

INVITATION TO TENDER: SUPPLY AND DELIVERY OF GYM EQUIPMENT (PSPF/ITT/13/2024)



INVITATION TO TENDER

SUPPLY AND DELIVERY OF GYM EQUIPMENT

PSPF/ITT/13/2024

ISSUE DATE: 19 SEPTEMBER 2024

DEADLINE: 01 NOVEMBER 2024, 1205HRS

TENDER OPENING: 01 NOVEMBER 2024, 1205HRS

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INVITATION TO TENDER:

SUPPLY AND DELIVERY OF GYM EQUIPMENT

PSPF/ITT/13/2024

The Public Service Pension Fund (PSPF) hereby invites tenders from local and international companies for the supply of gym equipment.

Bidding and subsequent awarding of the contract shall be through **Lowest Evaluated Cost** as governed by the Eswatini Public Procurement Act, 2011 read with Public Procurement Regulations, 2020.

The full bid document is available (downloadable) on the ESPPRA website www.esppra.co.sz and PSPF website www.pspf.co.sz under the "Work With US" page on "Tenders". Interested bidders should immediately send their emails (Ref: PSPF/ITT/13/2024) for the attention of the secretary of the tender committee to tenders@pspf.co.sz so that they are included in any correspondence pertaining to any addendum or clarifications for the tender that may be issued.

Request for clarification should be sent to tenders@pspf.co.sz up to **25 October 2024**.

Completed Tenders should be hand-delivered or emailed with an original receipt as proof of payment of a non-refundable tender fee of **SZL 1000.00**.

The **deadline** for submission is **Friday, 01 November 2024 1200HRS**, which shall be immediately followed by tender opening at the Fund's boardroom at **1205HRS**.

Late tenders shall not be accepted. *The Fund reserves the right to cancel this procurement.*

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Table of Contents

- 1. **Scope of tender:**.....5
- 2. **Indicating Interest In the Tender:**.....5
- 3. **Prohibited Practices by the Fund:**5
- 4. **Eligible Bidders:**5
- 5. **One tender per bidder:**5
- 6. **Joint Venture:**.....5
- 7. **Conflict of interest:**6
- 8. **Cost of Bidding:**.....6
- 9. **Clarification of Bidding Documents:**.....6
- 10. **Amendment of Bidding Documents:**.....6
- 11. **Language of Bid:**7
- 12. **Currencies of Bid:**7
- 13. **Payment of bidding fee:**7
- 14. **Documents Establishing Bidder Eligibility and Qualification:**7
- 15. **International Bids**7
- 16. **Documentary evidence of conformity of the goods and services:**8
- 17. **Bid validity:**.....8
- 18. **Completeness of bids:**8
- 19. **Submitting Electronic Bids:**8
- 20. **Submitting Hard Copies of Bids:**8
- 21. **Deadline for Submission of Bids:**9
- 22. **Late Bids:**.....9
- 23. **Withdrawal of Bids:**.....9
- 24. **Opening of Bids:**.....10
- 25. **Clarification of Bids**10
- 26. **Preliminary Examination:**10
- 27. **Promotion of Swazi Companies:** For evaluation purposes only, 5% preference margin shall be applied on Swazi-owned companies during financial evaluation..... 10

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- For a company to be considered to be Swazi-owned, it should meet the below requirements: 10
 - a) Be registered in Eswatini..... 10
 - b) At least 60% of its shares be owned by a Swazi. 11
- 28. **Prohibition from contacting PSPF after submission:**..... 11
- 29. **Post Qualifying:** 11
- 30. **Award Criteria:** 11
- 31. **Right to Reject Any Bid:** 11
- 32. **Notice of Intention to Award:**..... 12
- 33. **Bid Protests:** 12
- 34. **Bidder debriefs:** 12
- 35. **Notification of Award:** 12
- 36. **Signing of Contract:**..... 12
- 37. **Right to Vary Quantities:** 12
- 38. **Warranty:** 13
- 39. **Brand:**..... 13
- 40. **Price:** 13
- 41. **Delivery Requirements** 13
- 1. **Definitions**..... 21
- 2. **Use of contract documents and information** 22
- 3. **Patent rights**..... 22
- 4. **Inspections and tests** 23
- 5. **Packing**..... 24
- 6. **Incidental services** 24

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SECTION I: INSTRUCTION TO BIDDERS

1. **Scope of tender:** bidders are advised to refer to the Statement of Requirements for full scope of the tender.
2. **Indicating Interest In the Tender:** As soon as the tender is advertised, interested bidders should register their interest by sending an email bearing their business name and contact details to tenders@pspf.co.sz. A bidder is still permitted to submit a tender without having indicated interest.
3. **Prohibited Practices by the Fund:** Firms who engage in any corrupt practices with regards to this tender shall have their tenders rejected and further be reported to ESPPRA for suspension, their names shall be forwarded to the Anti-Corruption Commission for criminal investigations.
4. **Eligible Bidders:** This invitation for bids is open to all businesses registered in Eswatini. Any eligibility is subject to ESPPRA Circular 1/2019 which expressly precludes the participation of Politicians, and any officer employed in the Public Service including procuring entities, requesting entities, the Agency and Tender Boards.
5. **One tender per bidder:** A bidder shall not bid more than once for the same tender.
6. **Joint Venture:** Any eligible entity may bid independently or in a joint venture (JV).
 - i. all members shall be jointly and severally liable for the execution of the contract; and
 - ii. the JV shall nominate a representative who will have the authority to conduct all business for and on behalf of any and all the members of the JV. The bidders are reminded to attach a Power of Attorney document for the nominated member lest their bid is rejected.

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iii. All bidders should individually meet the eligibility criteria as set out in Section 40 of the Public Procurement Act, 2011

7. **Conflict of interest:** A bidder construed to have any actual, potential, or reasonably perceived conflict of interest as described in the Procurement Regulations and Act shall be disqualified from tendering.
8. **Cost of Bidding:** The bidder shall bear all costs associated with the preparation and submission of its bid, and the Fund will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
9. **Clarification of Bidding Documents:** A prospective bidder requiring any clarification of this bidding document shall contact the Secretary of the Tender Committee at tenders@pspf.co.sz up to three (3) calendar days before the tender deadline. The Fund will promptly respond to any request for clarification. The Fund shall send written copies of the responses to all who have indicated interest in the tender, including a description of the inquiry but without identifying its source.
10. **Amendment of Bidding Documents:** At any time prior to the deadline for submission of bid Fund may amend this bidding document by issuing addenda:
 - a. All addenda issued shall be part of this bidding document and shall be communicated in writing to all bidders that have registered their interests. The addenda shall also be posted on the Tenders page of the PSPF website www.pspf.co.sz

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b. To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the purchaser may extend the deadline for the submission of bids at its sole discretion.

11. **Language of Bid:** The bid prepared by the bidder, as well as all correspondence and documents relating to the bid exchanged by the bidder and PSPF, shall be written in the English language.

12. **Currencies of Bid:** The currency of the bid shall be Eswatini Lilangeni (SZL)

13. **Payment of bidding fee:** A tender shall be submitted after the payment of a non-refundable tender fee of SZL 1000.00, payable at the Fund’s Bank Account at FNB using the below details:

Account name:	Public Service Pension Fund
Account Number	62007684625
Account Type	Business Cheque Account
Branch Name	Mbabane
Branch code	280164
Swift Code	FIRNSZMX

14. **Documents Establishing Bidder Eligibility and Qualification:** Is discussed further in the Evaluation Criteria:

- a) The bid form and a price schedule completed.
- b) Documentary evidence/statutory documents as required by Section 40 of the Act (refer to Preliminary evaluation table)

15. **International Bids:** In attaching requirements as stipulated in the Preliminary Examination Table, tenderers must attach an equivalent of their country where the documents are not the same as that of Eswatini.

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16. **Documentary evidence of conformity of the goods and services:** The documentary evidence of conformity of the goods and services to the bidding documents may be in the form of literature, catalogues, drawings, and data, and shall consist of:

- a) a detailed description of the essential technical and performance characteristics of the goods;
- b) An item-by-item commentary on the purchaser's technical specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the technical specifications.

17. **Bid validity:** Bids should be valid for **90 days** from the date of tender closing. A bid with a validity of less than the specified validity shall be disqualified. Tenderers should ensure their technical bid form is filled in with the correct validity.

18. **Completeness of bids:** Bidders can quote for and win one or more lots. Bidders must quote for all the items within a lot, and for all quantities within an item. A partial quote will not be accepted. If a bid shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. An item not listed in the quotation shall be assumed not to be included in the bid.

19. **Submitting Electronic Bids:** The tenders must be emailed in PDF format and password-locked to the Secretary of the Tender Committee at tenders@pspf.co.sz marked as follows:

PSPF/ITT/13/2024 – Supply and Delivery of Gym equipment

ONLY bids received before the deadline shall be opened. During opening the bidders shall be requested to send the passwords to the tender opening committee. The Fund shall bear no responsibility for tenders that failed to arrive on time regardless of the circumstances that occasioned that failure.

20. **Submitting Hard Copies of Bids:**

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Tenders shall be submitted before the deadline at a tender box at the **Reception at PSPF Head Office, Mbabane**. Tenderers should submit one original and two copies of the tender. Should there be a discrepancy between the copy and the original, the original shall take precedence.

The outer envelope should read:

PSPF/ITT/13/2024

INVITATION TO TENDER

Supply and Delivery of Gym Equipment

DO NOT OPEN BEFORE 1205HR, 01 November 2024

Joint Venture Requirements: In addition to the requirements, bids submitted by a JV shall include in the bid a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed agreement.

21. **Deadline for Submission of Bids:** Bids must be received at the address indicated, before **1200hrs, Friday 01 November 2024**
22. **Late Bids:** Any bid received by the Funder after the deadline for submission of will be rejected and returned unopened to the bidder.
23. **Withdrawal of Bids:** The bidder may withdraw its bid after the bid's submission, provided that written notice is received by the purchaser prior to the deadline prescribed for submission of bids.
 - a) The bidder's withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of the relevant clause but in addition the envelopes shall be clearly marked "WITHDRAWAL". A withdrawal notice may also be sent by fax or email, but followed a signed confirmation copy, postmarked not later than the deadline for submission of bids.

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- b) No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the bidder on the bid form. Withdrawal of a bid during this interval may result in the bidder's forfeiture of its bid security.

24. **Opening of Bids:** The Fund will open all bids in the presence of bidders' representatives who choose to attend, at the time, on the date, and at the place specified in the bid document. The bidders' representatives who are present shall sign a register evidencing their attendance.

- a) The tender opening is not an evaluation but an exercise in transparency the tender opening committee shall make no pronouncement on rejection/acceptance of any tender that is being opened.
- b) Bids that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.
- c) The Fund will prepare minutes of the bid opening and a copy of which is to be sent promptly to the participating bidder.

25. **Clarification of Bids:** During the evaluation of the bids, the purchaser may, at its discretion, ask the bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the prices or substance of the bid shall be sought, offered, or permitted.

26. **Preliminary Examination:** The Fund will examine the bids to determine if they have provided all mandatory documents and returnable forms required as stated in the tender.

27. **Promotion of Swazi Companies:** For evaluation purposes only, 5% preference margin shall be applied on Swazi-owned companies during financial evaluation.

- For a company to be considered to be Swazi-owned, it should meet the below requirements:
 - a) Be registered in Eswatini

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- b) At least 60% of its shares be owned by a Swazi.

28. **Prohibition from contacting PSPF after submission:** The Fund will examine the bids to determine if they have provided all documents required as stated in the bid that has been attached.

- a. From the time of bid opening to the time of contract award, if any bidder wishes to contact the Fund on any matter related to the bid, it should do so in writing.
- b. Any effort by a bidder to influence the purchaser in its decisions on bid evaluation, bid comparison, or contract award may result in the rejection of the bidder's bid.

29. **Post Qualifying:** The FUND reserves the right to post-qualify a successful bidder. This shall be an assurance exercise to ensure the bidder's submissions are true.

- a) The determination will take into account the bidder's financial, technical, and production capabilities, it will be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder, as well as such other information as the purchaser deems necessary and appropriate.
- b) An affirmative determination will be a prerequisite for award of the contract to the bidder. A negative determination will result in rejection of the bidder's bid, in which event the purchaser will proceed to the next lowest evaluated bid to make a similar determination of that bidder's capabilities to perform satisfactorily.

30. **Award Criteria:** The Fund shall award the contract to the successful bidder whose bid has been determined to be **substantially responsive** and has the **lowest evaluated price**, provided further that the bidder is determined to be qualified to perform the contract satisfactorily.

31. **Right to Reject Any Bid:** The Fund reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the affected bidder or bidders.

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32. **Notice of Intention to Award:** Prior to the expiration of the period of bid validity, the purchaser shall send the notice of intention to award to all bidders and simultaneously publish it on the ESPPRA website. This shall signal the start of a 10-working days standstill period where a bidder may file a protest. Notice of intention to award shall not constitute the formation of a contract between the purchaser and the successful bidder and no legal or equitable rights shall be created through the delivery of the notice of intent to award.
33. **Bid Protests:** Bidders may protest the results of a procurement only in accordance with the rules and within the time periods established in Section 47 of the Public Procurement Act, 2011.
34. **Bidder debriefs:** The bidders are further allowed to request debriefs on the performance of their bid after the intention to award has been issued. The Fund shall within three working days offer such debrief in writing while protecting the confidentiality of other bids.
35. **Notification of Award:** Upon expiration of the period of the standstill period the Fund will send a Letter of Award to the successful bidder to sign signalling acceptance of the resulting contract. Until a formal contract is prepared and executed, the notification of award shall constitute a binding contract.
36. **Signing of Contract:** At the same time as the purchaser notifies the successful bidder that its bid has been accepted, the purchaser will send the bidder the contract form provided in the bidding documents, incorporating all agreements between the parties.
37. **Right to Vary Quantities:** At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in the Statement of Requirements, by up to 20% without any change in the unit prices or other terms and conditions of the Bid and the bidding document.

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38. **Warranty:** Items offered should be covered by at least 12 months' manufacturer's warranty from the date of delivery to the purchaser/procuring entity. Goods offered shall be new, unused and based on the manufacturer's current and most recent model.

39. **Brand:** bidders must state the brand, make and model of their goods. Further attach adequate technical documentation and catalogue(s) and any other pertinent information on the goods.

40. **Price:** the price of the goods should be inclusive of all taxes and all delivery charges. A contract that shall come with hidden cost shall be deemed non-responsive and the second-best evaluated tender shall be awarded the cancelled contract.

41. Delivery Requirements

- All gym equipment must be brand new.
- Delivery of the gym equipment should be between 2-4 weeks after the letter of award, at the PSPF offices in Mbabane. A bidder who fails to deliver the goods within the four weeks **shall incur a penalty 1%** for everyday outside of the prescribed for delivery period. **After 3 weeks of failure to deliver**, the contract shall be cancelled, and second-best evaluated bidder may be considered.

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SECTION II: STATEMENT OF REQUIREMENTS

All specifications are stated in **minimum terms**, except where ranges, approximations, maximum levels or exactitudes are stated.

Items quoted should accompanied by official manufacturer literature/catalogue in order for evaluation committee to ensure specifications are met.

GYM EQUIPMENT

SPECIFICATION – COMMERCIAL RANGE ONLY!!!!	QUANTITY
Bicep Curl	1
Incline Chest Press	1
Standing T-Bar Row	1
Battle Rope Protection Strap with Carabiner	1
Battle Rope Anti Friction Sleeve	1
Battle Rope: length 9m or 12m, diameter 38mm	1
Battle Rope: length 12m or 15m, diameter 50mm	1
Studio/Spinning Bikes with console	2
5kg Slam Ball	1
10kg Slam Ball	1
20 kg Olympic Weight Plates – rubber coated	4
15 kg Olympic Weight Plates – rubber coated	4
10 kg Olympic Weight Plates – rubber coated	4
Abs Glider	1
Stair Climber Machine	1
Leg Press/Hack Squat Machine	1

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8kg Hexagon dumbbells – rubber coated	2
10kg Hexagon dumbbells – rubber coated	2
12.5kg Hexagon dumbbells – rubber coated	2
15kg Hexagon dumbbells – rubber coated	2
17.5kg Hexagon dumbbells – rubber coated	2
20kg Hexagon dumbbells – rubber coated	2
35kg Hexagon/round dumbbells – rubber coated	2
45kg Hexagon/round dumbbells – rubber coated	2
55kg Hexagon/round dumbbells – rubber coated	2
Dumbbell Rack	1

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Section III - Evaluation and Qualification Criteria

1. Evaluation of bids shall take the following stages:
 - (a) Preliminary Examination
 - (b) Technical Evaluation
 - (c) Financial Evaluation

Preliminary examination checks compliance with the basic requirements of the tender. Any tender that does not submit the documents or does not comply with the below is ruled non-responsive and disqualified from further evaluation. Evaluation shall be on the basis of PASS/FAIL:

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	a. Preliminary Examination: The following are MANDATORY, absence of one may lead to rejection of the bid/proposal.	
i.	A valid copy of a trading license	
ii.	Original Tax Compliance Certificate	
iii.	Proof of Payment of Tender Fee	
iv.	Police clearance for directors of bidding organization	
v.	Completed Technical bid form.	
vi.	A certified copy of an official statement of the annual summary of shares (Form C)	
vii.	A certified copy of an official statement of directors, alternate directors (Form J)	
viii.	A certified copy of identity documents of the bidding organization's directors	
ix.	Original Labour Compliance Certificate	
x.	Power of Attorney for nominee in JV and statement of JV	
xi.	Compliant bid validity of 90 days	
xii.	Manufacturer's Authorisation	
xiii.	Manufacturer's warranty of at least 1 year	

2. **Technical Evaluation** (compliance method)

- a. Each tender submission shall be evaluated to see if the technical specifications of the goods to be offered meet the technical specification as explained in the statement of requirements in Section 2.
- b. If a bidder did not quote for 100% of all the items, that bid shall be rejected for being incomplete.
- c. Substantially responsive bids shall move on to have their financial offers evaluated. Substantially responsive bids are those bids that meet all the technical requirements as stated in the statement of requirements.
- d. As part of the evaluation, the tender evaluation committee may choose to inspect the specified quality to inform their decision.

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3. Financial Evaluation

- Shall consist of first arithmetic checks accuracy of calculations. Unit price takes precedence over total price.
- Evaluated price shall be ranked according to price. The cheapest price amongst the tenders that were found to be technically responsive shall be recommended for award of the resulting contract.

4. **Post Qualification:** the successful bidder(s) shall then be further qualified to ensure they have adequate resources, and supplier certifications to enable them to successfully deliver on the contract. If any claim by the bidder during bidding is proven to be later false. The contract shall then be awarded to second best evaluated bidder. Provided the bidder passes post qualification.

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SECTION III – BID FORMS

(Bidders are to correctly fill-in the forms A-D and return them with their bids. The words in italics and also those in brackets are to help bidders in filling in the forms. After completely filling in the forms no words italics or brackets should remain on the forms)

Form A: Letter of Bid/Bid For *(should be in the leatherheads of the bidding company)*

RFB No:.....

Date..... *(submission deadline)*

To: Secretary to the PSPF Tender Board

- (a) No reservations: We have examined and have no reservations to the bidding document, including Addenda issued in accordance with Instructions to Bidders;
- (b) Eligibility: We meet the eligibility requirements as required by Section 40 of the Procurement Act,2011 and have no conflict of interest to bid for this tender;
- (c) Conformity: We offer to supply in conformity with the bidding document and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods: *[insert a brief description of the Goods and Related Services];*
- (d) Bid Price.....
- (e) Bid Validity: Our Bid shall be valid for **90 days** and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) One bid per bidder: We are not submitting any other bid(s) as an individual bidder, and we are not participating in any other bid(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of the tender document;

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- (g) Suspension and Debarment: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by ESPPRA as per the Public Procurement Regulations,2020:
- (h) Binding Contract: We understand that this bid, together with your written acceptance thereof included in your Letter of Award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (i) Purchaser Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated bid, or any other bid that you may receive; and
- (j) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

Yours Faithfully

..... *[insert complete name of the Bidding organisation]*

..... *(signature)*

..... *Name and title of the person duly authorized to sign the Bid on behalf of the Bidder: (name of person duly authorized to sign the Bid)*

In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder.

Form B: Price Schedule for Goods

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Name of bidder _____ tender No. _____.

1	2	4	7	8	
Item	Description	Qty	Unit price	Delivery Lead Time	Total
Any pertinent charges (specify charges)					
VALUE ADDED TAX					
TOTAL PRICE FOR FULL DELIVERY					

Signature of bidder _____

Note: In the case of discrepancy between the unit price and the total, unit price takes precedence

Section IV: Conditions of Contract

1. Definitions

- a) "Contract" means the agreement between the purchaser and the supplier, as described in the purchase order and other documents referred to in the purchase order.
- b) "Contract price" means the price, inclusive of all amounts for taxes and contributions (as the term is defined in the financing agreement) payable to the supplier under the contract.

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- c) "Goods" means the goods which the supplier is required to supply to the purchaser under the contract.
- d) "Incidental services" means any service ancillary to the supply of the goods, such as installation, commissioning, provision of technical assistance, and training.
- e) "The purchaser" means the procuring entity that issues this purchase order.
- f) "Supplier" means the natural person or legal person who will supply the goods.
- g) "Bidding documents" means the documents issued by the purchaser for the procurement of the goods.

2. Use of contract documents and information

2.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for the purposes of such performance.

2.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information specified in CC clause 2.1, except for purposes of performing the contract.

2.3. All documents enumerated in CC clause 2.1, other than the contract itself, shall remain the property of the purchaser and shall be returned (all copies) to the purchaser upon completion of the supplier's performance of its obligations under the contract, if so, required by the purchaser.

3. Patent rights

3.1. The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, copyright, industrial design rights or other intellectual property rights arising from use of the goods or any part thereof in the purchaser's country and from the sale of products produced by the goods in any country.

3.2. Such indemnity shall not cover any use of the goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the contract, neither any infringement resulting from the use of the goods or any part thereof, or any products produced thereby in

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association or combination with any other equipment, plant, or materials not supplied by the supplier, pursuant to the contract.

3.3. Any studies, reports or other material, graphics, software or otherwise, prepared by the supplier for the purchaser under the contract shall belong to and remain the property of the purchaser. The supplier may retain a copy of such documents and software. Restrictions about the future use of these documents and software, if any, shall be specified in the purchase order.

3.4. The supplier shall hold the purchaser harmless from and against all suits, proceedings, claims, demands, losses and liabilities of any kind or nature brought by any party against the purchaser in connection with, based on, arising from, or relating to the contract. This shall include, but not be limited to litigation costs and expenses, attorney's fees, settlement payments and damages.

4. Inspections and tests

4.1. The purchaser or its representative shall have the right to inspect and to test the goods to confirm their conformity to the contract at no extra cost to the purchaser. The purchaser shall notify the supplier about any inspections and tests the purchaser requires and where they are to be conducted. Further, the purchaser shall notify the supplier in writing of the identity of any representatives retained for these purposes.

4.2. At the option of the purchaser, inspections and tests may be conducted on the premises of the supplier or its subcontractor(s), at the point of delivery, or at the project site. If conducted on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the purchaser.

4.3. Should any inspected or tested goods fail to conform to the specifications, the purchaser may reject the goods and the supplier shall either replace or make alterations necessary to meet specification requirements free of cost to the purchaser.

4.4. The purchaser's right to inspect, test and, where necessary, reject the goods shall in no way be limited or waived by reason of having previously been inspected, tested, and passed by the purchaser or its representative prior to shipment, installation or other performance in the purchaser's country.

4.5. Nothing in Clause 4 shall in any way release the supplier from any warranty or other obligations under this contract.

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5. Packing

5.1. The supplier shall provide such packing of goods as is required to prevent damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination and the absence of heavy handling facilities at all points in transit.

5.2. Packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements specified in the contract documents and through any subsequent instructions issued by the purchaser.

6. Incidental services

6.1. A supplier shall provide the incidental services indicated in the contract.

7. Spare parts

7.1. Unless not required under the contract, the supplier shall provide materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier including such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract.

7.2. In the event of termination of production of the spare parts:

- a) the supplier shall give advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
- b) following such termination, furnishing at no cost to the purchaser, blueprints, drawings, and specifications of the spare parts, if requested.

8. Warranty

8.1. The supplier warrants that the goods are new, unused, of the most recent or current models, and incorporates all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that the goods have no defect arising from design, materials, or workmanship or from any act or omission of the supplier, which may develop under normal use of the goods in the conditions prevailing in the purchaser's country.

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8.2. The warranties under this clause shall remain valid for twelve (12) months after final acceptance of the goods by the purchaser, unless a longer (but not a shorter) period is specified in the contract.

8.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

8.4. Upon receipt of such notice, the supplier shall, with all reasonable speed, and in any case within 72 hours, repair or replace the defective goods or parts thereof, without costs to the purchaser unless otherwise agreed in writing by the contracting parties.

8.5. If the supplier, having been notified, fails to remedy any defect within the period specified in the contract documents, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

9. Payment

9.1. The supplier's requests for payment shall be in writing and accompanied by an invoice and the required documents.

9.2. Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice by the supplier and certification from the purchaser, whichever is later.

9.3. Payments shall be made in the currency of the purchaser order, unless otherwise stated.

10. Prices

10.1. The contract price shall not vary from the prices quoted by the supplier in its bid except for any price adjustments authorized in the contract.

11. Change orders

11.1. The purchaser may, at any time, issue a written order to the supplier regarding changes in any, some or all of the following:

- a) drawings, designs or specifications for the goods;
- b) methods of shipment and packing of the goods;

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c) the place of performance or delivery of the goods; and

d) the incidental services.

11.2. If a change order will cause an increase or decrease in the cost of, or the time required for the supplier's supply of the goods, the parties shall exert their best effort to agree on an equitable adjustment in the contract price, the delivery schedule, or both. Any claims by the supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the supplier's receipt of the change order.

12. Contract amendments

12.1. No variation or modification of the terms of the contract shall be made except by either (a) a written amendment signed by the parties, or (b) a change order.

13. Assignment

13.1. The Supplier shall not assign, in whole or in part, its obligations to perform under this contract, except with the prior written consent of the purchaser.

14. Sub-contracts

14.1. The supplier shall notify the purchaser in writing about all subcontracts for the supply of the goods. Such notification shall not relieve the supplier of any liability or obligation under the contract.

15. Delays in the supplier's performance

15.1. If the supplier foresees or encounters conditions impeding timely delivery of the goods, the supplier shall promptly notify the purchaser in writing of the fact of the actual or foreseen delay, its likely duration and its causes.

15.2. No extension of the supplier's time for performance shall be effective unless the parties amend the contract.

16. Liquidated damages

16.1. Subject to CC clause 18, if the supplier fails to deliver all goods within the period specified in the contract, the purchaser may, without prejudice to other remedies under the contract (including termination of the contract), deduct, as liquidated damages, 0.5% from the contract price for each week of delay or fraction thereof, until delivery of all goods, up to 10% of the contract price.

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17. Termination

17.1. Without prejudice to any other remedy for breach of contract, the purchaser may terminate this contract in whole or in part by written notice to the supplier:

- a) if the supplier fails to deliver all the goods within the period specified in the contract;
- b) if the supplier fails to perform any other obligation(s) under the contract;
- c) if the supplier becomes bankrupt or otherwise insolvent;
- d) if at any time the purchaser decides to terminate the contract for its own convenience; or
- e) if the supplier fails to provide performance security within fifteen (15) days if performance security is part of this contract.

17.2. For the purpose of this clause: "corrupt practice" and "fraudulent practice" carries meaning defined in the Public Procurement Act, 2011.

17.3. In the event that the purchaser terminates the contract in whole or in part under clause 17.1(a), (b), (c) or (d), the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods similar to those that the supplier failed to deliver, provide or perform, and the supplier shall be liable to the purchaser for any excess costs for such similar goods. However, the supplier shall continue its performance of its obligations under the contract to the extent that the contract was not terminated.

17.4. If the contract is for goods, in the event that the purchaser terminates the contract in whole or in part under clause 17.1 (e), the goods that are complete and ready for shipment within thirty (30) days after the supplier's receipt of notice of termination shall be accepted by the purchaser at the contract terms and prices. For the remaining goods, the purchaser may elect:

- a) to have any portion completed and delivered at the contract terms and prices; and/or
- b) to cancel the remainder and pay the supplier an agreed amount for partially completed goods and for materials and parts previously procured by the supplier.

18. Force majeure

18.1. The purchaser may not deduct the liquidated damages from the contract price or terminate the contract under clause 17.1(a) or (b) if the supplier's delay in the performance of its obligations under the contract is the result of an event of force majeure.

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18.2. For purposes of this clause, "event of force majeure" means an exceptional event or circumstance which satisfies all of the following conditions: (a) such event or circumstance is beyond the control of the supplier, (b) the supplier could not reasonably have provided against such event or circumstance before entering into the contract, (c) such event or circumstance having arisen, the supplier could not reasonably have avoided or overcome such event or circumstance, and (d) the such event or circumstance is not in any way attributable to the supplier. Such events may include, but are not restricted to, acts of the purchaser's country in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

18.3. If an event of force majeure occurs, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the event of force majeure.

19. Settlement of disputes

19.1. If any dispute or difference of any kind whatsoever shall arise between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

20. Limitation of liability

20.1. Except in cases of criminal negligence or willful misconduct, and in the case of infringement as described in CC clause 3,

a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay liquidated damages to the purchaser; and

b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

21. Language

21.1. Unless the purchaser agrees otherwise, all documents referred to in the contract and all communications from supplier to the purchaser shall be in the English language.

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22. Applicable law

22.1. The contract shall be interpreted in accordance with the laws of the purchaser's country.

23. Notices

23.1. Any notice given by one party to the other pursuant to the contract shall be in writing and delivered to the other party in person or by courier, electronic mail or facsimile, to the other party's address specified in the contract.

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

24. Taxes and duties

24.1. The supplier should carefully read the provisions and revenue regulations of the applicable law.

24.2. The supplier shall be entirely responsible for all taxes, customs duties, license fees, and other such levies imposed both inside and outside of the purchaser's country by reason of or in relation to the contract.

24.3. Unless exempt under applicable laws and regulations, the supplier is subject to taxes and contributions for payments under this contract, as may be required under applicable laws and regulations. In no event shall the purchaser be responsible for the payment or reimbursement of any taxes and contributions. In the event that any taxes and contributions are imposed on the supplier, the contract price shall not be adjusted to account for such taxes and contributions.

25. Performance security

25.1. The supplier shall, within fifteen (15) days of the notification of contract award, provide performance security for the due performance of this contract in the amount or percentage specified in the purchase order.

25.2. The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete its obligations in accordance with the terms of this contract.

25.3. The performance security shall be denominated in the currency of this contract and shall be in the form of either a bank guarantee, bond or an irrevocable standby letter of credit issued by a

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reputable bank or surety located in purchaser's country and in form and substance satisfactory to the purchaser, substantially in the appropriate form included as an annex to this purchase order.

25.4. The performance security shall be discharged by the purchaser and returned to the supplier not later than twenty-eight (28) days following the date of completion of the supplier's performance obligations under this contract, including any warranty obligations.

26. Prohibition of Fraud and Corruption

26.1. The Supplier shall abide by and perform the contract in compliance with the Public Procurement Act, 2011 and the Fund's Policies 1. Failure to comply with this policy may lead to termination of contract as set out above at para. 17.1(c).

26.2. In accordance with Eswatini's Anticorruption Act, the Fund has the right to sanction firms and individuals, including by declaring them ineligible, permanently or for a stated period of time, to participate in any PSPF-funded or Public Procurement activity or operation subject to debarment by ESPPRA. The Fund also has the right to recognize debarments by other International Financial Institutions in accordance with its Anticorruption Policy.

26.3. The supplier will take appropriate measures to inform potential sub-contractors, sub-consultants, suppliers, agents and any of its agents or personnel of their obligations under the country's Anticorruption laws and require their compliance with this policy in connection with their involvement in competing for, or executing, this contract.

26.4. The supplier is required to complete and sign the attached statutory forms. In particular, the supplier is obliged to disclose relevant prior sanctions and criminal convictions and any commissions or fees paid or are to be paid to any agents or other party in connection with this procurement process or the execution of the contract.

26.5. The supplier is required to fully cooperate with any investigation conducted by the Fund, ESPPRA, and the Anti-Corruption Commission or any law enforcing agency of Eswatini including by making personnel available for interviews and by providing full access to any and all accounts, premises, documents and records (including electronic records) relating to this contract or the relevant procurement process and to have such accounts, premises, records and documents audited and/or inspected by auditors or investigators appointed by the Fund.

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26.6. The supplier shall keep all records and documents, including electronic records, relating to this contract, its execution and/or the corresponding bidding process available for a minimum of five (5) years after completion of the execution of the contract.

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INVITATION TO TENDER: SUPPLY AND DELIVERY OF GYM EQUIPMENT (PSPF/ITT/13/2024)

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