



# SUPPLY AND INSTALLATION OF OPEN SPACE FURNITURE (KIDS PLAY AREA AND PICNIC BENCHES).

**Tender No: MCMz038 of 2024/2025**

**Issued Date: 03 October 2024**

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# Invitation for Tenders

**Tender No: MCMz038 of 2024/2025**  
**Municipal Council of Manzini**  
**P O Box 418**  
**Manzini**

**03 October 2024**

**Dear Sir/Madam**

1. The Municipal Council of Manzini now invites sealed Tenders from local reputable, experienced and qualified companies for the Installation of Open Space Furniture (Kids Play Area and Picnic Benches) on a one (1) year Framework Contract.
2. Tendering will be conducted through the **Lowest Cost Selection** procedures specified in the Public Procurement Act of 2011 and the Public Procurement Regulations of 2020 and is open to all interested eligible Tenderers as defined in the Tendering Documents.
3. Tenderers may obtain further information from [www.esppra.co.sz](http://www.esppra.co.sz) and [www.mzcitycouncil.sz](http://www.mzcitycouncil.sz) inspect the Tendering Documents at the address given below.
4. A complete set of Tendering Documents in English may be purchased by Tenderers upon payment of a non-refundable fee of **E500.00**. 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 XXX.
5. A Non-Compulsory Tender Pre - Proposal Briefing meeting shall be held on Tuesday, the **15<sup>th</sup> October 2024 at 10:00am** at Manzini Civic Offices along Nkoseluhlaza Street.

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6. Tenders must be delivered to and placed in the tender box at the address below on or before **10:00AM** local time on **05<sup>th</sup> November 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 at **10:15AM** local time on **05<sup>th</sup> November 2024**. All Tenders must be accompanied by a Tender Securing Declaration
7. The addresses referred to above are:

Municipal Council of Manzini  
CIVIC Offices, P.O. Box 418  
Nkoseluhlaza Street, Mbabane  
**ESWATINI**

For further information:

The Chief Executive Officer  
Municipal Council of Manzini  
CIVIC Offices, P.O. Box 418  
Nkoseluhlaza Street, Mbabane  
**ESWATINI**  
<http://www.mzcitycouncil.sz>

For submission of tenders

**Municipal Council of Manzini, Civic Offices, Along Nkoseluhlaza Street, Manzini, Eswatini, 10:00AM, 05<sup>th</sup> November 2024.**

For opening of tenders

**Municipal Council of Manzini, Civic Offices, Along Nkoseluhlaza Street, Manzini, Eswatini, 10:15, 05<sup>th</sup> November 2024.**

***Chief Executive Officer***

***Municipal Council of***

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## Section I. Instructions to Tenderers

### A. General

- 1 Scope of Tender**
- 1.1 The Procuring Entity indicated in the Tendering Data Sheet (TDS), issues these Tendering Documents for the supply of Goods and Related Services incidental thereto as specified in Section VI, Schedule of Requirements. The name and identification number of this Open National Tendering (ONT) procurement are specified in the TDS. The name, identification, and number of lots of are provided in the TDS.
- 1.2 Throughout these Tendering Documents:
- (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, letter) with proof of receipt;
  - (b) if the context so requires, “singular” means “plural” and vice versa;
  - (c) “day” means calendar day;
  - (d) the term “Contract Manager” refers to the officer, body or institution appointed under Section 111 of the Public Procurement Regulations 2020;
  - (e) “Government” refers to the Government of the Kingdom of Eswatini, any Procuring Entity or the relevant approvals authority as defined in the Public Procurement Act of 2011; and “ESPPRA” refers to the Eswatini Public Procurement Regulatory Agency.
- 2 Source of Funds**
- 2.1 The Procuring Entity **specified in the TDS** has applied for or received financing (hereinafter called “funds”) from Government toward the cost of the project or programme or activity **named in the TDS**. The Procuring Entity intends to apply a portion of the funds to eligible

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payments under the contract for which these Tendering Documents are issued.

### **3 Fraud and Corruption**

3.1 Government requires that Procuring Entities (including beneficiaries of the funds), as well as Tenderers, Tenderers, contractors, and consultants under Government-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
  - (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
  - (iii) “collusive practice” means a scheme or arrangement between two or more Tenderers, with or without the knowledge of the Procuring Entity, designed to establish Tender prices at artificial, noncompetitive levels; and
  - (iv) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- (b) will reject a proposal for award if it determines that the Tenderer recommended for award has, directly or through an agent,

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engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question;

- (c) will sanction a firm or individual, including suspending or barring a Tenderer or Tenderer 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. A Tenderer or Tenderer aggrieved by such a decision may appeal in accordance with Section *fifty-seven* (57) of the Public Procurement Act of 2011; and
- (d) will have the right to require that a provision be included in Tendering Documents and in contracts financed by Government, requiring Tenderers, Tenderers, contractors and consultants to permit Government to inspect their accounts and records and other documents relating to the Tender submission and contract performance and to have them audited by auditors appointed by Government.

#### **4 Eligible Tenderers**

- 4.1 A Tenderer, and all parties constituting the Tenderer, may have the nationality of any country, subject to the restrictions specified in Section V, Eligible Countries. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or Tenderers for any part of the Contract including Related Services.
- 4.2 A Tenderer shall not have a conflict of interest. All Tenderers found to have conflict of interest shall be disqualified. Tenderers may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:

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- (a) are associated with a firm which has been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under these Tendering Documents ; or
  - (b) submit more than one Tender in this Tendering process, except for alternative offers permitted under ITT Clause 13. However, this does not limit the participation of subcontractors in more than one Tender;
- 4.3 A Tenderer that is under a declaration of ineligibility by ESPPRA in accordance with ITT Clause 3, at the date of contract award, shall be disqualified. The list of debarred firms is available at the electronic address specified in the TDS.
- 4.4 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 documents establishing the entity) sufficient to demonstrate that it meets the provisions of Section 92 of the Public Procurement Regulations 2020.
- 4.5 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

## **5 Eligible Goods and Related Services**

- 5.1 All the Goods and Related Services to be supplied under the Contract and financed by Government may have their origin in any country in accordance with Section V, Eligible Countries.
- 5.2 For purposes of this Clause, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” includes services such as insurance, installation, training, and initial maintenance.

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- 5.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

## **B. Contents of Tendering Documents**

### **6 Sections of Tendering Documents**

- 6.1 The Tendering Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addendum issued in accordance with ITT Clause 8.

#### **PART 1 Tendering Procedures**

- Section I. Instructions to Tenderers (ITT)
- Section II. Tendering Data Sheet (TDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Tendering Forms

#### **PART 3 Contract**

- Section VII. General Conditions of Contract (GCC)

#### **Section IX. Contract Forms**

The Invitation for Tenders issued by the Procuring Entity is not part of the Tendering Documents.

- 6.2 The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addendum, if they were not obtained directly from the Procuring Entity.
- 6.3 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tendering Documents. Failure to furnish all

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information or documentation required by the Tendering Documents may result in the rejection of the Tender.

**7 Clarification of  
Tendering  
Documents**

- 7.1 A prospective Tenderer requiring any clarification of the Tendering Documents shall contact the Procuring Entity in writing at the Procuring Entity's address **specified in the TDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than seven (7) days prior to the deadline for submission of Tenders. The Procuring Entity shall forward copies of its response to all those who have acquired the Tendering Documents directly from it, including a description of the inquiry but without identifying its source. Should the Procuring Entity deem it necessary to amend the Tendering Documents as a result of a clarification, it shall do so following the procedure under ITT Clause 8 and ITT Sub-Clause 22.2.

**8 Amendment of  
Tendering  
Documents**

- 8.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering Documents by issuing addendum.
- 8.2 Any addendum issued shall be part of the Tendering Documents and shall be communicated in writing to all who have obtained the Tendering Documents directly from the Procuring Entity.
- 8.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT Sub-Clause 22.2

**C. Preparation of Tenders**

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- 9 Cost of Tendering** 9.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.
- 10 Language of Tender** 10.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity, shall be written in **English**. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language **specified in the TDS**, in which case, for purposes of interpretation of the Tender, such translation shall govern.
- 11 Documents Comprising the Tender** 11.1 The Tender shall comprise the following:
- (a) Tender Submission Form and the applicable Price Schedules, in accordance with ITT Clauses 12 and 14;
  - (b) Tender Security or Tender-Securing Declaration, in accordance with ITT Clause 19, if required;
  - (c) written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT Clause 20;
  - (d) documentary evidence in accordance with ITT Clauses 16 and 27, that the Goods and Related Services conform to the Tendering Documents;
  - (e) documentary evidence in accordance with ITT Clause 17 establishing the Tenderer's qualifications to perform the contract if its Tender is accepted; and any other document **specified in the TDS**.
- 12 Tender Submission Form** 12.1 The Tenderer shall submit the Tender Submission Form using the form furnished in Section IV, Tendering Forms. This form must be completed without any alterations to its format, and no substitutes shall

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- and Price Schedules** be accepted. All blank spaces shall be filled in with the information requested.
- 12.2 The Tenderer shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms furnished in Section IV, Tendering Forms.
- 13 Alternative Tenders** 13.1 Unless otherwise **specified in the TDS**, alternative Tenders shall not be considered.
- 14 Tender Prices and Discounts**
- 14.1 The prices and discounts quoted by the Tenderer in the Tender Submission Form and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All lots and items must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Lots or items not listed in the Price Schedule shall be assumed to be not included in the Tender, and provided that the Tender is substantially responsive, the corresponding adjustment, as appropriate, shall be applied in accordance with ITT Clause 29.
- 14.3 The price to be quoted in the Tender Submission Form shall be the total price of the Tender, excluding any discounts offered.
- 14.4 The Tenderer shall quote any unconditional discounts and indicate the method for their application in the Tender Submission Form.
- 14.5 Prices shall be quoted in Emalangeni, inclusive of all taxes and duties (Delivered Duties Paid).
- 14.6 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to variation on any account.
- 14.7 If so indicated in ITT Sub-Clause 1.1, Tenders are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise **indicated in the TDS**, prices quoted

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shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer any price reduction (discount) for the award of more than one Contract shall specify the applicable price reduction in accordance with ITT Sub-Clause 14.4 provided the Tenders for all lots are submitted and opened at the same time.

**15 Documents****Establishing the Eligibility of the Tenderer**

- 15.1 To establish their eligibility in accordance with ITT Clause 4, Tenderers shall complete the Tender Submission Form, included in Section IV, Tendering Forms.

**16 Documents****Establishing the Conformity of the Goods and Related Services**

- 16.1 To establish the conformity of the Goods and Related Services to the Tendering Documents, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VI, Schedule of Requirements.
- 16.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.
- 16.3 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the TDS** following commencement of the use of the goods by the Procuring Entity.
- 16.4 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be

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descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Schedule of Requirements.

**17 Documents  
Establishing the  
Qualifications of  
the Tenderer**

- 17.1 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- (a) that, if required in the TDS, in case of a Tenderer not doing business within the Eswatini, the Tenderer is or will be (if awarded the contract) represented by an Agent in Eswatini equipped and able to carry out the Tenderer's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
  - (b) that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

**18 Period of Validity  
of Tenders**

- 18.1 Tenders shall remain valid for the period **specified in the TDS** after the Tender submission deadline date prescribed by the Procuring Entity. A Tender valid for a shorter period shall be rejected by the Procuring Entity as no-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT Clause 19, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security.

**19 Tender Security**

- 19.1 The Tenderer shall furnish as part of its Tender, a Tender Security or a Tender-Securing Declaration, if required, as **specified in the TDS**.

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19.2 The Tender Security shall be in the amount **specified in the TDS** and denominated in Emalangeni, and shall:

- (a) at the Tenderer's option, be in the form of either a letter of credit, or a bank guarantee from a banking institution, or a bond issued by a surety;
- (b) be issued by a reputable institution selected by the Tenderer. If the institution issuing the bond is located outside Eswatini, it shall have a correspondent financial institution located in Eswatini to make it enforceable.
- (c) be substantially in accordance with one of the forms of Tender Security included in Section IV, Tendering Forms, or other form approved by the Procuring Entity prior to Tender submission;
- (d) be payable promptly upon written demand by the Procuring Entity in case the conditions listed in ITT Clause 19.5 are invoked;
- (e) be submitted in its original form; copies will not be accepted;
- (f) remain valid for a period of 28 days beyond the validity period of the Tenders, as extended, if applicable, in accordance with ITT Clause 18.2.

19.3 If a Tender Security or a Tender- Securing Declaration is required in accordance with ITT Sub-Clause 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender Securing Declaration in accordance with ITT Sub-Clause 19.1, shall be rejected by the Procuring Entity as non-responsive.

19.4 The Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the Performance Security pursuant to ITT Clause 40.

19.5 The Tender Security may be forfeited or the Tender Securing Declaration executed:

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- (a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Tender Submission Form, except as provided in ITT Sub-Clause 18.2; or
- (b) if the successful Tenderer fails to:
  - (i) sign the Contract in accordance with ITT Clause 39;
  - (ii) furnish a Performance Security in accordance with ITT Clause 40.

19.6 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned.

## 20 Format and Signing of Tender

- 20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 11 and clearly mark it “ORIGINAL.” In addition, the Tenderer shall submit copies of the Tender, in the number **specified in the TDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer.
- 20.3 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

## D. Submission and Opening of Tenders

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**21 Submission,  
Sealing and  
Marking of  
Tenders**

21.1 Tenderers may always submit their Tenders by mail or by hand. When so specified in the TDS, Tenderers shall have the option of submitting their Tenders electronically.

- (a) Tenderers submitting Tenders by mail or by hand, shall enclose the original and each copy of the Tender, including alternative Tenders, if permitted in accordance with ITT Clause 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITT sub-Clauses 20.2 and 20.3.
- (b) Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

21.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Tenderer;
- (b) be addressed to the Procuring Entity in accordance with ITT Sub-Clause 22.1;
- (c) bear the specific identification of this Tendering process indicated in ITT Sub-Clause 1.1 and any additional identification marks as specified in the TDS; and
- (d) bear a warning not to open before the time and date for Tender opening, in accordance with ITT Sub-Clause 25.1.

21.3 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender.

**22 Deadline for  
Submission of  
Tenders**

22.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified in the TDS.

22.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering Documents in accordance with ITT Clause 8, in which case all rights and obligations

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of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

### **23 Late Tenders**

23.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

### **24 Withdrawal, Substitution, and Modification of Tenders**

24.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice in accordance with ITT Clause 10, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT Sub-Clause 20.2, (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- (a) submitted in accordance with ITT Clauses 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” or “Modification;” and
- (b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT Clause 22.

24.2 Tenders requested to be withdrawn in accordance with ITT Sub-Clause 24.1 shall be returned unopened to the Tenderers.

24.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Tender Submission Form or any extension thereof.

### **25 Tender Opening**

25.1 The Procuring Entity shall conduct the Tender opening in public at the address, date and time **specified in the TDS**. Any specific electronic Tender opening procedures required if electronic Tendering is

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permitted in accordance with ITT Sub-clause 21.1, shall be as **specified in the TDS.**

- 25.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening. Only envelopes that are opened and read out at Tender opening shall be considered further.
- 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the Tender Prices, including any discounts and alternative offers; the presence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate. Only discounts and alternative offers read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with ITT Sub-Clause 23.1.
- 25.4 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum: the name of the Tenderer and whether

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there is a withdrawal, substitution, or modification; the Tender Price, per lot if applicable, including any discounts, and alternative offers if they were permitted; and the presence or absence of a Tender Security or Tender-Securing Declaration, if one was required. The Tenderers' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Tenderers who submitted Tenders in time, and posted online when electronic Tendering is permitted.

## **E. Evaluation and Comparison of Tenders**

### **26 Confidentiality**

- 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of Tenders, and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with such process until publication of the Contract Award.
- 26.2 Any effort by a Tenderer to influence the Procuring Entity in the examination, evaluation, comparison, and post-qualification of the Tenders or contract award decisions may result in the rejection of its Tender.
- 26.3 Notwithstanding ITT Sub-Clause 26.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

### **27 Clarification of Tenders**

- 27.1 To assist in the examination, evaluation, comparison and post-qualification of the Tenders, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of

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arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT Clause 29.

**28 Responsiveness of Tenders**

28.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself.

28.2 A substantially responsive Tender is one that conforms to all the terms, conditions, and specifications of the Tendering Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- (a) affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
- (b) limits in any substantial way, inconsistent with the Tendering Documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
- (c) if rectified would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

28.3 If a Tender is not substantially responsive to the Tendering Documents, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by the Tenderer by correction of the material deviation, reservation, or omission.

**29 Non-conformities, Errors, and Omissions**

29.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformities or omissions in the Tender that do not constitute a material deviation.

29.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

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29.3 Provided that the Tender is substantially responsive, the Procuring Entity shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

29.4 If the Tenderer that submitted the best-evaluated Tender does not accept the correction of errors, its Tender shall be disqualified and its Tender Security may be forfeited or its Tender-Securing Declaration executed.

### **30 Preliminary Examination of Tenders**

30.1 The Procuring Entity shall examine the Tenders to confirm that all documents and technical documentation requested in ITT Clause 11 have been provided, and to determine the completeness of each document submitted.

30.2 The Procuring Entity shall confirm that the following documents and information have been provided in the Tender. If any of these documents or information is missing, the offer shall be rejected.

- a) Tender Security or Tender Securing Declaration, in accordance with ITT Clause 19 if applicable.

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**31 Examination of Terms and Conditions; Technical Evaluation**

- 31.1 The Procuring Entity shall examine the Tender to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Tenderer without any material deviation or reservation.
- 31.2 The Procuring Entity shall evaluate the technical aspects of the Tender submitted in accordance with ITT Clause 16, to confirm that all requirements specified in Section VI, Schedule of Requirements of the Tendering Documents have been met without any material deviation or reservation.
- 31.3 If, after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Tender is not substantially responsive in accordance with ITT Clause 28, it shall reject the Tender.

**32 Evaluation of Tenders**

- 32.1 The Procuring Entity shall evaluate each Tender that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 32.2 To evaluate a Tender, the Procuring Entity shall only use all the factors, methodologies and criteria defined in ITT Clause 32. No other criteria or methodology shall be permitted.
- 32.3 To evaluate a Tender, the Procuring Entity shall consider the following:
- (a) the Tender Price as quoted in accordance with clause 14;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITT Sub-Clause 29.3;
  - (c) price adjustment due to discounts offered in accordance with ITT Sub-Clause 14.4;
  - (d) adjustments due to the application of the evaluation criteria **specified in the TDS** from amongst those set out in Section III, Evaluation and Qualification Criteria;
  - (e) Tender Submission Form, in accordance with ITT Sub-Clause 12.1;

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(f) Price Schedules, in accordance with ITT Sub-Clause 12.2;

32.4 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified in Section III, Evaluation and Qualification Criteria. The factors, methodologies and criteria to be used shall be as specified in ITT Sub-Clause 32.3 (d).

32.5 If so **specified in the TDS**, these Tendering Documents shall allow Tenderers to quote separate prices for one or more lots, and shall allow the Procuring Entity to award one or multiple lots to more than one Tenderer. The methodology of evaluation to determine the best-evaluated lot combinations, is specified in Section III, Evaluation and Qualification Criteria.

### **33 Comparison of Tenders**

33.1 The Procuring Entity shall compare all substantially responsive Tenders to determine the best-evaluated Tender, in accordance with ITT Clause 32 and by application of preferential treatment in accordance with Section 39 of the Public Procurement Act 2011 and Section 12 of the Public Procurement Regulations 2020 to Swati-owned companies, as well as domestically manufactured goods by Swati citizens or Swati-companies.

### **34 Post-qualification of the Tenderer**

34.1 The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the best-evaluated and substantially responsive Tender is qualified to perform the Contract satisfactorily.

34.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT Clause 17.

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34.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the next best-evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

**35 Procuring  
Entity's Right to  
Accept Any  
Tender, and to  
Reject Any or All  
Tenders**

35.1 The Procuring Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to Tenderers.

## **F. Award of Contract**

**36 Award Criteria**

36.1 The Procuring Entity shall award the Contract to the Tenderer whose offer has been determined to be the best-evaluated Tender and is substantially responsive to the Tendering Documents, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.

**37 Procuring  
Entity's Right to  
Vary Quantities  
at Time of Award**

37.1 At the time the Contract is awarded, the Procuring Entity reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VI, Schedule of Requirements, provided this does not exceed the percentages specified in the TDS, and without any change in the unit prices or other terms and conditions of the Tender and the Tendering Documents.

**38 Notification of  
Award**

38.1 Prior to the expiration of the period of Tender validity, the Procuring Entity shall notify the successful Tenderer, in writing, that its Tender has been accepted.

38.2 Until a formal Contract is prepared and executed, the notification of award shall not constitute a binding Contract.

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38.3 Upon the successful Tenderer's furnishing of the signed Contract Form and performance security pursuant to ITT Clause 40, the Procuring Entity will promptly notify each unsuccessful Tenderer and will discharge its Tender security, pursuant to ITT Clause 19.4.

### **39 Standstill Period**

39.1 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.

39.2 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.

### **40 Debriefing by the Procuring Entity**

40.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 42, 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.

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

### **41 Signing of Contract**

41.1 Promptly after notification, the Procuring Entity shall send the successful Tenderer the Agreement and the Special Conditions of Contract.

41.2 Within twenty-eight (28) days of receipt of the Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

### **42 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:

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- 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.

#### **43 Performance Security**

- 43.1 Within twenty eight (28) days of the receipt of notification of award from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section IX Contract forms, or another Form acceptable to the Procuring Entity. The Procuring Entity shall promptly notify the name of the winning Tenderer to each unsuccessful Tenderer and discharge the Tender Securities of the unsuccessful Tenderers pursuant to ITT Sub-Clause 19.4.
- 43.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security or execution of the Tender-Securing Declaration. In that event the Procuring Entity may award the Contract to the next best-evaluated Tenderer, whose offer is substantially responsive and is determined by the Procuring Entity to be qualified to perform the Contract satisfactorily.

#### **44 Procurement Related Complaints and**

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

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**Administrative  
Review**

44.2 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>.

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## Section II. Tendering Data Sheet (TDS)

ITT Clause Reference	A. General
ITT 1.1	The Procuring Entity is: Municipal Council of Manzini
ITT 2.1	The name of the Project/Programme is: <b>SUPPLY AND INSTALLATION OF OPEN SPACE FURNITURE (KIDS PLAY AREA WITH PICNIC BENCHES)</b>
ITT 4.3	A list of firms debarred from participating in Government-financed projects is available at <a href="http://www.esppra.co.sz">http://www.esppra.co.sz</a>
	<p><b>A Non – Compulsory Tender Pre – Proposal Briefing Meeting shall be held on:</b></p> <p><b>Date of tender pre-briefing meeting:</b> _15<sup>th</sup> October 2024  <b>Time:</b> _10H00  <b>Address:</b> Municipal Council of Manzini, Civic Offices  <b>Telephone:</b> 2508000 E-mail: <a href="mailto:baphelele.masilela@mzcitycouncil.sz">baphelele.masilela@mzcitycouncil.sz</a></p> <p><b>Contact person/conference coordinator:</b> Baphelele Masilela</p>
	<b>B. Contents of Tendering Documents</b>
ITT 7.1	<p>For <b><u>Clarification of Tender purposes</u></b> only, the Procuring Entity's address is:</p> <p><b>Electronic mail address;</b> <a href="mailto:ps@manzinicity.co.sz">ps@manzinicity.co.sz</a>,  <a href="mailto:baphelele.masilela@mzcitycouncil.sz">baphelele.masilela@mzcitycouncil.sz</a>, <a href="mailto:betile.mncina@manzinicity.co.sz">betile.mncina@manzinicity.co.sz</a></p>
	<b>C. Preparation of Tenders</b>
ITT 11.1 (f)	<p>The Tenderer shall submit the following additional documents in its Tender:</p> <ol style="list-style-type: none"> <li>1. Copy/ Original Valid Tax Compliance Certificate</li> <li>2. Copy of Certificate of Incorporation</li> <li>3. Copy of a Valid Trading License</li> <li>4. Copy of Labour Compliance Certificate</li> </ol>

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	<p>5. Police Clearance for all company Directors</p> <p>6. Copy of a Form J, and Form C</p> <p>8. Company profile</p> <p>9. Independent Reviewed Financial Statements for the past two (2) years or Current one (1) year Bank Statement</p> <p>10. Names and contact details of at least (3) reference customers for similar/relevant works.</p> <p>11. Original Council Receipt Or Proof of Payment (POP) – E500.00</p> <p>12. Signed Tender Securing Declaration Form</p> <p>13. Signed Declaration of Eligibility Form</p>
<b>ITT 16.3</b>	Period of time the Goods are expected to be functioning): <b>15 YEARS</b>
<b>ITT 17.1 (a)</b>	<b>After sales service is:</b> REQUIRED for a period of five (5) years which shall be stated in the framework contract
<b>ITT 18.1</b>	The Tender validity period shall be <b>90 calendar days</b> .
<b>ITT 19.1</b>	Tender shall include a Signed a Tender Securing Declaration Form using the form included in Section III Tendering Forms.
<b>ITT 20.1</b>	<p>In addition to the original of the Tender, the number of copies is:</p> <p><b>Technical Proposal - (1) Original - (2) Copies.</b></p> <p><b>Financial proposal – (1) Original and 1 Copy with all Price Forms</b></p> <p><i><b>Failure to submit price forms separately from the technical proposal will result in disqualification.</b></i></p>
	<b>D. Submission and Opening of Tenders</b>
<b>ITT 21.2 (c)</b>	The inner and outer envelopes shall bear the following additional identification marks: <b><i>Name of the Company &amp; Tender Number.</i></b>
<b>ITT 22.1</b>	<p>For Tender submission purposes, the Procuring Entity's address is:</p> <p><b>Attention: Chief Executive Officer</b></p> <p><b>Address: Nkoseluhlaza Street</b></p> <p><b>Floor-Room number: Reception Area</b></p> <p><b>City: Manzini, Eswatini</b></p>

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	<p><b>The deadline for the submission of Tenders is:</b></p> <p><b>Date: 05<sup>th</sup> November 2024</b></p> <p><b>Time: 10:00AM</b></p>
<b>ITT 25.1</b>	<p>The Tender opening shall take place at:</p> <p><b>Street Address: Nkoseluhlaza Street</b></p> <p><b>Floor/ Room number: Council Chamber</b></p> <p><b>City: Manzini, Eswatini</b></p> <p><b>Date: 05<sup>th</sup> November 2024</b></p> <p><b>Time: 10:15AM</b></p>
	<b>E. Evaluation and Comparison of Tenders</b>
<b>ITT 32.3(d)</b>	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <p>(a) No Deviation in Delivery schedule</p> <p>(b) A five (5) year warranty is required for the office space furniture</p>
	<b><i>A price adjustment provision shall not be applicable.</i></b>

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## Section III. Evaluation and Qualification Criteria

### 1. Evaluation Criteria (ITT 32.3 (d))

1.1 Tenders shall be evaluated using, the methodology set out in this tender document and the awarding criteria will be Least Cost Selection.

1.2 Tenders shall be evaluated using, but not limited to the following tender evaluation criteria:

#### 1.2.1 The tender evaluation process is set out below;

1.2.1 A tender which obtains a NO in one of the required documents allocated to Preliminary Evaluation Criteria will be disqualified.

1.2.2 A tender which obtains a minimum of 70% during the Technical Evaluation shall be deemed to be technically – responsive and shall qualify for financial evaluation. The technical evaluation will be undertaken to compare each tender.

- ✓ Quality of the product i.e., conformity to specifications without deviation or reservation
- ✓ Designs and Drawings
- ✓ Proof of relevant experience by providing three reference letters for similar projects completed within the last five years, complete with contact names and contact numbers and a description of the supply.

- **NB: The Municipality reserves the right to contact any of the references listed.**

#### 1.3 Financial Criteria shall be in Emalangeneni.

##### 1.3.1 Least Cost Selection

The tender who submits a financial bid with the lowest price shall be the best evaluated proposal and shall be recommended for award of the supply

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## 2. Evaluation Criteria

Criteria Elements	Criteria Weighting Factors
<b>1. PRELIMINARY EVALUATION</b>	
<p>The Tenderer shall submit the following additional documents in its Tender:</p> <p>A. Copy /Original, Valid Tax Compliance Certificate</p> <p>B. Copy of Certificate of Incorporation</p> <p>C. Copy of a Valid Trading License</p> <p>D. Copy of Labour Compliance Certificate</p> <p>E. Police Clearance for all company Directors</p> <p>F. Copy of Form J</p> <p>G. Copy of Form C</p> <p>H. Company profile</p> <p>I. Independent Reviewed Financial Statements for the past two (2) years or Current one (1) year Bank Statement</p> <p>J. Original Council Receipt/Proof of Payment - <b>E500,00</b></p> <p>K. Signed Tender Securing Declaration Form</p> <p>L. Signed Declaration of Eligibility Form</p> <p>-All the tender documents have been appropriately signed and authorized</p> <p>- The document has been submitted in the correct format</p> <p><b>NB: A tender which does not contain the documents listed above may be deemed to be non-responsive and eliminated from further evaluation</b></p>	YES/NO
<b>2. TECHNICAL EVALUATION</b>	
Company experience of a minimum of five (5) years in the Provision of welding and fabrication industry.	15
Drawings and Designs of the open space furniture for the wards	25

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Three (3) reference letters for similar work completed within the last three years, complete with contact names and contact numbers and a description of relevant works.	20
<b><u>Delivery Lead Time</u></b>  Proposed Delivery Time: Shorter than, equal to or within specified contract period	10
<b><u>Proof of Resources</u></b>  Availability of resources required for the tender; 3 year audited financial statements or bank statement indicating a balance greater than E 50 000.00.	10
<b>3. GOODS SPECIFICATION</b> <b>Supply and Installation of Kids Play Area and Picnic benches.</b>	
Provide technical information, designs and drawings on the following play area equipment to be installed; <ol style="list-style-type: none"> <li>I. Heavy duty Double Swing- with bearings - 2 Seater Heavy duty Swing- with bearings With steel seats Painted with primary colors.</li> <li>II. Merry-Go-Around - Merry-Go-Around (Steel), 2.4 M Diameter base, handles at 1m high, Steel tread base plate, 8 Segment play area, Painted with primary colors.</li> <li>III. Steel Jungle Gym with steel slide - Steel Jungle Gym with steel slide, Built in ladder, 1x 2.4m Slide, Painted with primary colors</li> <li>IV. Seesaw - Seesaw (Steel), 4 seater, Tyre bumpers under seats Painted in primary colors</li> <li>V. 2 x table and bench combo - Material : reinforced concrete (moulded) or brick &amp; mortar reinforced with brick force and wire mesh</li> </ol> <p>Minimum Height table top: 0.74 m</p> <p>Minimum Table top thickness: 0.072 m</p> <p>Minimum Seat height: 0.49 m</p>	20

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<b>Total points for the criteria</b>	<b>100</b>
<i>The minimum technical score (St) required to pass is 70%</i>	
<b>4. FINANCIAL PROPOSAL</b>	
<b>Awarding Criteria is the Least Cost Selection</b>  The tenderer who submits a financial bid with the lowest prices shall be awarded the contract.	

## Section III. TECHNICAL SPECIFICATIONS

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## 1. Background

The Municipal Council of Manzini parks and open spaces play a vital role in fostering community interaction, promoting healthy lifestyles, and providing safe environments for children and families. However, many neighborhoods lack adequate recreational facilities that cater to young children and families. This gap often limits opportunities for outdoor play, socialization, and family gatherings.

Recognizing the need for improved recreational amenities, the Municipal Council of Manzini proposes the development of a dedicated kids' play area and picnic table space within existing open spaces. This initiative aims to create a vibrant and engaging environment that encourages outdoor activities and strengthens community bonds.

The location of the open spaces are; Thommasdale Park, Courts Valley Park and Sterksroom.

## 2. The objectives of the projects

- **Enhance Recreational Opportunities:** Provide a safe and enjoyable play environment for children to engage in physical activity, fostering their physical, social, and emotional development.
- **Promote Family and Community Engagement:** Create inviting spaces for families to gather, socialize, and strengthen community ties through shared activities like picnicking and play.
- **Ensure Safety and Accessibility:** Equip the play area with age-appropriate, safe equipment, and design the picnic area to be accessible for all community members, including those with disabilities.
- **Encourage Healthy Lifestyles:** Promote outdoor activities as a means of combating sedentary lifestyles, thereby improving overall community health and well-being.

## 3. Technical Specifications

I	Name of Goods or Related Service	Quantities	Specifications and Standards
1	Heavy duty Double Swing- with bearings	3	2 Seater Heavy duty Swing- with bearings.  With steel seats

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			Painted with primary colors.
2	Merry-Go-Around	3	Merry-Go-Around (Steel) 2.4 M Diameter base Handles at 1m high Steel tread base plate 8 Segment play area Painted with primary colors
3	Steel Jungle Gym with steel slide	3	Steel Jungle Gym with steel slide Built in ladder 1x 2.4m Slide Painted with primary colors
4	Seesaw	3	Seesaw (Steel) 4 seater Tyre bumpers under seats Painted in primary colors
5	Concrete tables and benches.	4	Material : reinforced concrete (moulded) or brick & mortar reinforced with brick force and wire mesh  Minimum Height table top: 0.74 m  Minimum Table top thickness: 0.072 m  Minimum Seat height: 0.49 m

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## Tender-Securing Declaration

Date: 05 November 2024 of Tender Submission  
ONT No.: *[insert number of Tendering process]*  
Alternative No.: N/A

To: Municipal Council of Manzini

We, the undersigned, declare that:

1. We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.
2. We acknowledge that, in accordance with the Procurement Act, 2011, we will automatically be suspended from being eligible to tender for any contract with the Municipal Council of Manzini in accordance with the Procurement Act, 2011 if we are in breach of our obligation(s) under the Tender conditions, because we:
  - (a) have withdrawn our Tender during the period of Tender validity specified by us in the Tendering Data Sheet; or
  - (b) having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITT.
3. We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of a copy of your notification of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.
4. We understand that if we are a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the Tender. If the Joint Venture has not been legally constituted at the time of Tendering, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender Securing Declaration]*

Name: *[insert complete name of person signing the Tender Securing Declaration]*

Duly authorized to sign the Tender for and on behalf of: *[insert complete name of Tenderer]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

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**DECLARATION OF ELIGIBILITY FORM**

[The Tenderer must provide a signed declaration on its company letterhead in the following format. If the Tender is being presented by a joint venture or consortium all members must each sign their own declaration.]

[>>>Name of Company, Address, and Date>>>]

To:

THE CHIEF EXECUTIVE OFFICER  
MUNICIPAL COUNCIL OF MANZINI  
P.O.BOX 418  
NKOSLUHLAZA STREET  
MANZINI

**Dear Madam,**

**Re: TENDER NO: - SUPPLY AND INSTALLATION OF OPEN SPACE FURNITURE  
(KIDS PLAY AREA WITH PICNIC BENCHES)**

I/We hereby declare that: -

- a) I/We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract.
- b) I/We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing.
- c) I/We have fulfilled our obligations to pay taxes and social security contributions.
- d) I/We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations. as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- e) I/We do not have a conflict of interest in relation to the procurement requirement.
- f) I/We do not have any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or

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misrepresentations as to its qualifications to enter into a procurement contract within a period of five years preceding the commencement of procurement proceedings.

- g) I/We are not subject to suspension in accordance with section 55, and none of its directors or officers have been involved in a tenderer or supplier currently subject to suspension.

Sincerely yours,

Signed .....

Authorized Representative

Date .....

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## VI TENDERING FORMS

### Tenderer Information Form

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: *[insert date (as day, month and year) of Tender Submission]*

ONT No.: *[insert number of Tendering process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Legal Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each party: <i>[insert legal name of each party in JV]</i>
3. Tenderer's actual or intended Country of Registration: <i>[insert actual or intended Country of Registration]</i>
4. Tenderer's Year of Registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Legal Address in Country of Registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i>  <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITT Sub-Clauses 4.1 and 4.2.  <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT Sub-Clause 4.1.  <input type="checkbox"/> In case of government owned entity -, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITT Sub-Clause 4.5.

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## **Tender Submission Form** *(SHOULD BE SUBMITTED TOGETHER WITH THE FINANCIAL PROPOSAL)*

*[The Tenderer shall fill in this Form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: *[insert date (as day, month and year) of Tender Submission]*

ONT No.: *[insert number of Tendering process]*

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

To: Municipal Council of Manzini

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tendering Documents, including Addenda No.: *[insert the number and issuing date of each Addenda]*;
- (b) We offer to supply in conformity with the Tendering Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services *[insert a brief description of the Goods and Related Services]*;
- (c) The total price of our Tender, excluding any discounts offered in item (d) below, is: *[insert the total Tender price in words and figures]*;
- (d) The discounts offered and the methodology for their application are:

**Discounts.** If our Tender is accepted, the following discounts shall apply. *[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies.]*

**Methodology of Application of the Discounts.** The discounts shall be applied using the following method: *[Specify in detail the method that shall be used to apply the discounts]*;

- (e) Our Tender shall be valid for the period of time specified in ITT Sub-Clause 18.1, from the date fixed for the Tender submission deadline in accordance with ITT Sub-Clause 22.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our Tender is accepted, we commit to obtain a performance security in accordance with ITT Clause 40 and GCC Clause 16 for the due performance of the Contract;
- (g) We have no conflict of interest in accordance with ITT Sub-Clause 4.2;
- (h) Our firm, its affiliates or subsidiaries—including any subcontractors or Tenderers for any part of the contract—has not been declared ineligible by ESPPRA, in accordance with ITT Sub-Clause 4.3;

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- (i) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate “none.”)

- (j) We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (k) We understand that you are not bound to accept the best-evaluated Tender or any other Tender that you may receive.

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Tender Submission Form]*

Name: *[insert complete name of person signing the Tender Submission Form]*

Duly authorized to sign the Tender for and on behalf of: *[insert complete name of Tenderer]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

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## 1. List of Goods and Delivery Schedule

Line Item N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination	Delivery Date		
					Earliest Delivery Date	Latest Delivery Date	Tenderer's offered Delivery date [to be provided by the Tenderer]
1	Heavy duty Double Swing- with bearings 2 Seater Heavy duty Swing- with bearings. With steel seats Painted with primary colors.	3	3	Thomasdale-Madonsa Open Space Coates Valley Open Space Sterksroom Open Space			
2	Merry-Go-Around Steel 2.4 M Diameter base Handles at 1m high Steel tread base plate 8 Segment play area Painted with primary colors	3	3	Thomasdale-Madonsa Open Space Coates Valle Open Space Sterksroom Open Space			



3	Steel Jungle Gym with steel slide Built in ladder 1x 2.4m Slide Painted with primary colors	3	3	Thomasdale- Madonsa Open Space Coates Valle Open Space Sterksroom Open Space			
4	Seesaw (Steel) 4 seater Tyre bumpers under seats Painted in primary colors	3	3	Thomasdale- Madonsa Open Space Coates Valle Open Space Sterksroom Open Space			
5	Supply and Installation of concrete tables and benches. Material : reinforced concrete (moulded) or brick & mortar reinforced with brick force and wire mesh Minimum Height table top: 0.74 m Minimum Table top thickness: 0.072 m Minimum Seat height: 0.49 m	4	4	Thomasdale- Madonsa Sterksroom Open Space			

## 2. Price Schedule Forms

### /Price Schedule: Goods

			Date: _____ ONT No: _____ Alternative No: _____ Page N° _____ of _____			
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
<b>Line Item N°</b>	<b>Description of Goods</b>	<b>Delivery Date</b>	<b>Quantity and physical unit</b>	<b>Unit price DPP</b>	<b>Total price per line item (Col. 4 × 5)</b>	<b>Country of Origin</b>
<i>[insert number of the item]</i>	<i>[insert name of Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price]</i>	<i>[insert total price per line item]</i>	
01	Heavy duty Double Swing- with bearings		3			
02	Merry-Go-Around		3			
03	Steel Jungle Gym with steel slide		3			
04	Seesaw		3			
05	Concrete tables and benches.		4			
06	Tax					
<b>Total Price: Goods</b>						

## Section IV. General Conditions of Contract

### 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.

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- (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

(a)

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

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Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

- |  |   |
|--|---|
| <p><b>3. Law Governing Contract</b></p>        | <p>3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.</p>  |
| <p><b>4. Language</b></p>                      | <p>4.1. This Contract has been executed in <b>English</b>, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.</p>  |
| <p><b>5. Headings</b></p>                      | <p>5.1. The headings shall not limit, alter or affect the meaning of this Contract.</p>   |
| <p><b>6. Communications</b></p>                | <p>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 <b>SCC</b>.</p> <p>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 <b>SCC</b>.</p> |
| <p><b>7. Location</b></p>                      | <p>7.1. The Services shall be performed at such locations as are specified in <b>Appendix A</b> 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.</p>  |
| <p><b>8. Authority of Member in Charge</b></p> | <p>8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the <b>SCC</b> 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.</p>  |
| <p><b>9. Authorized Representatives</b></p>    | <p>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 <b>SCC</b>.</p>  |

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**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.

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**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

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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.

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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;

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(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.

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- 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.

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**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.

**(b)**

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.

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- b. Consultant and Affiliates Not to Engage in Certain Activities** 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 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.

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**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**.

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## 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 or 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,

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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.

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(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.

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**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

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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

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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**.

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## 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 party<sup>1</sup>;
  - (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 obligation<sup>2</sup>;
  - (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 party<sup>3</sup>;
  - (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 party<sup>4</sup>;

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

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(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 nominated<sup>5</sup> sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Government-financed contract.

<sup>5</sup> 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.

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## Section IX. Contract Forms

### 1. Contract Agreement

*[The successful Tenderer shall fill in this form in accordance with the instructions indicated]*

THIS CONTRACT AGREEMENT is made

the [ insert: **number** ] day of [ insert: **month** ], [ insert: **year** ].

BETWEEN

(1) [ insert complete name of Procuring Entity ], a [ insert description of type of legal entity, for example, an agency of the Ministry of .... of the Government of { insert name of Country of Procuring Entity }, or corporation incorporated under the laws of { insert name of Country of Procuring Entity } ] and having its principal place of business at [ insert address of Procuring Entity ] (hereinafter called “the Procuring Entity”), and

(2) [ insert name of Tenderer ], a corporation incorporated under the laws of [ insert: country of Tenderer ] and having its principal place of business at [ insert: address of Tenderer ] (hereinafter called “the Tenderer”).

WHEREAS the Procuring Entity invited Tenders for certain Goods and ancillary services, viz., [insert brief description of Goods and Services] and has accepted a Tender by the Tenderer for the supply of those Goods and Services in the sum of [insert Contract Price in words and figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Procuring Entity and the Tenderer, and each shall be read and construed as an integral part of the Contract:
  - (a) This Contract Agreement
  - (b) Special Conditions of Contract
  - (c) General Conditions of Contract

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- (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
  - (e) The Tenderer's Tender and original Price Schedules
  - (f) The Procuring Entity's Notification of Award
  - (g) *[Add here any other document(s)]*

3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

4. In consideration of the payments to be made by the Procuring Entity to the Tenderer as hereinafter mentioned, the Tenderer hereby covenants with the Procuring Entity to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

5. The Procuring Entity hereby covenants to pay the Tenderer in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *Eswatini* on the day, month and year indicated above.

For and on behalf of the Procuring Entity

Signed: *[insert signature]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[insert identification of official witness]*

For and on behalf of the Tenderer

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Signed: *[insert signature of authorized representative(s) of the Tenderer]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[ insert identification of official witness]*

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