical Proposals, when the selection is based on quality only (QBS), the top-ranked Consultant is invited to negotiate the Contract.

22.2 If Financial Proposals were invited together with the Technical Proposals, only the Financial Proposal of the technically top-ranked Consultant is opened by the Procuring Entity's evaluation committee. All other Financial Proposals are returned unopened after the Contract negotiations are successfully concluded and the Contract is signed.

17. Public Opening of Financial Proposals (for QCBS, and LCS methods)

23.1 After the technical evaluation is completed and has been approved, the Procuring Entity shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score (and shall provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion) that their Financial Proposals will be returned unopened after completing the selection process and Contract signing. The Procuring Entity shall simultaneously notify in writing those Consultants that have achieved the minimum overall technical score and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant's attendance at the opening of the Financial Proposals (in person,

or online if such option is indicated in the **Data Sheet**) is optional and is at the Consultant's choice.

23.2 The Financial Proposals shall be opened by the Procuring Entity's evaluation committee in the presence of the representatives of those Consultants whose proposals have passed the minimum technical score. At the opening, the names of the Consultants, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

18. Correction of Errors

24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

a. Time-Based Contracts

24.1.1 If a Time-Based contract form is included in the RFP, the Procuring Entity's evaluation committee will (a) correct any computational or arithmetical errors, and (b) adjust the prices if they fail to reflect all inputs included for the respective activities or items in the Technical Proposal. In case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between words and figures, the former will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

b. Lump-Sum Contracts

24.2 If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical corrections nor price adjustments shall be made. The total price, net of taxes understood as per Clause ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

- 19. Taxes** 25.1 The Procuring Entity’s evaluation of the Consultant’s Financial Proposal shall exclude taxes and duties in Eswatini in accordance with the instructions in the **Data Sheet**.
- 20. Conversion to Single Currency** 26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the **Data Sheet**.
- 27. Combined Quality and Cost Evaluation**
- a. Quality- and Cost-Based Selection (QCBS)** 27.1 In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the **Data Sheet**. The Consultant achieving the highest combined technical and financial score will be invited for negotiations.
- b. Fixed-Budget Selection (FBS)** 27.2 In the case of FBS, those Proposals that exceed the budget indicated in Clause 14.1.4 of the **Data Sheet** shall be rejected.
- 27.3 The Procuring Entity will select the Consultant that submitted the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, and invite such Consultant to negotiate the Contract.

c. Least-Cost Selection

27.4 In the case of Least-Cost Selection (LCS), the Procuring Entity will select the Consultant with the lowest evaluated total price among those consultants that achieved the minimum technical score, and invite such Consultant to negotiate the Contract.

D. Negotiations and Award

28. Negotiations

28.1 The negotiations will be held at the date and address indicated in the **Data Sheet** with the Consultant's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Consultant.

28.2 The Procuring Entity shall prepare minutes of negotiations that are signed by the Procuring Entity and the Consultant's authorized representative.

a. Availability of Key Experts

28.3 The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with Clause 12 of the ITC. Failure to confirm the Key Experts' availability may result in the rejection of the Consultant's Proposal and the Procuring Entity proceeding to negotiate the Contract with the next-ranked Consultant.

28.4 Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

b. Technical negotiations

28.5 The negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Procuring Entity's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

c. Financial negotiations

28.6 The negotiations include the clarification of the Consultant's tax liability in Eswatini and how it should be reflected in the Contract.

28.7 If the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

28.8 In the case of a Time-Based contract, unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates after consultation with ESPPRA.

The format for (i) providing information on remuneration rates in the case of Quality Based Selection; and (ii) clarifying remuneration rates' structure under Clause 28.8 above, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates.

29. Conclusion of Negotiations

29.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Procuring Entity and the Consultant's authorized representative.

29.2 If the negotiations fail, the Procuring Entity shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing the Consultant of the reasons for doing so. After having obtained approval, the Procuring Entity will invite the next-ranked Consultant to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Consultant, the Procuring Entity shall not reopen the earlier negotiations.

30. Award of Contract

30.1 After completing the negotiations the Procuring Entity shall obtain approval to the negotiated draft Contract, if applicable; sign the Contract; publish the intention to award as per the instructions in the **Data Sheet**; and promptly notify the other shortlisted Consultants.

30.2 The Consultant is expected to commence the assignment on the date and at the location specified in the **Data Sheet**.

31. Standstill Period

31.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 10 working days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

31.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the

Notification of Intention to Enter in to a Contract with the successful Tenderer.

32. Debriefing by the Procuring Entity

32.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 30, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

32.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

33. Publication of Procurement Contract

Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded on the Website of the Agency. At the minimum, the notice shall contain the following information:

- a) Name and address of the Procuring Entity;
- b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) The name of the successful Tenderer, the final total contract price, the contract duration.
- d) Dates of signature, commencement and completion of contract;
- e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

34. Procurement Related Complaints and Administrative Review

34.1 The procedures for making a Procurement-related Complaint are as **specified in the TDS**.

34.2 An application for administrative review shall be made in accordance with section 48 and 49 of the Act, 2011 using the form provided on the Agency's website <https://www.esppra.co.sz>.

Instructions to Consultants

E. Data Sheet

A. General	
ITC Clause Reference	
2.1	<p>Name of the Procuring Entity: Municipal Council of Manzini</p> <p>Method of selection: <u>Quality and Cost Based Selection</u> as per</p> <p>Applicable Regulations: Regulations 77 to 91 of the Public Procurement Regulations, 2020 available on http://www.esppra.co.sz</p>
2.2	<p>Financial Proposal with Financial Standard Forms should be submitted in two (2) separate envelopes with the Technical Proposal.</p> <p><i>Technical Proposal: (1) Original and (1) Copy should be submitted plus a flash drive.</i></p> <p><i>Financial Proposal: (1) Original and (1) Copy should be submitted.</i></p> <p>The name of the assignment is: PROVISION OF EXTERNAL AUDIT SERVICES</p>
2.3	A tender pre - briefing meeting will not be held
2.4	A list of debarred firms and individuals is available at: http://www.esppra.co.sz
B. Preparation of Proposals	
2.5	<p>The Proposal shall comprise the following:</p> <p><u>For FULL TECHNICAL PROPOSAL (FTP):</u></p> <p>1st Inner Envelope with the Technical Proposal:</p> <ol style="list-style-type: none"> (1) Power of Attorney to sign the Proposal (2) TECH-1 (3) TECH-2 (4) TECH-3 (5) TECH-4 (6) TECH-5 (7) TECH-6

	<p>AND</p> <p>2d Inner Envelope with the Financial Proposal (if applicable):</p> <p>(1) FIN-1</p> <p>(2) FIN-2</p>
2.6	Statement of Undertaking is not required
2.7	Participation of Sub-consultants, Key Experts and Non-Key Experts in more than one Proposal is not permissible
2.8	The Tender Validity Period shall be 90 days after the proposal submission deadline.
2.9	<p>Clarifications may be requested no later than 06 February 2024 days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is: <u>Anita Nkambule</u></p> <p>E-mail: anitan@mzcitycouncil.sz and copied to mduduzid@mzcitycouncil.sz</p>
2.10	<p>The format of the Technical Proposal to be submitted is: Full Technical Proposal (FTP).</p> <p>Submission of the Technical Proposal in a wrong format may lead to the Proposal being deemed non-responsive to the RFP requirements.</p>
2.11	Information on the Consultant’s tax obligations in Eswatini can be found at the Eswatini Revenue Service’s website on www.ers.org.sz
2.12	<p>The Financial Proposal shall be stated in the following currencies:</p> <p>Consultant may express the price for their Services in Emalangeni.</p> <p>.....</p> <p>The Financial Proposal should state local costs in Eswatini Emalangeni</p>
C. Submission, Opening and Evaluation	
2.13	The Consultants shall not have the option of submitting their Proposals electronically.

2.14	<p>The Consultant must submit:</p> <p>(a) Technical Proposal: one (1) original and (1) copy and in a flash drive</p> <p>(b) Financial Proposal: one (1) original and (1) copy.</p>
2.15	<p>The Proposals must be submitted on or before the:</p> <p>Date: 21 February 2023. Time: 12h00 noon Location: Reception Area, Civic Offices, Municipal Council of Manzini, Nkoseluhlaza Street</p> <p>The Proposal shall consist of a Technical Proposal and a Financial Proposal, which shall be submitted in two separate sealed envelopes marked clearly with “Technical Proposal – RFP – Tender No. : MCM51 OF 2023/2024 and “Financial Proposal – RFP: Tender No. MCM51 OF 2023/2024 respectively. The two envelopes must be enclosed in a sealed outer envelope clearly showing the name of Tenderer, which shall be marked: “Request for Proposal – Technical” and “Request for Proposal – Financial”: TENDOR NO: MCM51 OF 2023/2024: PROVISION OF EXTERNAL AUDIT SERVICES - and addressed to:</p> <p>Chief Executive Officer Municipal Council of Manzini P.O. Box 418 Manzini</p> <p>Failure to mark the envelope clearly and accurately may result in rejection of the proposal. The Proposal must be deposited in the Tender Box situated at the reception.</p>
2.16	<p><u>Opening of Tenders</u></p> <p>The submitted proposal (s) shall be opened at the Municipal Council of Manzini, Civic Offices, Ngwane/Nkoseluhlaza Street, Manzini, Eswatini at 1215hrs, 21st February 2024</p> <p>An online option of the opening of the Technical Proposals shall not be offered.</p>
2.17	<p>The Tenderer shall submit the following additional/ equivalent documents in its Tender:</p> <ol style="list-style-type: none"> 1. Original and Valid Tax Compliance Certificate 2. Certificate of Incorporation 3. Certified Copy of a Valid Trading License

	<p>4. Certified Copy of Labour Compliance Certificate</p> <p>5. Police Clearance for all company Directors</p> <p>6. Certified copy of a Form J, stamped by the Registrar of Companies</p> <p>7. Certified copy of Form C, stamped by the Registrar of Companies</p> <p>8. Company Audited Annual Financial Statements for the past 3 years</p> <p>9. Original Council Receipt as proof of payment E500.00</p> <p>10. Copy of a Valid ENPF Compliance Certificate</p>
<p>2.18 (for FTP)</p>	<p>2. Criteria, sub-criteria, and point system for the evaluation of Full Technical Proposals are:</p> <p>i) Specific experience of the Consultants relevant to the assignment: (30) The firm must have:</p> <ul style="list-style-type: none"> • more than 7 years of auditing experience; and • Provide at least three reference letters from previous clients not older than 3 years. • List of previous and current audit assignments undertaken in the past 5 years with contract values <p>ii) Adequacy of the proposed methodology and work plan in responding to the Terms of Reference: (25)</p> <p>a) Comments on the Terms of Reference: (5)</p> <p>b) Technical approach and methodology: (15)</p> <p>c) Work plan for the three (3)years: (5)</p> <p>iii) Key Experts/Audit Team Qualifications and Competence for the Assignment (35)</p> <p>a) Organisation and Staffing</p> <ul style="list-style-type: none"> • Lead Consultant/Directors/Supervisors/Staff.(20) • Support Staff & personnel (15) <p><i>NB: relevant qualification and experience will be key and an added advantage for lead consultant, and/or supervisors.</i></p> <p>iv) Participation by Swazi Company (joint venture)/ 50% staff Eswatini citizens(Local Economic Development & Empowerment) (5)</p> <p>v) <i>Demonstration of Quality Management System knowledge (5)</i></p> <p>Total points for the five criteria: 100</p> <p>The minimum technical score (St) required to pass is 70 Points.</p>

2.19	An online option of the opening of the Financial Proposals shall not be offered.
2.20	For the purpose of the evaluation, the Municipal Council of Manzini will exclude: (a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) all additional local indirect tax on the remuneration of services rendered by non-resident experts in Eswatini. If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized (using the itemized list as a guidance but not limiting to it) and added to the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Municipality on behalf of the Consultant.
2.21	The single currency for the conversion of all prices expressed in various currencies into a single one is: <u>Emalangeni [E]</u>.
2.22 (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:</p> <p>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.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: T = 70, and P = 30</p> <p>Proposals are 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 following: S = St x T% + Sf x P%.</p>
D. Negotiations and Award	
2.23	<p>Expected date and address for contract negotiations:</p> <p>Date: <u>TBC</u></p> <p>Address: <u>TBC</u></p>
2.24	<p>The publication of the contract award information following the completion of the evaluation process will be done as following:</p> <p>https://www.esppra.co.sz</p>

Section 3.

Terms of Reference

1. Background

The Municipal Council of Manzini (MCM) is a public sector entity established in terms of the Urban Government Act No. 8 of 1969. The Municipality's primary mandate is to facilitate the provision of basic municipal services for the citizens of Manzini at community level and managing development within the City through the Urban Government Act, 1969.

The Manzini City is located in the central regions of Swaziland, about 35 km South - East of Mbabane, along the Main Road (MR3), sitting on an area size of about 2,447 hectares, with a night population size of about 28,700 (currently estimated at 40,000) people and day-time population of over 120 000 people.

The organization has an unwavering commitment to serve the people of Manzini and as such has adopted a service centric approach of utilizing good governance, sound judgment and customer centered management to deliver relevant quality services. The Council is guided by its values of being Innovative, Accountability, Integrity and Inclusion. Our values-based approach to business is an important element of both our continued success and our organizational culture.

The municipality's vision is to be 'A vibrant African City that innovatively provides quality services and economic opportunities to its stakeholders. The organization's mission is 'To provide quality municipal services to add value to all our customers through good governance and partnering with relevant stakeholders'.

The municipality has four (4) departments namely; Technical Services, Finance, Corporate Services and Community Services.

2. Objective(s) of the Assignment

- 2.1 Municipal Council of Manzini (MCM) invites sealed Proposals for External Audit Services for MCM. The 'Request for Proposals' document can be obtained at the civic offices of Municipal Council of Manzini or downloaded from the ESPPRA's website at www.esppra.co.sz or [Municipal Council of Manzini website at www.mzcitycouncil.sz](http://www.mzcitycouncil.sz)
- 2.2 The Municipality seeks to engage a reputable audit firm which is registered with the Swaziland Institute of Accountants to provide external audit services to MCM for **three (3) financial years ending 31st March 2024, 2025, and 2026, respectively.**
- 2.3 The purpose of this Request for Proposals (RFP) is to establish a service agreement to cover a period of three (3) years. The Municipality shall continuously review the performance of the service provider and, if the performance of the service provider is not satisfactory, MCM shall have the right to terminate the service agreement in line with the agreed terms and conditions.

3. Scope of Services, Tasks (Components) and Expected Deliverables

3.1 Scope of Services

The scope of work for the external audit services shall include, but not be limited to:

- a) Conducting an independent audit of the Municipal Council of Manzini in line with International Standards on Auditing.
- b) Review and evaluate Council's internal controls and risk management systems, advise management on the adequacy and effectiveness of the internal controls and systems, report on deficiencies and make recommendations on areas of improvements.
- c) Express an opinion on whether the financial statements are prepared, in all material respects, in accordance with the applicable International Financial Reporting Standards and in a manner required by the Urban Government Act, 1969 and the Public Finance Management Act, 2020.
- d) The Auditor shall consider whether the municipality has maintained proper books of accounts, and whether the accompanying financial statements give a true and fair view of the financial position and performance of the Council.
- e) Provide any other value added services consistent with the audit of the Fund's financial statements, including but not limited to reviewing and incorporating the Fund's annual actuarial valuation results in the financial statements.

3.2 Expected Outputs/ Deliverables

3.2.1 Audit Report

The audit report should clearly state the Auditor's opinion and include the following;

- a) The list of financial information audited including the period covered, statement of the Councillors' responsibility and/or management as well as the responsibility of the auditor;
- b) The scope and methodology used, including the description and the nature of the audit referencing; accounting standards that have been applied and indicate the effect of any deviations from these standards if any;
- c) The work performed by the Auditor in accordance with International Standards on Auditing;
- d) The Auditors opinion, in accordance with the requirements of the International Standards on Auditing; and
- e) Whether the financial transactions reflected in the financial statements are in accordance with International Financial Reporting Standards (IFRS) and in a manner required by the Urban Government Act, 1969 and the Public Finance Management Act, 2020.

3.2.2 Management Letter

The Auditors should submit a letter to the management at the completion of the audit. The issues to be covered in the letter should include;

- a) The assessment of the efficiency of the administration, management and internal control systems of MCM.
- b) A description of any specific internal control deficiencies noted in the financial management.
- c) Recommendations to resolve/eliminate internal control weaknesses noted.
- d) Management’s comments/responses to audit findings and recommendations.

4. Team Composition & Qualification Requirements for the Key Experts (and any other requirements will be used for evaluating the Key Experts and Staff under Data Sheet 2.18)

- a) Auditors must be completely impartial and independent from all aspects of management or financial interests of the Municipality
- b) The Auditors should not ,during the period covered by the audit nor during the undertaking of the audit, be employed by serve as Director for, or have any financial or close business relationships with any Senior member in the management of MCM.
- c) The Auditors should disclose any relationship that might possibly compromise their independence.
- d) The auditors should have experience in applying auditing standards
- e) The audit firm should employ adequate staff with appropriate professional qualifications and suitable experience in auditing accounts of public enterprises.
- f) Curriculum Vitae (CVs) should be provided to MCM by the principal of the audit firm who would be responsible for signing the opinion, together CVs of Managers, Supervisors and key personnel proposed as part of the audit team.
- g) Curriculum Vitae (CVs) should include details of audits carried out by the applicable staff, including ongoing assignments indicating capability and capacity to undertake the audit and experience in auditing financial statements compliant with IFRS.
- h) Number of partners and professional staff; partner-staff ratio, ability to substitute staff at similar levels of qualifications and experience if necessary.
- i) The Audit firm’s specialties that may be advantageous to the audit of the Municipality (e.g., IT, enterprise risk management).
- j) Types of clients/sectors, number of large clients/client spread (not overly reliant on few clients)
- k) Any legal actions or reputational issues relating to the Audit firm or its proposed professional staff that may impact on the ability of the firm to provide services to the Municipality
- l) Feedback on performance from other clients.
- m) Clearly outline if any personnel will be outsourced.
- n) Engagement partner must be a practicing auditor registered with the institute of Accountants.

- o) The team members are expected to fulfil the following qualification and experience:
- p) Bachelor’s Degree in Accounting with Auditing Major or equivalent
- q) At least 5 years of practical auditing experience in parastatals.
- r) Affiliation and membership of professional body e.g. ACCA or equivalent.
- s) Certified copies of academic qualifications of the team to be involved in the assignment attached.
- t) The Auditor in charge must have at least 3 years’ audit experience and have a CA.
- u) Demonstrate professional competence and integrity. The bidder should be professional.

5. Reporting Requirements and Time Schedule for Deliverables

The draft audit report for financial year FY 2023/2024 should be submitted within 30 working days from date of commencement of the audit assignment including the day for audit briefing. The final signed audit report for FY2023/2024 should be submitted within 5 working days after the draft report has been approved by the Board of Directors.

6. Evaluation Criteria

6.1 Stage One: Pre-qualification Criteria

Submission of required documentation as per requirements of the Request for Proposal (RFP), Data Sheet 2.17

6.2 Stage Two: Technical Evaluation Criteria

The Proposals shall be evaluated based on the Quality and Cost Based Selection (QCBS) methodology. The technical proposal shall be evaluated first before the financial proposal can be opened and considered. The technical proposal shall score 70 points or above to qualify for financial evaluation. Any proposal that scores below 70 points shall be rendered non-responsive and rejected.

The Technical Proposal score is 70% and the Financial Proposal score is 30%. The successful tenderer will be one that scores the highest combined points out of 100.

6.3 Stage Three: Financial Proposal

The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.

The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:

$Sf = 100 \times Fm / F$, 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 (T) and Financial (P) Proposals are:

T = 70, and P = 30

Proposals are 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 following: $S = St \times T\% + Sf \times P\%$.

Section 4. Technical Proposal – Standard Forms

{Notes to Consultant shown in brackets { } throughout Section 3 provide guidance to the Consultant to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}

CHECKLIST OF REQUIRED FORMS

Required for FTP or STP (v)		FORM	DESCRIPTION	Page Limit
FTP	STP			
v	v	TECH-1	Technical Proposal Submission Form.	
	“v” If applicable	TECH-1 Attachment	If the Proposal is submitted by a joint venture, attach a letter of intent or a copy of an existing agreement.	
	“v” If applicable	Power of Attorney	No pre-set format/form. In the case of a Joint Venture, several are required: a power of attorney for the authorized representative of each JV member, and a power of attorney for the representative of the lead member to represent all JV members	
v		TECH-2	Consultant’s Organization and Experience.	
v		TECH-2A	A. Consultant’s Organization	
v		TECH-2B	B. Consultant’s Experience	
v		TECH-3	Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Procuring Entity.	
v		TECH-3A	A. On the Terms of Reference	
v		TECH-3B	B. On the Counterpart Staff and Facilities	
v	v	TECH-4	Description of the Approach, Methodology, and Work Plan for Performing the Assignment	
v	v	TECH-5	Work Schedule and Planning for Deliverables	
v	v	TECH-6	Team Composition, Key Experts Inputs, and attached Curriculum Vitae (CV)	

All pages of the original Technical and Financial Proposal shall be initialed by the same authorized representative of the Consultant who signs the Proposal.

FORM TECH-1

TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: Municipal Council of Manzini
P O Box 419
Manzini

Dear Sirs:

We, the undersigned, offer to provide the consulting services for the Provision of External **Audit Services** in accordance with your Request for Proposals dated **22 January 2024** and our Proposal. *[Select appropriate wording depending on the selection method stated in the RFP: “We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope” or, if only a Technical Proposal is invited “We hereby are submitting our Proposal, which includes this Technical Proposal only in a sealed envelope.”]*

{If the Consultant is a joint venture, insert the following: We are submitting our Proposal a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: “of our letter of intent to form a joint venture” or, if a JV is already formed, “of the JV agreement”} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

{OR

If the Consultant’s Proposal includes Sub-consultants, insert the following: We are submitting our Proposal with the following firms as Sub-consultants: {Insert a list with full name and address of each Sub-consultant.}

We hereby declare that:

- (a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity and/or may be sanctioned by ESPPRA.
- (b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- (c) We have no conflict of interest in accordance with ITC 3.

- (d) We meet the eligibility requirements as stated in ITC 6, and we confirm our understanding of our obligation to abide by the Public Procurement Act in regard to corrupt and fraudulent practices as per ITC 5.
- (f) Except as stated in the Data Sheet, Clause 12.1, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 28.4 may lead to the termination of Contract negotiations.
- (g) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 30.2 of the Data Sheet.

We understand that the Procuring Entity is not bound to accept any Proposal that the Procuring Entity receives.

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: _____

Name and Title of Signatory: _____

Name of Consultant (company's name or JV's name):

In the capacity of: _____

Address: _____

Contact information (phone and e-mail): _____

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}

FORM TECH-2 (FOR FULL TECHNICAL PROPOSAL ONLY)

CONSULTANT'S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Consultant's organization and an outline of the recent experience of the Consultant that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Consultant's Key Experts and Sub-consultants who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Consultant), and the Consultant's role/involvement.

A - Consultant's Organization

1. Provide here a brief description of the background and organization of your company, and – in case of a joint venture – of each member for this assignment.

B - Consultant's Experience

1. List only previous similar assignments successfully completed in the last [.....] years.
2. List only those assignments for which the Consultant was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their CVs. The Consultant should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references if so requested by the Procuring Entity.

Section 3. Technical Proposal – Standard Forms

Duration	Assignment name/ & brief description of main deliverables/outputs	Name of Procuring Entity & Country of Assignment	Approx. Contract value (in SZL/ Amount paid to your firm)	Role on the Assignment
{e.g., Jan.2009– Apr.2010}	{e.g., “Improvement quality of.....”: designed master plan for rationalization of; }	{e.g., Ministry of, country}	{e.g., SZL1 mill/SZL0.5 mill}	{e.g., Lead partner in a JV A&B&C}
{e.g., Jan-May 2011}	{e.g., “Support to sub-national government.....” : drafted secondary level regulations on.....}	{e.g., municipality of....., country}	{e.g., SZL0.2 mil/SZL0.2 mil}	{e.g., sole Consultant}

FORM TECH-3 (FOR FULL TECHNICAL PROPOSAL)

**COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE,
COUNTERPART STAFF, AND FACILITIES TO BE PROVIDED BY THE PROCURING
ENTITY**

Form TECH-3: comments and suggestions on the Terms of Reference that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Procuring Entity, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

{improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

{ comments on counterpart staff and facilities to be provided by the Procuring Entity. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any }

FORM TECH-4 (FOR FULL TECHNICAL PROPOSAL ONLY)

DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN IN RESPONDING TO THE TERMS OF REFERENCE

Form TECH-4: a description of the approach, methodology and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{Suggested structure of your Technical Proposal (in FTP format):

- a) Technical Approach and Methodology
 - b) Work Plan
 - c) Organization and Staffing }
-
- a) **Technical Approach and Methodology.** {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs in here. }
 - b) **Work Plan (3 year period).** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form. }
 - c) **Organization and Staffing.** {Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff. }

FORM TECH-4 (FOR SIMPLIFIED TECHNICAL PROPOSAL ONLY)

DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

Form TECH-4: a description of the approach, methodology, and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{Suggested structure of your Technical Proposal }

- a) **Technical Approach, Methodology, and Organization of the Consultant's team.**
{Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TOR), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s); the degree of detail of such output; and describe the structure and composition of your team. Please do not repeat/copy the TORs in here.}
- b) **Work Plan and Staffing.** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan and work schedule showing the assigned tasks for each expert. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form. }
- c) **Comments (on the TOR and on counterpart staff and facilities)**
{Your suggestions should be concise and to the point, and incorporated in your Proposal. Please also include comments, if any, on counterpart staff and facilities to be provided by the Procuring Entity. For example, administrative support, office space, local transportation, equipment, data, background reports, etc. }

FORM TECH-5

WORK SCHEDULE AND PLANNING FOR DELIVERABLES

N°	Deliverables ¹ (D-..)	Months											
		1	2	3	4	5	6	7	8	9	n	TOTAL
D-1	{e.g., Deliverable #1: Report A												
	1) data collection												
	2) drafting												
	3) inception report												
	4) incorporating comments												
	5)												
	6) delivery of final report to Procuring Entity}												
D-2	{e.g., Deliverable #2:.....}												
n													

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity’s approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
3. Include a legend, if necessary, to help read the chart.



FORM TECH-6

TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

N°	Name	Expert's input (in person/month) per each Deliverable (listed in TECH-5)										Total time-input (in Months)			
		Position		D-1		D-2		D-3		D-...		Home	Field	Total
KEY EXPERTS															
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home]	[2 month]	[1.0]	[1.0]									
			[Field]	[0.5 m]	[2.5]	[0]									
K-2															
K-3															
n															
											Subtotal				
NON-KEY EXPERTS															
N-1			[Home]												
			[Field]												
N-2															
n															
											Subtotal				
											Total				

1 For Key Experts, the input should be indicated individually for the same positions as required under the Data Sheet ITC21.1.

-
- 2 Months are counted from the start of the assignment/mobilization. One (1) month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.
 - 3 "Home" means work in the office in the expert's country of residence. "Field" work means work carried out in Eswatini or any other country outside the expert's country of residence.

 Full time input
 Part time input

**FORM TECH-6
(CONTINUED)**

CURRICULUM VITAE (CV)

Position Title and No.	{e.g., K-1, TEAM LEADER}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship/Residence	

Education: {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}

Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous Procuring Entity’s and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact information for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2005-present]	[e.g., Ministry of, advisor/consultant to... For references: Tel...../e-mail.....; Mr. Hbbbb, deputy minister]		

Membership in Professional Associations and Publications:

Language Skills (indicate only languages in which you can work): _____

Adequacy for the Assignment:

Detailed Tasks Assigned on Consultant's Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved}	

Experts contact information: (e-mail, phone.....)

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Procuring Entity, and/or sanctions by ESPPRA.

{ day/month/year }

Name of Expert

Signature

Date

{ day/month/year }

Name of authorized
Representative of the Consultant
(the same who signs the Proposal)

Signature

Date

Section 5. Financial Proposal - Standard Forms

{*Notes to Consultant* shown in brackets { } provide guidance to the Consultant to prepare the Financial Proposals; they should not appear on the Financial Proposals to be submitted.}

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FORM FIN-1
FINANCIAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: **Municipal Council of Manzini**
P O Box 419
Manzini

Dear Sirs:

We, the undersigned, offer the Provision of External Audit Services in accordance with your Request for Proposal dated 22 January 2024 and our Technical Proposal.

Our attached Financial Proposal is for the amount of {Indicate the corresponding to the amount(s) currency(ies)} {Insert amount(s) in words and figures}, *[Insert “including” or “excluding”]* of all indirect local taxes in accordance with Clause 25.1 in the Data Sheet. The estimated amount of local indirect taxes is {Insert currency} {Insert amount in words and figures} which shall be confirmed or adjusted, if needed, during negotiations. {Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Clause 12.1 of the Data Sheet.

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____
_____	_____	_____

{If no payments are made or promised, add the following statement: “No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution.”}

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: _____

Name and Title of Signatory: _____

In the capacity of: _____

Address: _____

E-mail: _____

{For a joint venture, either all members shall sign or only the lead member/consultant,
in which case the power of attorney to sign on behalf of all members shall be attached}

FORM FIN-2 SUMMARY OF COSTS

Item	Cost			
	{Consultant must state the proposed Costs in accordance with Clause 16.4 of the Data Sheet; delete columns which are not used}			
	{Insert Local Currency # 1}	{Insert Local Currency # 2, if used}	{Insert Local Currency # 3, if used}	{Insert Local Currency, if used and/or required (16.4 Data Sheet)}
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
Total Cost of the Financial Proposal: {Should match the amount in Form FIN-1}				
Indirect Local Tax Estimates – to be discussed and finalized at the negotiations if the Contract is awarded				
(i) {insert type of tax: e.g., VAT or sales tax}				
(ii) {e.g., income tax on non-resident experts}				
(iii) {insert type of tax}				
Total Estimate for Indirect Local Tax:				

Section 6. Corrupt and Fraudulent Practices

(this Section 6 shall not be modified)

“Fraud and Corruption

1.23 Section 60, 61 and 62 of the Public Procurement Act, 2011, require that Procuring Entities (including beneficiaries of Government funds), consultants, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers, and any personnel thereof, observe the highest standard of ethics during the selection and execution of Government-financed contracts [footnote: In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage is improper.]. In pursuance of this policy, the Act:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party¹;
- (ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation²;
- (iii) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party³;
- (iv) “coercive practices” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁴;

¹ For the purpose of this sub-paragraph, “another party” refers to a public officer acting in relation to the selection process or contract execution. In this context “public officer” means any officer employed in the public service including in procuring entities, requesting entities, the Agency and the Tender Boards.

² For the purpose of this sub-paragraph, “party” refers to a public officer; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

³ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officers) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

⁴ For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights;
- (b) will reject a proposal for award if it determines that the consultant recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the funds allocated to a contract if it determines at any time that representatives of the Procuring Entity or of a recipient of any part of the proceeds were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the selection process or the implementation of the contract in question, without the Procuring Entity having taken timely and appropriate action satisfactory to the Government to address such practices when they occur, including by failing to inform the Government in a timely manner they knew of the practices;
- (d) will sanction a firm or an individual at any time, in accordance with prevailing sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Government-financed contract, and (ii) to be a nominated⁵ sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Government-financed contract.

⁵ A nominated sub-consultant, supplier, or service provider is one which has been either (i) included by the consultant in its proposal because it brings specific and critical experience and know-how that are accounted for in the technical evaluation of the consultant’s proposal for the particular services; or (ii) appointed by the Borrower.

PART II

Section 7. Conditions of Contract Preface

1. The standard Contract form consists of four parts: the Form of Contract to be signed by the Procuring Entity and the Consultant, the General Conditions of Contract (GCC), including Attachment 1 (Corrupt and Fraudulent Practices); the Special Conditions of Contract (SCC); and the Appendices.
2. The General Conditions of Contract, including Attachment 1, shall not be modified. The Special Conditions of Contract that contain clauses specific to each Contract intend to supplement, but not over-write or otherwise contradict, the General Conditions.

I. General Conditions of Contract

A. GENERAL PROVISIONS

1. Definitions

- 1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (a) “Applicable Regulations” means Public Procurement Regulations, 2022.
 - (b) “Applicable Law” means the Laws of Eswatini and any other instruments having the force of law in Eswatini, as they may be issued and in force from time to time.
 - (c) “Procuring Entity” means the Procuring Entity or implementing agency that signs the Contract for the Services with the Selected Consultant.
 - (d) “Consultant” means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
 - (e) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
 - (f) “Day” means a working day unless indicated otherwise.
 - (g) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
 - (h) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
 - (i) “Foreign Currency” means any currency other than the currency of Eswatini.
 - (j) “GCC” means these General Conditions of Contract.
 - (k) “Government” means the government of Eswatini.
 - (l) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the

JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.

- (m) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant’s proposal.
- (n) “Local Currency” means the currency of Eswatini.
- (o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (p) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.
- (q) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (r) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (s) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (t) “Third Party” means any person or entity other than the Government, the Procuring Entity, the Consultant or a Sub-consultant.

2. Relationship between the Parties

2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

4. Language

4.1. This Contract has been executed in **English**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

5. Headings

5.1. The headings shall not limit, alter or affect the meaning of this Contract.

- 6. Communications**
- 6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**.
- 6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.
- 7. Location**
- 7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Procuring Entity may approve.
- 8. Authority of Member in Charge**
- 8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.
- 9. Authorized Representatives**
- 9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the **SCC**.
- 10. Corrupt and Fraudulent Practices**
- 10.1. The Government requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in **Attachment 1** to the GCC.
- a. Commissions and Fees**
- 10.2. The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by ESPPRA.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 11. Effectiveness of Contract**
- 11.1. This Contract shall come into force and effect on the date (the "Effective Date") of the Procuring Entity's notice to the Consultant

instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

12. Termination of Contract for Failure to Become Effective

12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty eight (28) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

13. Commencement of Services

13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

14. Expiration of Contract

14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

15. Entire Agreement

15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

16. Modifications or Variations

16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

16.2. In cases of substantial (20% and above) modifications or variations, the prior written consent of ESPPRA is required.

17. Force Majeure

a. Definition

17.1. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Experts, Sub-consultants or agents or employees, nor (ii) any event

which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. No Breach of Contract

17.4. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be Taken

17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Procuring Entity, shall either:

- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

18. Suspension

18.1. The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19. Termination

19.1. This Contract may be terminated by either Party as per provisions set up below:

a. By the Procuring Entity

19.1.1. The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Procuring Entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- (e) If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;

- (f) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.

19.1.2. Furthermore, if the Procuring Entity determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

b. By the Consultant

19.1.3. The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 45.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- (c) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 45.1.
- (d) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

19.1.4. Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

19.1.5. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the

Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

e. Payment upon Termination

19.1.6. Upon termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:

- (a) payment for Services satisfactorily performed prior to the effective date of termination; and
- (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. OBLIGATIONS OF THE CONSULTANT

20. General

a. Standard of Performance

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.

20.2. The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

20.3. The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Procuring Entity. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

b. Law Applicable to Services 20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5. Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in Eswatini when

- (a) as a matter of law or official regulations, the Government prohibits commercial relations with that country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21. Conflict of Interests

21.1. The Consultant shall hold the Procuring Entity's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

a. Consultant Not to Benefit from Commissions, Discounts, etc.

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Consultant shall comply with the Applicable Regulations, and shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

b. Consultant and Affiliates Not to Engage

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and

- in Certain Activities** any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the **SCC**.
- c. Prohibition of Conflicting Activities** 21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- d. Strict Duty to Disclose Conflicting Activities** 21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.
- 22. Confidentiality** 22.1 Except with the prior written consent of the Procuring Entity, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.
- 23. Liability of the Consultant** 23.1 Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be provided by the Applicable Law.
- 24. Insurance to be Taken out by the Consultant** 24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage specified in the **SCC**, and (ii) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.
- 25. Accounting, Inspection and Auditing** 25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the Government and/or persons appointed by the Government to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Government if requested by the Government. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under ESPPRA's prevailing sanctions procedures.)

**26. Reporting
Obligations**

26.1 The Consultant shall submit to the Procuring Entity the reports and documents specified in **Appendix A**, in the form, in the numbers and within the time periods set forth in the said Appendix.

**27. Proprietary Rights
of the Procuring
Entity in Reports
and Records**

27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

**28. Equipment,
Vehicles and
Materials**

28.1 Equipment, vehicles and materials made available to the Consultant by the Procuring Entity, or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the

Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into Eswatini for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. CONSULTANT’S EXPERTS AND SUB-CONSULTANTS

- 29. Description of Key Experts** 29.1 The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Consultant’s Key Experts are described in **Appendix B**.
- 30. Replacement of Key Experts** 30.1 Except as the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.
- 30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant’s written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.
- 31. Removal of Experts or Sub-consultants** 31.1 If the Procuring Entity finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Consultant’s Expert of Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice while performing the Services, the Consultant shall, at the Procuring Entity’s written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement.
- 31.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.
- 31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

E. OBLIGATIONS OF THE PROCURING ENTITY

32. Assistance and Exemptions

32.1 Unless otherwise specified in the **SCC**, the Procuring Entity shall use its best efforts to:

- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Procuring Entity's country while carrying out the Services under the Contract.
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- (c) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (d) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Eswatini according to the applicable law in Eswatini.
- (e) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Eswatini, of bringing into Eswatini reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- (f) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

33. Access to Project Site

33.1 The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Procuring Entity will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or

negligence of the Consultant or any Sub-consultants or the Experts of either of them.

34. Change in the Applicable Law Related to Taxes and Duties

34.1 If, after the date of this Contract, there is any change in the applicable law in Eswatini with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 38.1

35. Services, Facilities and Property of the Procuring Entity

35.1 The Procuring Entity shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in said **Appendix A**.

36. Counterpart Personnel

36.1 The Procuring Entity shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the Consultant's advice, if specified in **Appendix A**.

36.2 Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

37. Payment Obligation

37.1 In consideration of the Services performed by the Consultant under this Contract, the Procuring Entity shall make such payments to the Consultant for the deliverables specified in **Appendix A** and in such manner as is provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

38. Contract Price

38.1 The Contract price is fixed and is set forth in the **SCC**. The Contract price breakdown is provided in **Appendix C**.

38.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in **Appendix A**.

- 39. Taxes and Duties**
- 39.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.
- 39.2 As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Procuring Entity on behalf of the Consultant.
- 40. Currency of Payment**
- 40.1 Any payment under this Contract shall be made in the currency(ies) of the Contract.
- 41. Mode of Billing and Payment**
- 41.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 41.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in **Appendix A**. The payments will be made according to the payment schedule stated in the **SCC**.
- 41.2.1 Advance payment: Unless otherwise indicated in the **SCC**, an advance payment shall be made against an advance payment bank guarantee acceptable to the Procuring Entity in an amount (or amounts) and in a currency (or currencies) specified in the **SCC**. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix D**, or in such other form as the Procuring Entity shall have approved in writing. The advance payments will be set off by the Procuring Entity in equal portions against the lump-sum installments specified in the **SCC** until said advance payments have been fully set off.
- 41.2.2 The Lump-Sum Installment Payments. The Procuring Entity shall pay the Consultant within sixty (60) days after the receipt by the Procuring Entity of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.
- 41.2.3 The Final Payment. The final payment under this Clause shall be made only after the final report have been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Services shall then be deemed completed and finally accepted

by the Procuring Entity. The last lump-sum installment shall be deemed approved for payment by the Procuring Entity within ninety (90) calendar days after receipt of the final report by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. 41.2.4 All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.

41.2.4 With the exception of the final payment under 41.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations hereunder.

- 42. Interest on Delayed Payments** 42.1 If the Procuring Entity had delayed payments beyond fifteen (15) days after the due date stated in Clause GCC 41.2.2, interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the **SCC**.

G. FAIRNESS AND GOOD FAITH

- 43. Good Faith** 43.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. SETTLEMENT OF DISPUTES

- 44. Amicable Settlement** 44.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.
- 44.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 49.1 shall apply.
- 45. Dispute Resolution** 45.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the **SCC**.

II. General Conditions

Attachment 1: Corrupt and Fraudulent Practices

(the text in this Attachment 1 shall not be modified)

“Fraud and Corruption

1.23 Section 60, 61 and 62 of the Public Procurement Act, 2011, to require that Procuring Entities (including beneficiaries of Government funds), consultants, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers, and any personnel thereof, observe the highest standard of ethics during the selection and execution of Government-financed contracts [footnote: In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage is improper.]. In pursuance of this policy, the Government:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party⁶;
- (ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation⁷;
- (iii) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party⁸;

⁶ For the purpose of this sub-paragraph, “another party” refers to a public officer acting in relation to the selection process or contract execution. In this context “public officer” means any officer employed in the public service including in procuring entities, requesting entities, the Agency and the Tender Boards.

⁷ For the purpose of this sub-paragraph, “party” refers to a public officer; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

⁸ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officers) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

- (iv) “coercive practices” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁹;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights;
- (b) will reject a proposal for award if it determines that the consultant recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the funds allocated to a contract if it determines at any time that representatives of the Procuring Entity or of a recipient of any part of the proceeds were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the selection process or the implementation of the contract in question, without the Procuring Entity having taken timely and appropriate action satisfactory to the Government to address such practices when they occur, including by failing to inform the Government in a timely manner they knew of the practices;
- (d) will sanction a firm or an individual at any time, in accordance with prevailing sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Government-financed contract, and (ii) to be a nominated¹⁰ sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Government-financed contract.

⁹ For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

¹⁰ A nominated sub-consultant, supplier, or service provider is one which has been either (i) included by the consultant in its proposal because it brings specific and critical experience and know-how that are accounted for in the technical evaluation of the consultant’s proposal for the particular services; or (ii) appointed by the Borrower.
