

**Public Procurement Regulatory Framework And Tender Evaluation Procedures**  
**STANDARD TENDERING**  
**DOCUMENTS**



# **Procurement of Goods**

## **Open National Tendering**

**June 2022**



# SBD for Procurement of Goods

## Summary

### PART 1 – TENDERING PROCEDURES

#### Section I. Instructions to Tenderers (ITT)

This Section provides information to help Tenderers prepare their Tenders. Information is also provided on the submission, opening, and evaluation of Tenders and on the award of Contracts. Section I contains provisions that are to be used without modification.

#### Section II. Tendering Data Sheet (TDS)

This Section includes provisions that are specific to each procurement and that supplement Section I, Instructions to Tenderers.

#### Section III. Evaluation and Qualification Criteria

This Section specifies the criteria to be used to determine the best-evaluated Tender, and the Tenderer's qualification requirements to perform the contract.

#### Section IV. Tendering Forms

This Section includes the forms for the Tender Submission, Price Schedules, and Tender Security to be submitted with the Tender.

#### Section V. Eligible Countries

This Section contains information regarding eligible countries.

### PART 2 – SUPPLY REQUIREMENTS

#### Section VI. Schedule of Requirements

This Section includes the List of Goods and Related Services, the Delivery and Completion Schedules, the Technical Specifications and the Drawings that describe the Goods and Related Services to be procured.



## **PART 3 – CONTRACT**

### **Section VII. General Conditions of Contract (GCC)**

This Section includes the general clauses to be applied in all contracts. The text of the clauses in this Section shall not be modified.

### **Section VIII. Special Conditions of Contract (SCC)**

This Section includes clauses specific to each contract that modify or supplement Section VII, General Conditions of Contract.

### **Section IX: Contract Forms**

This Section includes the form for the Agreement, which, once completed, incorporates corrections or modifications to the accepted Tender that are permitted under the Instructions to Tenderers, the General Conditions of Contract, and the Special Conditions of Contract.

The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Tenderer after contract award.

### **Attachment: Invitation for Tenders**

An “Invitation for Tenders” form is provided at the end of the Tendering Documents for information.



# TENDERING DOCUMENTS

Issued on: \_\_\_\_\_

for

## Procurement of

*Design, Supply and Installation of a  
pressed steel tank or equivalent  
galvanised bolted potable water  
reservoir and galvanized steel stand*

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**ONT No:** *Tender No. 9 of 2022/23*

**Project/Programme:** *Design, Supply and Installation of a  
pressed steel tank or equivalent galvanized bolted potable  
water reservoir and galvanized steel stand*

**Procuring Entity:** *Eswatini Water Services Corporation*



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## **PART 1 – Tendering Procedures**



# Section I. Instructions to Tenderers

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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 57 of the Public Procurement Act of 2011;
  - (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 **named in the TDS**. The Procuring Entity intends to apply a portion of the funds to eligible payments under the contract for which these Tendering Documents are issued.
- 2.2 Payments by Procuring Entity will be made only at the request of the Contract Manager.
- 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, 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 *sixty-five*, *sixty-six* and *sixty-seven* of the Public Procurement Act of 2020 and in accordance with regulations 162 to 167 of the Public Procurement Regulations of 2020. A Tenderer or Tenderer aggrieved by such a decision may appeal in accordance with Section *sixty-nine* 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:
  - (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 34 of the Public Procurement Act of 2011. To establish eligibility, the government-owned enterprise or institution should provide all relevant documents (including its charter) sufficient to demonstrate that it meets the provisions of Section 34(2) of the Public Procurement Act of 2011.

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.
- 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
- Section V. Eligible Countries

### **PART 2 Supply Requirements**

- Section VI. Schedule of Requirements

### **PART 3 Contract**

- Section VII. General Conditions of Contract (GCC)



▪ Section VIII. Special Conditions of Contract (SCC)

Section IX. Contract Forms

- 6.2 The Invitation for Tenders issued by the Procuring Entity is not part of the Tendering Documents.
- 6.3 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.
- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tendering Documents. Failure to furnish all 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 fourteen (14) 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

- 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 and Price Schedules**

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 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 Emalangen, 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 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 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**

- 18.1 Tenders shall remain valid for the period **specified in the TDS** after the





**of Tenders**

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**.

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

- (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.





## 20 Format and Signing of Tender

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.

- 20.1 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

### 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



accordance with ITT Clause 8, in which case all rights and obligations 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 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 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 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.

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 Submission Form, in accordance with ITT Sub-Clause 12.1;



(b) Price Schedules, in accordance with ITT Sub-Clause 12.2;  
Tender Security or Tender Securing Declaration, in accordance with ITT Clause 19 if applicable.

### 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;
- 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 preference treatment in accordance with the Citizens Economic Empowerment Act, 2006 to citizen influenced, citizen empowered and citizen owned companies as well as domestically manufactured goods by citizen influenced, citizen empowered or citizen owned 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.
- 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 constitute a binding Contract.
- 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 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:
- 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



**44 Procurement  
Related  
Complaints and  
Administrative  
Review**

Procuring Entity to be qualified to perform the Contract satisfactorily.

- 44.1 The procedures for making a Procurement-related Complaint are as **specified in the TDS.**
- 44.2 A request for administrative review shall be made in the form provided on the Agency's website <https://www.esppra.co.sz>.





## Section II. Tendering Data Sheet (TDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

*[Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITT Clauses.]*

ITT Clause Reference	A. General
ITT 1.1	The Procuring Entity is: <i>Eswatini Water Services Corporation</i>
ITT 1.1	The name and identification number of the ONT are: <i>Design, Supply and Installation of a pressed steel tank or equivalent galvanized bolted potable water reservoir and galvanized steel stand</i> The number, identification and names of the lots comprising this ONT are: <i>EWSC Tender No. 9 of 2022/23</i>
ITT 2.1	The Procuring Entity is: <i>Eswatini Water Services Corporation</i>
ITT 2.1	The name of the Project/Programme is: <i>Design, Supply and Installation of a pressed steel tank or equivalent galvanized bolted potable water reservoir and galvanized steel stand</i>
ITT 4.3	A list of firms debarred from participating in Government-financed projects is available at <a href="http://www.esppra.coequivalent.sz">http://www.esppra.coequivalent.sz</a>
	B. Contents of Tendering Documents
ITT 7.1	<p>For <b>clarification purposes</b> only, the Procuring Entities's address is:            Attention: <b>Procurement Manager</b>            Street Address: <b>CNR MR103 and Cultural Village Drive</b> _____            City: <b>Ezulwini</b>  <b>Eswatini</b></p> <p>Telephone: <b>+268 2416 9000</b>            Electronic mail address: <a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a></p> <p><b>EWSC shall respond to written requests for clarification which it receives not later than 14 days prior to the deadline for the submission of tenders.</b></p>



	<b>C. Preparation of Tenders</b>
<b>ITT 11.1 (f)</b>	<p>The Tenderer shall submit the following additional documents in its Tender:</p> <ol style="list-style-type: none"> <li><b>1. Original and Valid Tax Compliance Certificate</b></li> <li><b>2. Certified copy of Valid Trading Licence</b></li> <li><b>3. Power of Attorney</b></li> <li><b>4. Tender Security</b></li> <li><b>5. Police Clearance Certificate for Directors</b></li> <li><b>6. Valid ENPF Certificate</b></li> <li><b>7. Valid Labour Compliance Certificate</b></li> </ol> <p><i>[insert list of other documents, if any]</i></p>
<b>ITT 13.1</b>	<p>Alternative Tenders <b><i>shall not</i></b> considered.</p> <p><i>[If alternatives shall be considered, insert:</i></p> <p><i>“A Tenderer may submit an alternative Tender only with a Tender for the base case. The Procuring Entity shall only consider the alternative Tenders offered by the Tenderer whose Tender for the base case was determined to be the best-evaluated Tender.”</i></p> <p><b>or</b></p> <p><i>“A Tenderer may submit an alternative Tender with or without a Tender for the base case. The Procuring Entity shall consider Tenders offered for alternatives as specified in the Technical Specifications of Section VI, Schedule of Requirements All Tenders received, for the base case, as well as alternative Tenders meeting the specified requirements, shall be evaluated on their own merits in accordance with the same procedures, as specified in the ITT 36.”]</i></p>
<b>ITT 14.7</b>	<p>Prices quoted for each lot shall correspond at least to <i>[insert figure]</i> % of the items specified for each lot.</p> <p>Prices quoted for each item of a lot shall correspond at least to <i>[insert figure]</i> percent of the quantities specified for this item of a lot.</p>
<b>ITT 16.3</b>	<p>Period of time the Goods are expected to be functioning (for the purpose of spare parts): <b>40 years</b></p>



ITT 17.1 (a)	After sales service is: <b><i>required</i></b>
ITT 18.1	The Tender validity period shall be <b>90</b> days.
ITT 19.1	Tender shall include a Tender Security (issued by bank or surety) using the form included in Section IV Tendering Forms
ITT 19.2	The amount of the Tender Security shall be: <b><i>SZL20 000.00</i></b>
ITT 20.1	In addition to the original of the Tender, the number of copies is: <b>4</b>
<b>D. Submission and Opening of Tenders</b>	
ITT 21.1	Tenderers <b><i>shall not</i></b> have the option of submitting their Tenders electronically.
ITT 21.1 (b)	If Tenderers shall have the option of submitting their Tenders electronically, the electronic Tendering submission procedures shall be: <b><i>Not applicable</i></b>
ITT 21.2 (c)	The inner and outer envelopes shall bear the following additional identification marks: <b><i>EWSC Tender No. 9 of 2022/23</i></b>  <b><i>Design, Supply and Installation of a pressed steel tank or equivalent galvanized bolted potable water reservoir and galvanized steel stand</i></b>
ITT 22.1	The Tender submission shall take place at: Street Address: <b><i>CNR MR103 and Cultural Village Drive</i></b> Floor/Room number: <b><i>Auditorium</i></b> City: <b><i>Ezulwini</i></b> Country: <b><i>Eswatini</i></b>  The deadline for the submission of tenders is: Date: <b>29 July 2022</b> Time: <b>12h00</b>
ITT 25.1	The Tender opening shall take place at:  Street Address: <b><i>CNR MR103 and Cultural Village Drive</i></b>  Floor/ Room number: <b><i>Auditorium</i></b>  City: <b><i>Ezulwini, Eswatini</i></b>  Date: <b>29 July 2022</b>  Time: <b>12h00</b>



<b>ITT 25.1</b>	If electronic Tender submission is permitted in accordance with ITT sub-clause 23.1, the specific Tender opening procedures shall be: <b><i>Not Applicable</i></b>
	<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: <i>[refer to Schedule III, Evaluation and Qualification Criteria; insert complementary details if necessary]</i></p> <ul style="list-style-type: none"> <li>(a) Deviation in Delivery schedule: <b><i>Not applicable</i></b></li> <li>(b) the cost of major replacement components, mandatory spare parts, and service: <b><i>No</i></b></li> <li>(c) the performance and productivity of the equipment offered; <b><i>Yes, as specified in the BOQ.</i></b></li> </ul>
<b>ITT 32.5</b>	Tenderers <b><i>shall not</i></b> be allowed to quote separate prices for one or more lots.
	<b>F. Award of Contract</b>
<b>ITT 37.1</b>	<p>The maximum percentage by which quantities may be increased is: <b><i>0%</i></b></p> <p>The maximum percentage by which quantities may be decreased is: <b><i>0%</i></b></p>
<b>ITT 44.1</b>	<p>The procedures for making a Procurement-related Complaint are detailed in the ESPPRA website <a href="https://www.esppra.co.sz">https://www.esppra.co.sz</a></p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is by email), to: <a href="mailto:complaints@esppra.co.sz">complaints@esppra.co.sz</a> or <a href="mailto:info@esppra.co.sz">info@esppra.co.sz</a></p> <p><b>For the attention:</b> <i>[insert full name of person receiving complaints]</i></p> <p><b>Title/position:</b> <i>[insert title/position]</i></p> <p><b>Procuring Entity:</b> <b><i>Eswatini Water Services Corporation</i></b></p> <p><b>Email address:</b> <b><i>procurement@ewsc.co.sz</i></b></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"> <li>1. the terms of the Tendering Documents; and</li> <li>2. the Procuring Entity's decision to award the contract.</li> </ol>



## Section III. Evaluation and Qualification Criteria

*This Section complements the Instructions to Tenderers. It contains the criteria that the Procuring Entity may use to evaluate a Tender and determine whether a Tenderer has the required qualifications. No other criteria shall be used.*

*[The Procuring Entity shall select the criteria deemed appropriate for the procurement process, insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

### Contents

1. Evaluation Criteria
2. Multiple Contracts
3. Post-qualification Requirements



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

The Procuring Entity's evaluation of a Tender may take into account, in addition to the Tender Price quoted in accordance with ITT Clause 14.6, one or more of the following factors as specified in ITT Sub-Clause 32.3(d) and in TDS referring to ITT 32.3(d), using the following criteria and methodologies.

- (a) Delivery schedule.

*The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VI, Delivery Schedule. No credit will be given to deliveries before the earliest date, and Tenders offering delivery after the final date shall be treated as non-responsive. Within this acceptable period, an adjustment, as specified in TDS Sub-Clause 32.3(d), will be added, for evaluation purposes only, to the Tender price of Tenders offering deliveries later than the "Earliest Delivery Date" specified in Section VI, Delivery Schedule.*

- (b) Cost of major replacement components, mandatory spare parts, and service. *[insert one of the following]*

*The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during the initial period of operation specified in the TDS Sub-Clause 16.3, is in the List of Goods. An adjustment equal to the total cost of these items, at the unit prices quoted in each Tender, shall be added to the Tender price, for evaluation purposes only.*

- (c) Performance and productivity of the equipment. *[insert one of the following]*

- (i) Performance and productivity of the equipment. An adjustment representing the capitalized cost of additional operating costs over the life of the plant will be added to the Tender price, for evaluation purposes if specified in the TDS Sub-Clause 32.3(d). The adjustment will be evaluated based on the drop in the guaranteed performance or efficiency offered in the Tender below the norm of 100, using the methodology specified in TDS Sub-Clause 32.3(d).

**or**

- (ii) An adjustment to take into account the productivity of the goods offered in the Tender will be added to the Tender price, for evaluation purposes only, if specified in TDS Sub-Clause 32.3(d). The adjustment will be evaluated based on the cost per unit of the actual productivity of goods offered in the Tender with respect to minimum required values, using the methodology specified in TDS Sub-Clause 32.3(d).



- (g) Specific additional criteria

*Other specific additional criteria to be considered in the evaluation, and the evaluation method shall be detailed in TDS Sub-Clause 32.3(d) ]*

## 2. Multiple Contracts (ITT 32.5)

The Procuring Entity shall award multiple contracts to the Tenderer that offers the best-evaluated combination of Tenders (one contract per Tender) and meets the post-qualification criteria (this Section III, Sub-Section ITT 34.2 Post-Qualification Requirements)

The Procuring Entity shall:

- (a) evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITT Sub Clause 14.7
- (b) take into account:
  - (i) the best-evaluated Tender for each lot and
  - (ii) the price reduction per lot and the methodology for its application as offered by the Tenderer in its Tender.

## 3. Comparison of Tenders (ITT 33.1)

The best-evaluated Tender shall be determined after application of the following preference treatment at the Financial or Commercial Evaluation stage, by way of a discount, as follows:

*Not applicable*

## 4. Post-qualification Requirements (ITT 34.2)

After determining the best-evaluated Tender in accordance with ITT Sub-Clause 33.1, the Procuring Entity shall carry out the post-qualification of the Tenderer in accordance with ITT Clause 34, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Tenderer's qualifications.

- (a) Financial Capability

The Tenderer shall furnish documentary evidence that it meets the following financial requirement(s): ***Audited financial statements for the past 3 years***

- (b) Experience and Technical Capacity

The Tenderer shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s):



	Criteria	Comments	Yes/No
1	Company experience and track record	<input type="checkbox"/> Relevant Experience of supplier not less than 10 years	
2	Similar sized projects	<input type="checkbox"/> Must have undertaken five (5) similar sized projects in the past three years (Evidence must be attached)	

- (c) The Tenderer shall furnish documentary evidence to demonstrate that the Goods it offers meet the following usage requirement: *As specified in the BOQ.*





# Section IV. Tendering Forms

## Table of Forms

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## 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.



## Joint Venture Partner Information Form

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below].*

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. JV's Party legal name: <i>[insert JV's Party legal name]</i>
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>
4. JV's Party Year of Registration: <i>[insert JV's Party year of registration]</i>
5. JV's Party Legal Address in Country of Registration: <i>[insert JV's Party legal address in country of registration]</i>
6. JV's Party Authorized Representative Information  Name: <i>[insert name of JV's Party authorized representative]</i>  Address: <i>[insert address of JV's Party authorized representative]</i>  Telephone numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i>  Email Address: <i>[insert email address of JV's Party authorized representative]</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 2, above, in accordance with ITT Sub-Clauses 4.1 and 4.2.  <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.



## Tender Submission Form

*[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]*

**Invitation for Tender No.: EWSC Tender No 13 of 2022/23**

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

To: *[insert complete name of Procuring Entity]*

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;



- (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]*



## Price Schedule Forms

<b>BILL OF QUANTITIES</b>					
	<b>Activity</b>	<b>Unit of measure</b>	<b>Quantity</b>	<b>Rate</b>	<b>Amount</b>
1	<b>Mananga Galvanized Reservoir</b>				
1.1	Design, Supply and Installation of a 110 Kilolitres pressed steel tank or equivalent galvanised bolted potable water reservoir and a 30m galvanised stand  <b>NB:</b> Amount inclusive of transport cost of reservoir to site.	<i>No.</i>	1		
1.2	Commissioning of Reservoir	<i>Lump Sum</i>	1		
1.3	<b>SUBTOTAL</b>				
1.4	15% VAT				
1.5	CIC Levy (1%)				
	<b>GRAND TOTAL</b>				



## Tender Security (Bank Guarantee)

*[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[insert Bank's Name, and Address of Issuing Branch or Office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**TENDER GUARANTEE No.:** *[insert Tender Guarantee number]*

We have been informed that *[insert name of the Tenderer]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]*.

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in Emalangeni]*, *[insert amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer:

- (a) has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Tender Submission Form; or
- (b) having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity as stated in the Tender Submission Form or extended by the Employer at any time prior to expiration of this period, (i) fails or refuses to execute the Contract, if required, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITT.

This Guarantee will expire: (a) if the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and the Performance Security issued to you upon the instruction of the Tenderer; or (b) if the Tenderer is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful; or (ii) twenty-eight days after the expiration of the Tenderer's Tender.

Consequently, any demand for payment under this Guarantee must be received by us at the office on or before that date.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

*[Signature(s) of authorized bank's representative(s)]*



## Tender Security (Tender Bond)

*[The Surety shall fill in this Tender Bond Form in accordance with the instructions indicated.]*

BOND NO. *[insert bond number]*

BY THIS BOND *[insert name of Tenderer]* as Principal (hereinafter called “the Principal”), and *[insert name, legal title, and address of surety]*, **authorized to transact business in** *[insert name of country of Procuring Entity]*, as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of Procuring Entity]* as Obligee (hereinafter called “the Procuring Entity”) in the sum of *[insert amount of Bond expressed in Emalangeni]* *[insert amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Tender to the Procuring Entity dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for the supply of *[insert name and/or description of goods]* (hereinafter called the “Tender”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (1) withdraws its Tender during the period of Tender validity specified by the Tenderer on the Tender Form; or
- (2) having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity;
  - (a) fails or refuses to execute the Contract Form in accordance with the Instructions to Tenderers, if required; or
  - (b) fails or refuses to furnish the Performance Security in accordance with the Instructions to Tenderers;

then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and affect up to and including the date 28 days after the date of expiration of the Tender validity as stated in the Invitation to Tender. Any demand in respect of this Bond should reach the Surety not later than the above date.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.





Principal (s): *[name(s) of authorized representative(s) of the Surety]*      Surety: *[Name of Surety]*

Corporate Seal (where appropriate)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)



## Tender-Securing Declaration

*[The Tenderer shall fill in this Form in accordance with the instructions indicated .]*

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: *[insert complete name of Procuring Entity]*

We, the undersigned, declare that:

1. We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time of *[insert number of months or years]* starting on *[insert date]*, 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]*



## Section V. Eligible Countries

### Eligibility for the Provision of Goods, Works and Services in Eswatini

1. In accordance with Section 61 of the Public Procurement Act No. 07 of 2011 and Clause 155 of the Public Procurement Regulations of 2020, Government permits firms and individuals from all countries to offer goods, works and services for Government-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:
  - (i): as a matter of law or official regulation, the Eswatini prohibits commercial relations with that Country, provided that Cooperating Partners involved are satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or
  - (ii): 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, Government prohibits any import of goods from that Country or any payments to persons or entities in that Country.
2. For the information of Tenderers, at the present time firms, goods and services from the following countries are excluded from this Tendering:

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## **PART 2 – Supply Requirements**



## Section VI. Schedule of Requirements

### Contents

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## Notes for Preparing the Schedule of Requirements

The Schedule of Requirements shall be included in the Tendering documents by the Procuring Entity, and shall cover, at a minimum, a description of the goods and services to be supplied and the delivery schedule.

The objective of the Schedule of Requirements is to provide sufficient information to enable Tenderers to prepare their Tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITT Clause 37.1.



## 1. List of Goods and Delivery Schedule

*[The Procuring Entity shall fill in this table (Columns A to G inclusive) with column H which is to be filled by the Tenderer]*

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 <i>[to be provided by the Tenderer]</i>
<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>H</i>
<i>[insert item No]</i>	<i>[insert description of Goods]</i>	<i>[insert quantity of item to be supplied]</i>	<i>[insert physical unit for the quantity]</i>	<i>[insert place of Delivery]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>
1	Design, Supply and Installation of a 110 Kilolitres pressed steel tank or equivalent galvanised bolted potable water reservoir and a 30m galvanised stand	1	1	Mananga			

## 2. List of Related Services and Completion Schedule

*[This table shall be filled in by the Procuring Entity. The Required Completion Dates should be realistic, and consistent with the required Goods Delivery Dates]*

Service N°	Description of Service	Quantity <sup>1</sup>	Physical Unit	Place where Services shall be performed	Final Completion Date(s) of Services
<i>[insert Service No]</i>	<i>[insert description of Related Services]</i>	<i>[insert quantity of items to be supplied]</i>	<i>[insert physical unit for the items]</i>	<i>[insert name of the Place]</i>	<i>[insert required Completion Date(s)]</i>





### 3. Technical Specifications

*The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Goods and Related Services required by the Procuring Entity. The Procuring Entity shall prepare the detailed TS take into account that:*

- *The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, well-defined TS will facilitate preparation of responsive Tenders by Tenderers, as well as examination, evaluation, and comparison of the Tenders by the Procuring Entity.*
- *The TS shall require that all goods and materials to be incorporated in the goods be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the contract.*
- *The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the TS.*
- *Standardizing technical specifications may be advantageous, depending on the complexity of the goods and the repetitiveness of the type of procurement. Technical Specifications should be broad enough to avoid restrictions on workmanship, materials, and equipment commonly used in manufacturing similar kinds of goods.*
- *Standards for equipment, materials, and workmanship specified in the Tendering Documents shall not be restrictive. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.”*
- *Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable the words “or at least equivalent” shall always follow such references.*
- *Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:*
  - (a) *Standards of materials and workmanship required for the production and manufacturing of the Goods.*
  - (b) *Detailed tests required (type and number).*
  - (c) *Other additional work and/or Related Services required to achieve full delivery/completion.*
  - (d) *Detailed activities to be performed by the Tenderer, and participation of the Procuring Entity thereon.*
  - (e) *List of detailed functional guarantees covered by the Warranty and the specification of the liquidated damages to be applied in the event that such guarantees are not met.*



- *The TS shall specify all essential technical and performance characteristics and requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the Procuring Entity shall include an additional ad-hoc Tendering form (to be an Attachment to the Tender Submission Sheet), where the Tenderer shall provide detailed information on such technical performance characteristics in respect to the corresponding acceptable or guaranteed values.*

*When the Procuring Entity requests that the Tenderer provides in its Tender a part or all of the Technical Specifications, technical schedules, or other technical information, the Procuring Entity shall specify in detail the nature and extent of the required information and the manner in which it has to be presented by the Tenderer in its Tender.*

*[If a summary of the Technical Specifications (TS) has to be provided, the Procuring Entity shall insert information in the table below. The Tenderer shall prepare a similar table to justify compliance with the requirements]*

***“Summary of Technical Specifications. The Goods and Related Services shall comply with following Technical Specifications and Standards:***

<b><i>Item No</i></b>	<b><i>Name of Goods or Related Service</i></b>	<b><i>Technical Specifications and Standards</i></b>
<i>[insert item No]</i>	<i>[insert name]</i>	<i>[insert TS and Standards]</i>

*Detailed Technical Specifications and Standards [whenever necessary].*

*[Insert detailed description of TS]*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_” ] \_\_\_\_\_



## 4. Drawings

These Tendering Documents includes *[insert “the following” or “no”]* drawings.

*[If documents shall be included, insert the following List of Drawings]*

List of Drawings		
Drawing Nr.	Drawing Name	Purpose



## 5. Inspections and Tests

The following inspections and tests shall be performed: *[insert list of inspections and tests]*

List of Inspections and Tests		
Line Item No	Brief Description of Item	Inspection and/or Test



## **PART 3 - Contract**



## Section VII. General Conditions of Contract

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## Section VII. General Conditions of Contract

### 1 Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “Contract” means the Contract Agreement entered into between the Procuring Entity and the Tenderer, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- (c) “Contract Price” means the price payable to the Tenderer as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) “Day” means calendar day.
- (e) “Completion” means the fulfillment of the Related Services by the Tenderer in accordance with the terms and conditions set forth in the Contract.
- (f) “GCC” means the General Conditions of Contract.
- (g) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Tenderer is required to supply to the Procuring Entity under the Contract.
- (h) “Government” means the Government of the Kingdom of Eswatini or any other Government agency duly mandated to carry out specialized functions of Government.
- (i) “Procuring Entity” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (j) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Tenderer under the Contract.
- (k) “SCC” means the Special Conditions of Contract.
- (l) “Subcontractor” means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Tenderer.
- (m) “Tenderer” means the natural person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- (n) “The Project Site,” where applicable, means the place named in the SCC.

### 2 Contract Documents

2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

### 3 Fraud and Corruption

3.1 Government requires that Procuring Entities (including beneficiaries of 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; and
  - (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, non-competitive 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 sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Government-financed contract if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Government-financed contract; and
- (c) will have the right to require that Tenderers 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 Interpretation**

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Entire Agreement:

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

4.3 Amendment:

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

4.4 Nonwaiver:

- (a) Subject to GCC Sub-Clause 4.4(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party’s rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.5 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any



other provisions and conditions of the Contract.

## **5 Language**

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Tenderer and the Procuring Entity, shall be written in English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Tenderer shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Tenderer.

## **6 Joint Venture, Consortium or Association**

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

## **7 Notices**

- 7.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt.
- 7.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

## **8 Governing Law**

- 8.1 The Contract shall be governed by and interpreted in accordance with the laws of Eswatini.

## **9 Settlement of Disputes**

- 9.1 The Procuring Entity and the Tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 9.2 Disputes will be settled in accordance with the Laws of Eswatini.

## **10 Scope of Supply**

- 10.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

## **11 Delivery and Documents**

- 11.1 Subject to GCC Sub-Clause 29.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Tenderer are specified in the **SCC**.



## **12 Tenderer's Responsibilities**

- 12.1 The Tenderer shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 10, and the Delivery and Completion Schedule, as per GCC Clause 11.

## **13 Contract Price**

- 13.1 Prices charged by the Tenderer for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Tenderer in its Tender.

## **14 Terms of Payment**

- 14.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.
- 14.2 The Tenderer's request for payment shall be made to the Procuring Entity in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 11 and upon fulfillment of all other obligations stipulated in the Contract.
- 14.3 Payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Tenderer, and after the Procuring Entity has accepted it.
- 14.4 In the event that the Procuring Entity fails to pay the Tenderer any payment by its due date or within the period set forth in the SCC, the Procuring Entity shall pay to the Tenderer interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

## **15 Taxes and Duties**

- 15.1 All price are inclusive of applicable taxes and duties.

## **16 Performance Security**

- 16.1 If required as specified in the SCC, the Tenderer shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the SCC.
- 16.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 16.3 As specified in the SCC, the Performance Security, if required, shall be in one of the format stipulated by the Procuring Entity in the SCC, or in another format acceptable to the Procuring Entity.
- 16.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Tenderer not later than twenty-eight (28) days following the date of Completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.



## **17 Copyright**

- 17.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Tenderer herein shall remain vested in the Tenderer, or, if they are furnished to the Procuring Entity directly or through the Tenderer by any third party, including Tenderers of materials, the copyright in such materials shall remain vested in such third party

## **18 Confidential Information**

- 18.1 The Procuring Entity and the Tenderer shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Tenderer may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Tenderer shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Tenderer under GCC Clause 18.
- 18.2 The Procuring Entity shall not use such documents, data, and other information received from the Tenderer for any purposes unrelated to the contract. Similarly, the Tenderer shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.
- 18.3 The obligation of a party under GCC Sub-Clauses 18.1 and 18.2 above, however, shall not apply to information that:
- (a) the Procuring Entity or Tenderer need to share with Government or other institutions participating in the financing of the Contract;
  - (b) now or hereafter enters the public domain through no fault of that party;
  - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 18.4 The above provisions of GCC Clause 18 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 18.5 The provisions of GCC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

## **19 Subcontracting**

- 19.1 The Tenderer shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Tenderer from any of its obligations, duties, responsibilities, or liability under the Contract.
- 19.2 Subcontracts shall comply with the provisions of GCC Clause 3.



## **20 Specifications and Standards**

### **20.1 Technical Specifications and Drawings**

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Tenderer shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Procuring Entity.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 29.

## **21 Packing and Documents**

- 21.1 The Tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 21.2 The 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, if any, specified in the **SCC**, and in any other instructions ordered by the Procuring Entity.

## **22 Insurance**

- 22.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery.

## **23 Inspections and Tests**

- 23.1 The Tenderer shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.
- 23.2 The inspections and tests may be conducted on the premises of the Tenderer or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Eswatini as specified in the **SCC**. Subject to GCC Sub-Clause 23.3, if conducted on the premises of the Tenderer or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 23.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 23.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.



- 23.4 Whenever the Tenderer is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Tenderer shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.
- 23.5 The Procuring Entity may require the Tenderer to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Tenderer's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Tenderer's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 23.6 The Tenderer shall provide the Procuring Entity with a report of the results of any such test and/or inspection.
- 23.7 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Tenderer shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub-Clause 23.4.
- 23.8 The Tenderer agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 23.6, shall release the Tenderer from any warranties or other obligations under the Contract.

## **24 Liquidated Damages**

- 24.1 Except as provided under GCC Clause 28, if the Tenderer fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 31.

## **25 Warranty**

- 25.1 The Tenderer warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 25.2 Subject to GCC Sub-Clause 20.1(b), the Tenderer further warrants that the Goods shall be free from defects arising from any act or omission of the Tenderer or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 25.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at





the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

- 25.4 The Procuring Entity shall give notice to the Tenderer stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Tenderer to inspect such defects.
- 25.5 Upon receipt of such notice, the Tenderer shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.
- 25.6 If having been notified, the Tenderer fails to remedy the defect within the period specified in the **SCC**, the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Tenderer's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Tenderer under the Contract.

## **26 Patent Indemnity**

- 26.1 The Tenderer shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 26.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Tenderer or the use of the Goods in the country where the Site is located; and
  - (b) the sale in any country of the products produced by the Goods.
- 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 association or combination with any other equipment, plant, or materials not supplied by the Tenderer, pursuant to the Contract.
- 26.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 26.1, the Procuring Entity shall promptly give the Tenderer a notice thereof, and the Tenderer may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 26.3 If the Tenderer fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.
- 26.4 The Procuring Entity shall, at the Tenderer's request, afford all available assistance to the Tenderer in conducting such proceedings or claim, and shall be reimbursed by the Tenderer for all reasonable expenses incurred in so doing.
- 26.5 The Procuring Entity shall indemnify and hold harmless the Tenderer and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and



expenses, which the Tenderer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

## **27 Change in Laws and Regulations**

- 27.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Eswatini (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Tenderer has thereby been affected in the performance of any of its obligations under the Contract.

## **28 Force Majeure**

- 28.1 The Tenderer shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 28.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Tenderer that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Tenderer. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 28.3 If a Force Majeure situation arises, the Tenderer shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Tenderer shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **29 Change Orders and Contract Amendments**

- 29.1 The Procuring Entity may at any time order the Tenderer through notice in accordance GCC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
  - (b) the method of shipment or packing;
  - (c) the place of delivery; and
  - (d) the Related Services to be provided by the Tenderer.
- 29.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Tenderer’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Tenderer for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Tenderer’s receipt of the Procuring Entity’s change order.





- 29.3 Prices to be charged by the Tenderer for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Tenderer for similar services.
- 29.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

### **30 Extensions of Time**

- 30.1 If at any time during performance of the Contract, the Tenderer or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 11, the Tenderer shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Tenderer's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Tenderer's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 30.2 Except in case of Force Majeure, as provided under GCC Clause 28, a delay by the Tenderer in the performance of its Delivery and Completion obligations shall render the Tenderer liable to the imposition of liquidated damages pursuant to GCC Clause 24, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 30.1.

### **31 Termination**

#### **31.1 Termination for Default**

- (a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Tenderer, may terminate the Contract in whole or in part:
- (i) if the Tenderer fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 30;
  - (ii) if the Tenderer fails to perform any other obligation under the Contract; or
  - (iii) if the Tenderer, in the judgment of the Procuring Entity has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 31.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Tenderer shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Tenderer shall continue performance of the Contract to the extent not terminated.

#### **31.2 Termination for Insolvency.**

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



### 31.3 Termination for Convenience.

- (a) The Procuring Entity, by notice sent to the Tenderer, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Tenderer under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Tenderer's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Tenderer an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Tenderer.

## 32 Assignment

- 32.1 Neither the Procuring Entity nor the Tenderer shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.



## Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

*[The Procuring Entity shall select insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

<b>GCC 1.1(i)</b>	The Procuring Entity is: <i>Eswatini Water Services Corporation</i>
<b>GCC 1.1 (n)</b>	The Project Site(s)/Final Destination(s) is/are: <i>Mananga</i>
<b>GCC 7.1</b>	For <b><u>notices</u></b> , the Procuring Entity's address shall be:  Attention: <i>Procurement Manager</i>  Street Address: <i>CNR MR103 and Cultural Village Drive</i>  City: <i>Ezulwini</i>  <b>Eswatini</b>  Telephone: <i>+268 2416 9000</i>  Electronic mail address: <i>procurement@ewsc.co.sz</i>
<b>GCC 11.1</b>	Details of Shipping and other Documents to be furnished by the Tenderer are <i>[insert shipping details and other documents]</i> .  The above documents shall be received by the Procuring Entity before arrival of the Goods and, if not received, the Tenderer will be responsible for any consequent expenses.
<b>GCC 14.1</b>	<b><i>Sample provision</i></b> GCC 14.1—The method and conditions of payment to be made to the Tenderer under this Contract shall be as follows:  Payment for Goods and Services shall be made as follows: (i) <b>Advance Payment:</b> Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract against a simple receipt and a bank guarantee for the equivalent amount and in the form provided in the Tendering documents or another form acceptable to the Procuring Entity. (ii) <b>On Delivery:</b> Eighty (80) percent of the Contract Price shall be paid on receipt of the Goods and upon submission of the documents



	<p>specified in GCC Clause 12.</p> <p>(iii) <b>On Acceptance:</b> The remaining ten (10) percent of the Contract Price shall be paid to the Tenderer within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Procuring Entity.</p>
<b>GCC 14.5</b>	<p>The payment-delay period after which the Procuring Entity shall pay interest to the Tenderer shall be <b>56</b> days.</p> <p>The interest rate that shall be applied is <b>0</b> %</p>
<b>GCC 16.1</b>	A Performance Security of <b>10% of the Accepted Contract Amount shall be required</b>
<b>GCC 16.3</b>	If required, the Performance Security shall be in the form of : <b>“a Bank Guarantee” or “a Performance Bond”</b>
<b>GCC 21.2</b>	The packing, marking and documentation within and outside the packages shall be: <b>Design, Supply and Installation of a pressed steel tank or equivalent galvanised bolted reservoir and galvanized steel stand</b>
<b>GCC 23.1</b>	The inspections and tests shall be: <i>[insert nature, frequency, procedures for carrying out the inspections and tests]</i>
<b>GCC 23.2</b>	The Inspections and tests shall be conducted at: <b>Mananga</b>
<b>GCC 25.1</b>	The liquidated damage shall be: <b>0.2% per day</b>
<b>GCC 24.1</b>	The maximum amount of liquidated damages shall be: <b>15%</b>
<b>GCC 25.3</b>	<p>The period of validity of the Warranty shall be: <b>365</b> days</p> <p>For purposes of the Warranty, the place(s) of final destination(s) shall be: <b>Mananga</b></p>
<b>GCC 25.5</b>	The period for repair or replacement shall be: <b>30</b> days.



# Section IX. Contract Forms

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# 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
  - (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

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]*



## 2. Performance Security

*[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]*

Date: *[insert date (as day, month, and year) of Tender Submission]*  
 ONT No. and title: *[insert no. and title of Tendering process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

**Beneficiary:** *[insert complete name of Procuring Entity]*

**PERFORMANCE GUARANTEE No.:** *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Tenderer]* (hereinafter called "the Tenderer") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Tenderer, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)<sup>1</sup> in figures and words]* upon receipt by us of your first demand in writing declaring the Tenderer to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,<sup>2</sup> and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

*[signatures of authorized representatives of the bank and the Tenderer]*

<sup>1</sup> The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.

<sup>2</sup> Dates established in accordance with Clause 17.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 15.2 of the GCC intended to be secured by a partial Performance Guarantee. The Procuring Entity should note that in the event of an extension of the time to perform the Contract, the Procuring Entity would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Procuring Entity might consider adding the following text to the Form, at the end of the penultimate paragraph: " We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Procuring Entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."





### 3. Bank Guarantee for Advance Payment

*[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated.]*

Date: *[insert date (as day, month, and year) of Tender Submission]*  
ONT No. and title: *[insert number and title of Tendering process]*

*[bank's letterhead]*

**Beneficiary:** *[insert legal name and address of Procuring Entity]*

**ADVANCE PAYMENT GUARANTEE No.:** *[insert Advance Payment Guarantee no.]*

We, *[insert legal name and address of bank]*, have been informed that *[insert complete name and address of Tenderer]* (hereinafter called "the Tenderer") has entered into Contract No. *[insert number]* dated *[insert date of Agreement]* with you, for the supply of *[insert types of Goods to be delivered]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the Tenderer, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount(s)<sup>3</sup> in figures and words]* upon receipt by us of your first demand in writing declaring that the Tenderer is in breach of its obligation under the Contract because the Tenderer used the advance payment for purposes other than toward delivery of the Goods.

It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the Tenderer on its account *[insert number and domicile of the account]*

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Tenderer under the Contract until *[insert date<sup>4</sup>]*.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

\_\_\_\_\_  
*[signature(s) of authorized representative(s) of the bank]*

<sup>3</sup> The bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.

<sup>4</sup> Insert the Delivery date stipulated in the Contract Delivery Schedule. The Procuring Entity should note that in the event of an extension of the time to perform the Contract, the Procuring Entity would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Procuring Entity might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed *[six months]**[one year]*, in response to the Procuring Entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

