

---

# ESWATINI WATER SERVICES CORPORATION



**Eswatini Water Services Corporation**  
Headquarters, Emtfonjeni Building,  
Cnr MR103 and Cultural  
Village Drive, Ezulwini

## **Open National Tender**

**SEPTEMBER 2023**

<b>Procuring Entity</b>	ESWATINI WATER SERVICES CORPORATION (EWSC)
<b>Subject of Procurement</b>	SUPPLY AND DELIVERY OF GROUNDWATER DRILLING ACCESSORIES AND CONSUMABLES
<b>Reference Number</b>	EWSC 66 OF 2023/24
<b>Issue Date</b>	18 SEPTEMBER 2023
<b>Submission Date</b>	20 OCTOBER 2023

---

# 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.

Letter of Invitation to Tender

ESWATINI WATER SERVICES CORPORATION

Tender number **EWSC 66** of 2023/24

**RE: INVITATION TO TENDER: SUPPLY AND DELIVERY OF GROUNDWATER DRILLING ACCESSORIES AND CONSUMABLES**

The Eswatini Water Services Corporation hereby invites sealed bids for the supply and delivery of groundwater drilling accessories and consumables for the Department of Water Affairs in the Ministry of Natural Resources as tender specifications details.

Submissions are to be accompanied by an original receipt of **SZL 500.00** payable at any EWSC service centre, Trading license, Form J and C, valid tax compliance certificate, power of attorney, ENPF compliance certificate, police clearances for all Directors, Labor compliance certificate, certificate of incorporation, audited financial statements for the past two years, bid securing declaration form, Valid CIC registration certificate and eligibility criteria in terms of the procurement Act. Bids not accompanied by these documents will not be evaluated.

Payment will only be made upon delivery of all the items. Prices are to include all relevant taxes, transport and delivery charges. There will be no advance/upfront payments.

The deadline for submission is **Friday the 20<sup>th</sup> October 2023 at 12.00 noon** at which time they shall be opened physically in the presence of bidders who elect to attend. Late, telegraphic, emailed and faxed tenders shall not be accepted. **There shall also be a compulsory site inspection meeting on the 29<sup>th</sup> of September 2023, 11:00 a.m. local time at Ministry of Natural Resources and Energy, Department of Water Affairs, Groundwater Stores in Matsapha**

Bids shall be valid for a period of 90 days after bid opening and must be hand delivered to a designated tender box in a sealed envelope addressed to:

**The Managing Director  
Swaziland Water Services Corporation Headquarters,  
Emtfonjeni Building, Corner MR 103 and Cultural Village Road  
Ezulwini, Eswatini**

Requests for clarification are to be directed to the e-mail address below before seven (7) days prior to submission of bids.

[procurement@ewsc.co.sz](mailto:procurement@ewsc.co.sz)

The Corporation does not bind itself to accept the lowest or any tender.

**J. MASHWAMA  
MANAGING DIRECTOR**

## Table of Contents

PART 1 – Tendering Procedures .....	1
Section I. Instructions to Tenderers .....	2
Section II. Tendering Data Sheet (TDS).....	19
Section III. Evaluation and Qualification Criteria .....	24
Section IV. Tendering Forms.....	28
Section V. Eligible Countries .....	47
PART 2 – Supply Requirements.....	48
Section VI. Schedule of Requirements .....	49
PART 3 - Contract .....	59
Section VII. General Conditions of Contract.....	60
Section VIII. Special Conditions of Contract .....	73
Section IX. Contract Forms .....	75



## **PART 1 – Tendering Procedures**

# Section I. Instructions to Tenderers

## Table of Clauses

A.	General .....	4
1	Scope of Tender .....	4
2	Source of Funds .....	4
3	Fraud and Corruption.....	4
4	Eligible Tenderers.....	5
5	Eligible Goods and Related Services.....	6
B.	Contents of Tendering Documents .....	6
6	Sections of Tendering Documents .....	6
7	Clarification of Tendering Documents .....	7
8	Amendment of Tendering Documents.....	7
C.	Preparation of Tenders .....	7
9	Cost of Tendering .....	7
10	Language of Tender .....	7
11	Documents Comprising the Tender .....	8
12	Tender Submission Form and Price Schedules.....	8
13	Alternative Tenders .....	8
14	Tender Prices and Discounts.....	8
15	Documents Establishing the Eligibility of the Tenderer.....	9
16	Documents Establishing the Conformity of the Goods and Related Services.....	9
17	Documents Establishing the Qualifications of the Tenderer .....	9
18	Period of Validity of Tenders .....	9
19	Tender Security.....	10
20	Format and Signing of Tender .....	11
D.	Submission and Opening of Tenders.....	11
21	Submission, Sealing and Marking of Tenders .....	11
22	Deadline for Submission of Tenders .....	11
23	Late Tenders .....	11
24	Withdrawal, Substitution, and Modification of Tenders .....	12
25	Tender Opening .....	12
E.	Evaluation and Comparison of Tenders .....	13
26	Confidentiality .....	13



---

27	Clarification of Tenders .....	13
28	Responsiveness of Tenders .....	13
29	Non-conformities, Errors, and Omissions .....	14
30	Preliminary Examination of Tenders .....	14
31	Examination of Terms and Conditions; Technical Evaluation .....	14
32	Evaluation of Tenders .....	15
33	Comparison of Tenders.....	15
34	Post-qualification of the Tenderer .....	16
35	Procuring Entity’s Right to Accept Any Tender, and to Reject Any or All Tenders .....	16
F.	Award of Contract .....	16
36	Award Criteria .....	16
37	Procuring Entity’s Right to Vary Quantities at Time of Award .....	16
38	Notification of Award.....	16
39	Standstill Period.....	16
40	Debriefing by the Procuring Entity .....	17
41	Signing of Contract.....	17
42	Publication of Procurement Contract.....	17
43	Performance Security.....	17
44	Procurement Related Complaints and Administrative Review.....	17

## 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 Emalangenani, 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 non-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.



- 19.6 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned.
- 20 Format and Signing of Tender**
- 20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 11 and scan the tender document and then upload it to a compact disc (CD) and submit the document.
- 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, scanned and uploaded into a compact disc (CD).
- 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 Tender, including alternative Tenders, if permitted in accordance with ITT Clause 13, in one envelope. The rest of the procedure shall be in accordance with ITT sub-Clauses 20.2 and 20.3.
- (b) Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.
- 21.2 The inner and outer envelopes shall:
- (a) Bear the name and address of the Tenderer,
- (b) be addressed to the Procuring Entity in accordance with ITT Sub-Clause 22.1,
- (c) bear the specific identification of this Tendering process indicated in ITT Sub-Clause 1.1 and any additional identification marks as specified in the TDS; and
- (d) bear a warning not to open before the time and date for Tender opening, in accordance with ITT Sub-Clause 25.1.
- 21.3 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender.
- 22 Deadline for Submission of Tenders**
- 22.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified in the TDS.
- 22.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering Documents in accordance with ITT Clause 8, in which case all rights and obligations 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**

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

**Conditions;  
Technical  
Evaluation**

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 Procuring Entity to be qualified to perform the Contract satisfactorily.
- 44 Procurement Related Complaints and**
- 44.1 The procedures for making a Procurement-related Complaint are as **specified in the TDS.**
- 44.2 A request for administrative review shall be made in the form provided on

**Administrative  
Review**

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.

<b>ITT Clause Reference</b>	<b>A. General</b>
<b>ITT 1.1</b>	The Procuring Entity is: <b>Eswatini Water Services Corporation</b>
<b>ITT 1.1</b>	The name and identification number of the ONT is, <b>Supply and Delivery of Groundwater Drilling Accessories and Consumables</b>
<b>ITT 2.1</b>	The Procuring Entity is: <b>Eswatini Water Services Corporation</b>
<b>ITT 2.1</b>	The name of the Project is: <b>Supply and Delivery of Groundwater Drilling Accessories and Consumables</b>
<b>ITT 4.3</b>	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>B. Contents of Tendering Documents</b>
<b>ITT 7.1</b>	For <b>clarification purposes</b> only, the Procuring Entity'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>  Telephone: <b>+268 2416 9000</b> Electronic mail address: <a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a>  <b>EWSC shall respond to written requests for clarification which it receives not later than 7 days prior to the deadline for the submission of tenders.</b>
<b>IT 9</b>	Cost of bid document: SZL500 payable at any EWSC Service Centre.
	<b>C. Preparation of Tenders</b>
<b>ITT 11.1 (f)</b>	The Tenderer shall submit the following additional documents in its Tender:  <b>1. Original and Valid Tax Compliance Certificate</b>

	<ol style="list-style-type: none"> <li>2. <b>Certified copy of Valid Trading License</b></li> <li>3. <b>Power of Attorney</b></li> <li>4. <b>Tender Securing Declaration Form</b></li> <li>5. <b>Police Clearance Certificate for Directors or Affidavit</b></li> <li>6. <b>Valid ENPF Certificate</b></li> <li>7. <b>Valid Labour Compliance Certificate</b></li> <li>8. <b>Certificate of Incorporation</b></li> <li>9. <b>Original tender receipt (Proof of tender purchase)</b></li> <li>10. <b>Audited financial statement for the past two years.</b></li> <li>11. <b>Form C (for shareholding)</b></li> <li>12. <b>Form J (for company directors)</b></li> <li>13. <b>Tender submission form</b></li> <li>14. <b>Valid Construction Industry Council (CIC) Certificate</b></li> </ol>
<b>ITT 13.1</b>	Alternative Tenders <b>shall not</b> <i>be</i> considered.
<b>ITT 14.7</b>	<p>Prices quoted for each lot shall correspond to 100 % of the items specified for each lot.</p> <p>Prices quoted for each item of a lot shall correspond to 100 percent of the quantities specified for this item of a lot.</p> <p>The tender has got 2 different lots being lot 1 and lot 2 as specified in price schedules.</p>
<b>ITT 16.3</b>	Period of time the Goods are expected to be functioning (for the purpose of spare parts): <b>5 years</b>
ITT 17.1 (a)	After sales service is: <b>required</b>
<b>ITT 18.1</b>	The Tender validity period shall be <b>90</b> days.
<b>ITT 19.1</b>	Tender shall include a Tender Security using the form included in Section IV Tendering Forms
<b>ITT 19.2</b>	The amount of the Tender Security is not required tenderers are expected to

	full fill the tender securing declaration form as per instruction.
<b>ITT 20.1</b>	In addition to the original of the Tender, the number of copies is 1
	<b>D. Submission and Opening of Tenders</b>
<b>ITT 21.1</b>	Tenderers <b>shall not</b> have the option of submitting their Tenders electronically.
<b>ITT 21.1 (b)</b>	If Tenderers shall have the option of submitting their Tenders electronically, the electronic Tendering submission procedures shall be: <b>Not applicable</b>
<b>ITT 21.2 (c)</b>	The inner and outer envelopes shall bear the following additional identification marks: <b>EWSC Tender No. 66 of 2023/24</b>  <b>Supply and Delivery of Groundwater Drilling Accessories and Consumables</b>
<b>ITT 22.1</b>	The Tender submission shall take place at: Street Address: <b>CNR MR103 and Cultural Village Drive</b> Floor/Room number: <b>Designated Tender Box at EWSC Headquarters Reception Area</b> City: <b>Ezulwini</b> Country: <b>Eswatini</b>  The deadline for the submission of tenders is: Date: <b>20<sup>th</sup> October 2023</b> Time: <b>12h00</b>  <b>Before submission of tender documents, there shall also be a compulsory site inspection meeting on the:</b> <b>Date: 29<sup>th</sup> of September 2023</b> <b>Time: 11:00 a.m. (local time)</b> <b>Venue: Ministry of Natural Resources, Department of Water Affairs Stores at Matsapha, Eswatini (26°29'38.4"S, 31°18'15.5"E)</b>
<b>ITT 25.1</b>	The Tender opening shall take place at:  Street Address: <b>CNR MR103 and Cultural Village Drive</b>  Floor/ Room number: <b>Pool Area</b>  City: <b>Ezulwini, Eswatini</b>  Date: <b>20th October 2023</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>Not Applicable</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> <p>(a) Deviation in Delivery schedule: <b>Not applicable</b></p> <p>(b) the cost of major replacement components, mandatory spare parts, and service: <b>No</b></p> <p>(c) the performance and productivity of the equipment offered; <b>Yes, as specified in the BOQ/Price schedule.</b></p>
<b>ITT 32.5</b>	Tenderers <b>shall not</b> be allowed to quote separate prices for one or more lots.
	<b>F. Award of Contract</b>
<b>ITT 36.1</b>	<p>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.</p> <p>Award will be done in line with eligibility of tenderer, technical responsiveness and competitiveness in pricing.</p>
<b>ITT 37.1</b>	<p>The maximum percentage by which quantities may be increased is: <b>15%</b></p> <p>The maximum percentage by which quantities may be decreased is: <b>0%</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: The Managing Director</b>  <b>Title/position: The Managing Director</b>  <b>Procuring Entity: Eswatini Water Services Corporation</b></p>

	<p><b>Email address:</b> <a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a></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.*

### **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

The evaluation shall be conducted on a yes or no basis and tender will be awarded based on eligibility, technical responsiveness and price competitiveness.

## 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 2 years**

- (b) Experience and Technical Capacity

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

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



## Technical Evaluation criteria

	<b>Criteria</b>	<b>Comments</b>	<b>YES/NO</b>
<b>1</b>	<b>Financial Capacity</b>	<ul style="list-style-type: none"> <li>• Audited financial statements for the past 2 years.</li> </ul>	
		<ul style="list-style-type: none"> <li>• Letter from the bank guaranteeing funding of not less than E1,000,000.00 or bank statement with a minimum of E1,000,000.00</li> </ul>	
<b>2</b>	<b>Company experience and track record</b>	<ul style="list-style-type: none"> <li>• Relevant Experience of supplier not less than 2 years</li> </ul>	
<b>3</b>	<b>Similar sized projects</b>	<ul style="list-style-type: none"> <li>• Must have undertaken three (3) similar sized projects in the past two years. Evidence must be attached in the form of purchase orders, contracts, or reference letters from previous contractors.</li> </ul>	
<b>4</b>	<b>Manufacturer's Authorisation</b>	<ul style="list-style-type: none"> <li>• Must have a guarantee for the source of supply from manufacturer on goods required in lot 2 only.</li> </ul>	
<b>5</b>	<b>ISO/SABS Certification (Manufacturing)</b>	<ul style="list-style-type: none"> <li>• Provide evidence that the required equipment is manufactured under an ISO/SABS certified environment and quality standards.</li> </ul>	
<b>6</b>	<b>Adherence to technical specification</b>	<ul style="list-style-type: none"> <li>• As detailed under price schedules and required specifications.</li> </ul>	
<b>7</b>	<b>Provision of warranties</b>	<ul style="list-style-type: none"> <li>• Equipment to be supplied shall have a 12-month warranty. (This does not apply to consumable items)</li> </ul>	

# Section IV. Tendering Forms

## Table of Forms

Tenderer Information Form.....	29
Joint Venture Partner Information Form .....	30
Tender Submission Form .....	31
Tender Security (Bank Guarantee).....	39
Tender Security (Insurance Bond).....	41
Tender-Securing Declaration .....	43

## 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 processes]*

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>
<p>6. JV's Party Authorized Representative Information</p> <p>Name: <i>[insert name of JV's Party authorized representative]</i></p> <p>Address: <i>[insert address of JV's Party authorized representative]</i></p> <p>Telephone numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i></p> <p>Email Address: <i>[insert email address of JV's Party authorized representative]</i></p>
<p>7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i></p> <p><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.</p> <p><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.</p>

## Tender Submission Form

*[In a company headed paper, 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. 65 of 2023/24**

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

### SUPPLY AND DELIVERY OF GROUNDWATER DRILLING ACCESSORIES AND CONSUMABLES

#### LOT 1

Item No.	Quantity	Item Description	Unit	Statement of Compliance (*)	Unit Rate (E)	Total (E)
1	50	152 mm ID x 6.1 m x 6 mm Steel Casing Pipe	No.			
2	20	152 mm ID x 6.1 m x 6 mm Slotted Steel Casing Pipe	No.			
3	50	203 mm ID x 6 m x 6.1 mm Steel Casing Pipe	No.			
4	20	203 mm ID x 6 m x 6.1 mm Slotted Steel Casing Pipe	No.			
5	200	5mmx 6 m x 140 mm OD Threaded Perforated PVC Casing Pipe	No.			
6	400	5mm x 6m x 140mm OD Threaded Plain PVC Casing Pipe	No.			
7	50	4 m x 140 mm OD Threaded Perforated PVC Casing Pipe	No.			
8	150	4 m x 140 mm OD Threaded Plain PVC Casing Pipe	No.			
9	50	5mmx 6 m x 140 mm OD Threaded End Cap for PVC Casing Pipe	No.			
10	100	6 m x 180mm OD Threaded Perforated PVC Casing Pipe	No.			
11	200	6 m x 180mm OD Threaded Plain PVC Casing Pipe	No.			
12	50	6 m x 180mm OD Threaded End Cap PVC Casing Pipe	No.			
13	20	6 m Long 4½" x 3 ½" Regular API Drilling Rod	No.			
14	20	4 m Long 4½" x 3 ½" Regular API Drilling Rod	No.			
15	5	4 ½" x 3 ½" API Female Threaded Sub Steel	No.			
16	25	Rod Wiper Part No. 5749083 (Mud flap)	No.			
17	10	Top Head Packing Part No.58035254	No.			
18	2	Drilling Hammer Basket (Fabricate as per sample)	No.			
19	3	6" Steel Casing Clamp Assembly (Fabricate as per sample)	No.			
20	3	8" Steel Casing Clamp Assembly (Fabricate as per sample)	No.			
21	25	176mm Steel Borehole Cap Assembly	No.			
22	25	215mm Steel Borehole Cap Assembly	No.			
23	6	6" Steel Casing Clamp Assembly - for 140mm PVC Pipe (Fabricate as per availed sample)	No.			
24	6	8" Steel Casing Clamp Assembly - for 180mm PVC Pipe (Fabricate as per sample; available for viewing)	No.			
25	2	Wrench - Breakout Cylinder IR 58158452: sample available	No.			
26	5	Break - Out Tongs Complete (TH-P-2141(50195916)); sample available	No.			
27	5	Insert - Knurled (DPIK - 4174): sample available	No.			
28	5	Insert - Plain (DPIP - 4174): sample available	No.			
29	5	Chain Screw (DPSC - 4174-68): sample available	No.			
30	5	Nut - Chain Screw (DPNCS - 4174-CH)	No.			
31	5	Link-2 Section Repair (15-45-2 A-R)	No.			
32	12	Drill Rod Guide 4 1/2" (IR 58035320)	No.			

33	2	Lower Wrench Assembly 3 1/4" and 4" (58047143)	No.			
34	10	Compressor Oil - PAROIL S EXTREME x 20L	No.			
35	1	Rechargeable Batteries Size - R14 Per Box of 64 (Dry Cells; 64 cells)	No.			
36	1	Battery Charger for rechargeable R14 Dry Cells	No.			
37	1	Splicing Kit 1M x 5Kg	No.			
38	2	Submersible Lead Out Cable: 1m length	No.			
39	1	Masking Tape in 5Kg (Insulation)	No.			
40	1	HDPE Pipe 32mm x 100m Class 12	No.			
41	1	HDPE Pipe 40mm x 100m Class 12	No.			
42	4	HDPE Male Adapter 32mm	No.			
43	4	HDPE Female Adapter 32mm	No.			
44	2	HDPE Male Adapter 40mm	No.			
45	2	HDPE Female Adapter 40mm	No.			
46	2	Submersible Cable 2.5mm x 100m	No.			
47	2	Submersible Cable 1.5mm x 100m	No.			
48	5	High Strength Wooden Rig Stand - 100mmx100mmx6m (sample available)	No.			
49	5	Diesel Cummins Engine Coolant in 20L	No.			
50	5	Deck Kiloskier Engine Coolant in 20L	No.			
		Transportation and delivery to designated stores location (Matsapha, Eswatini (26°29'38.4"S, 31°18'15.5"E))				
		Subtotal				
		CIC Levy				
		VAT @ 15%				
		<b>Total Amount for Lot 1</b>				

**LOT 2: This materials lot will require manufacturer's authorization or letter of support on bid items as a minimum precondition to tender.**

Item No.	Quantity	Item Description	Unit	Statement of Compliance (*)	Unit Rate (E)	Total (E)
51	5	5 1/2" Drill Hammer (DTH)	No.			
52	5	1 x 8" Stabilizer: 6.1m long	No.			
53	6	5 1/2" Mission Shank Drill Hammer or better	No.			
54	2	7 1/2" Drill Hammer (DTH)	No.			
55	2	6 1/2" Drill Hammer	No.			
56	50	5 7/8" Drill Bit	No.			
57	20	7 7/8" Drill Bit	No.			
58	5	5 3/4" Drill Bit	No.			
59	4	10" Drill Bit	No.			
60	1	Pilot Reamer Bit and Accessories - complete assembly: 6" to 8" well extension.	No.			
61	1	8-10" Odyssey drill hammer bit system or equivalent	No.			
62	10	Groundwater Monitoring Telemetry Water logger, to measure water conductivity, temperature and depth (CTD), Measuring Sensors; 5 x 45m Cable length, 5 x 70m Cable length (cable looping capable) - CTD	No.			



		<p>GPRS Compact or equivalent- Water Tight and Corrosion Resistant, Compatible with long life batteries source able in Eswatini, Slim Sim Card Provision or equivalent.</p> <p><b>Note:</b></p> <ol style="list-style-type: none"> <li>1. The system to be supplied must have traceable installations references in SADC region, resilient and reliable water loggers to cope over a wide range of water quality conditions. The offer must include trainings on system setup, system calibration and onsite recalibration of loggers, trouble shooting, data interpretation and reporting. Trainings will be critical to prepare DWA technicians on subsequent installations as the groundwater monitoring network is being expanded on annual basis. The system should be flexible for integration with other applications such as GeOdin application.</li> <li>2. In your bid indicate key staff profiles with experience on similar assignments executed in the SADC region, inclusive of individual CVs.</li> <li>3. Logger mounting accessories in monitoring wells must consider that Eswatini wells ID vary between 6-8inch.</li> <li>4. This offer is inclusive of sections; 63, 64 and 65. Partial offers will not be entertained.</li> </ol>				
63	2	Field Note Book (Rugged padded, Water and dust proofed encased unit); CPU Processing Unit for Calibrating CTD GPRS Compact unit, manual field data migration (when necessary) and onsite logger recalibration capable; with minimum i7 Processor, USB Ports for harnessing Calibration Cap or equivalent.	No.			
64	3	Calibration Cap for CTD GPRS Compact or equivalent- Tested for system connectivity with field note book and logger unit.	No.			
65	2	Signal Booster Antenna with the Appropriate Adaptor Port to Logger or equivalent - to improve mobile signal.	No.			
66	2	Otta Version Water Level Probe x 75m depth	No.			
67	1	Otta Version Water Level Probe x 100m depth	No.			
68	1	<p>Supply, install, a fully licensed GeODin professional version application with a 2 years subscription activated, with a minimum of 3 users connecting independently. Elementary to advanced system trainings to be facilitated at 2 separate intervals; to capacitate DWA technicians on the application usage with emphasis on handling, processing and managing hydrogeological data and other geospatial information.</p> <p><b>Note:</b></p> <p>The trainings must consider as minimum; hydrogeological data management, importing and exporting geospatial data, data/information archiving, generating thematic maps, cross sections, flexible to integrate groundwater monitoring data and other geospatial based information, incorporating existing hydrogeological maps, lithological data, ability to handle shape files and exchange products in multiple formats.</p> <ul style="list-style-type: none"> <li>➤ 2 x Mandatory trainings on the use of the application on various hydrogeological activities to capture and process data into information formats.</li> <li>➤ 1<sup>st</sup> and 2<sup>nd</sup> year annual subscription licence be</li> </ul>	No.			

		<p>activated.</p> <p>➤ In your bid indicate key staff profiles with experience on similar assignments executed elsewhere, inclusive of individual CVs. Firms or professionals with a traceable footprint in the SADC Region will be considered as an advantage subject to meeting all other requirements.</p>				
69	10	Aero Foam (Drilling Foam) in 210L Container	No.			
70	5	Rock Drill Hammer Oil in 210L (Tundralube) Container	No.			
71	10	Rock Drill Hammer Oil in 20L (Tundralube) Container	No.			
72	3	SRD 5000 - Compressor Air Clear Filter - PA2518A / PA 2519	No.			
73	2	SRD 5000 - Axillary PRESSURE SENSOR	No.			
74	2	SRD 5000 - High PRESSURE SENSOR	No.			
75	2	SRD 5000 - Low PRESSURE SENSOR	No.			
76	2	SRD 5000 - TEMPERATURE SENSOR	No.			
77	2	SRD 5000 - FUEL PICK-UP SENSOR	No.			
78	5	SRD 5000 - COOLING FAN V-BELT	No.			
79	5	SRD 5000 - FOAM PUMP COUPLING	No.			
80	2	SRD - BREATHER FILTER	No.			
81	5	SRD SERVICE KIT - KILOSQUIER ENGINE (Air, Oil, Fuel Filters)	No.			
82	2	SRD Compressor Oil Separator agglomerator element	No.			
83	1	Silica Sand 2.5-3.5mm x 5 tons	No.			
84	20	Bentonite Pellets x 25L packaging	No.			
85	1	<p><b>Trailer mounted Pumping Test Kit:</b>  Three Phase diesel generator 30KVA (silent version), Submersible pump 3KW (complete motor and pump assembly) with minimum pump flow rate of 2.4L/s at 120m Head, Pressure gauge(s), water flow meter (non-drifting), control panel, gears (Variable Drive Control) and switches, electrical cable and accessories, high strength safety cable at 100m and high strength water pipe 63mm x100m. spare tire for trailer inclusive and must be fit for haulage on all terrains. Full demonstration and operational procedure trainings to be offered on site in Eswatini selected by the procuring entity. Trailer must comply with all road worthiness standards.</p>	No.			
		Transportation and delivery to designated stores location ( <b>Matsapha, Eswatini</b> (26°29'38.4"S, 31°18'15.5"E))				
		Subtotal				
		CIC Levy				
		VAT @ 15%				
		<b>Total Amount for Lot 2</b>				

Corporate Seal

---

*(Signature)*


---

*(Printed name and title)*

## **Description / Specification**

### **1. Warranty**

- a) The bidder shall offer on-site comprehensive warranty of the equipment of not less than 12 months from the date of successful delivering of the drilling equipment excluding consumables at the designated location & shall cover every part of the equipment including parts having limited life etc. The purchaser is not liable to pay any extra charges on any account during warranty period.
- b) The bidder shall pay to the purchaser such compensations that may arise by reasons of the warranty therein contained but not attended by the bidder.
- c) Any part or parts fail or proved defective within the on-site warranty period specified above, owing to defect in design, material or workmanship, the bidder shall have to replace them at the place of installation without asking for any charges.
- d) During the warranty period, expert(s) shall be deputed at site by the bidder within three working days from the date of request from purchaser, to rectify and fixing the defects of the equipment at the location where equipment would have been installed. The cost of deputation of expert(s) and any other associated expenditure shall be borne by the bidder.

### **2. After Sales Services**

- a) The bidder shall ensure to render after sales services during the warranty period to the satisfaction of purchaser.

### **3. Manuals:**

The bidder to supply three (01) sets of each of the following manuals in hard format and one (01) soft format:

- a) Installation Manual
- b) Operation Manual
- c) Maintenance Manual

### **4. Performance Period:**

- a) The supplier shall provide EWSC with a delivery schedule. It is expected that the delivery will be within 30 days of the Notice to Proceed.

- b) The material shall be inspected on receipt at site and bidder shall be responsible for any damage during the transit of equipment.
- c) The bidder shall not arrange part shipments and/or trans-shipments without the permission of purchaser. The insurance cover including insuring the goods against the loss or damage incidental to manufacture or acquisition, transportation, storage and delivery shall be obtained by the bidder in his own name and not in the name of purchaser. The purchaser will as soon as possible but not later than 30 days from the date of arrival of goods at destination shall notify the bidder of any loss or damage to the goods.

**5. Delivery period after receipt of supply order from purchaser:**

The complete delivery of equipment by the bidder shall be within thirty (30) calendar days from the date of issue of supply order or letter of appointment and signing of contract. However, the bidder has an option to submit the best delivery time.

## 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 (Insurance 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*

*Corporate Seal (where appropriate)*

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

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

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

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



## Tender-Securing Declaration

*[In a company headed paper, the Tenderer shall fill in this Form in accordance with the instructions indicated.]*

Date: *[date (as day, month and year)]*  
Tender No.: *[number of Tendering process]*  
Alternative No.: *[identification No if this is a Tender for an alternative]*

To: *[complete name of Procuring Entity]*

We, the undersigned, declare that:

We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

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 *[number of months or years]* starting on *[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 in the Form of Tender; 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; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

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

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[date of signing]*  
Corporate Seal (where appropriate)

*[Note: In case of a Joint Venture, the Tender Securing Declaration must be in the name of all partners to the Joint Venture that submits the Tender.]*

## Manufacturer's Authorization

*[The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer shall include it in its Tender, if so indicated in the TDS.]*

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

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

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

27

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

### WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of Tenderer]* to submit a Tender the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

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

Name: *[insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[insert title]*

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

<b>ELIGIBILITY CRITERIA IN TERMS OF THE PROCUREMENT ACT 2011</b>	
<b>Bidder:</b> ..... <b>Date:</b> .....	
<b>JV Partner:</b> .....	
<b>LEGAL REQUIREMENT</b>	<b>RESPONSE/EVIDENCE</b>
Our firm has the legal capacity to enter into the contract	Certificates of incorporation, Forms C and J, Trading licences Power of attorney CIC certificate  .....
Our firm is not insolvent, in receivership, bankrupt or being wound up. Its affairs are not being administered by a court or a judicial officer, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing	Audited financial statements for the past three years enclosed. Confirmation by signature of authorised signatory: .....
Our firm has fulfilled its obligations to pay taxes and social security contributions	Valid tax compliance certificate for Government and parastatal tenders enclosed. ENPF Compliance Certificate for national tenderers  .....
It adheres to basic labour legislation viz; in respect to satisfactory, safe and healthy conditions.	Labour Compliance Certificate enclosed
Our firm, or any of its directors/key personnel do not have any conflict of interest in relation to the procurement requirements and do not have circumstances in which we can benefit whether directly nor indirectly from the procurement process.	Confirmation by signature of authorised signatory: .....
Our firm, or any of its directors/key personnel or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to	Police clearance Certificate enclosed. Confirmation by signature of authorised signatory: .....

enter into a procurement contract within a period of five years preceding the commencement of procurement proceedings	
Our company and none of its directors or officers have been suspended from participating in the tendering process by SPPRA for the reasons specified in Section 56 of the Act	Confirmation by signature of authorised signatory: .....
Our company and its directors and officers are not a government owned entity, are not public officers or politicians as defined in Section 60 of the Act	Confirmation by signature of authorised signatory: .....
SWSC bid document purchase receipt	Enclosed

## 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:

---

---

---

---

## **PART 2 – Supply Requirements**

# Section VI. Schedule of Requirements

## Contents

1.	List of Goods and Delivery Schedule.....	51
2.	List of Related Services and Completion Schedule.....	52
3.	Technical Specifications.....	53
4.	Drawings .....	57
5.	Inspections and Tests.....	58

## **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

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	All Items Required in Lot 1	As specified in price schedule	As specified in price schedule	DWA Groundwater r site stores;  <b>Matsapha, Eswatini</b> (26°29'38.4"S , 31°18'15.5"E)	20 November 2023	30 November 2023	
2	All Items Required in Lot 2	As specified in price schedule	As specified in price schedule	DWA Groundwater r site stores;  <b>Matsapha, Eswatini</b> (26°29'38.4"S , 31°18'15.5"E)	20 November 2023	30 November 2023	

**All goods to be delivered at DWA Groundwater stores at; Matsapha, Eswatini (26°29'38.4"S, 31°18'15.5"E).**



### 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: Kindly refer to section

<i>Item No</i>	<i>Name of Goods or Related Service</i>	<i>Technical Specifications and Standards</i>
1.	Lot 1	As specified in Lot 1 price schedule items description.
2.	Lot 2	As specified in Lot 2 price schedule items description.

## **GENERAL**

The non-completion of the Statement of Compliance and the Bills of Quantities will lead to the disqualification of the tenderer.

### **Quality Standards and Trade Names**

The Contractor is advised that all trade names specified in these Bills of

Quantities and in the Specifications are to be read as "of other approved equivalent". Trade names and manufacturer's catalogue reference numbers have been specified to establish a minimum quality standard only and are not intended to limit the Contractor to any specific manufacturer or, manufacturer's product. The Contractor shall price the Bills as printed. The Client's written approval must, in all cases, be obtained before the use of any alternative to the specification.

### **Guarantees**

Where guarantees are called for, the Contractor shall obtain a written guarantee, addressed to the Purchaser, from the firm supplying the materials and shall deliver same to the client with each Statement or Invoice submitted. The guarantee shall state that workmanship and materials are guaranteed for a specified period from the date of delivery or installation, and that any defects that may arise during the specified period shall be made good at the expense of the firm supplying materials upon written notice from the Purchaser to do so. The Purchaser shall be the sole judge of the cause responsible for defects in the materials and his ruling shall be final and binding.

### **Assembling**

Manufactured items are to include for all fitting and the full assembling thereof and are to be in Perfect working order.

### **Loss by Theft, Fire or otherwise**

The Contractor shall immediately upon acceptance of his tender take full risk for any loss or damage whatsoever to any materials under this contract before delivery and acceptance by the Purchaser, whether caused by theft, fire, storm, riot or otherwise and shall take such steps- as he may deem necessary for his own protection against such loss or damage.

**Placing materials in store**

Where materials are to be placed in store for subsequent delivery to the client, prices are to include for storing in a suitable place, either on or off site, all multiple handling, where necessary, labelling to enable corrects identification.



## 5. Inspections and Tests

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

<b>List of Inspections and Tests</b>		
<b>Line-Item No</b>	<b>Brief Description of Item</b>	<b>Inspection and/or Test</b>
1.	All Lot 1 items	Inspect if equipment, goods, accessories, and consumables is new, sealed and not defective.
2.	All Lot 1 items	Inspect if equipment, goods, accessories, and consumables is new, sealed and not defective.



## **PART 3 - Contract**

## Section VII. General Conditions of Contract

### Table of Clauses

1	Scope of Tender.....	4
2	Source of Funds.....	4
3	Fraud and Corruption .....	4
4	Eligible Tenderers .....	5
5	Eligible Goods and Related Services .....	6
6	Sections of Tendering Documents.....	6
7	Clarification of Tendering Documents.....	7
8	Amendment of Tendering Documents .....	7
9	Cost of Tendering.....	7
10	Language of Tender.....	7
11	Documents Comprising the Tender.....	8
12	Tender Submission Form and Price Schedules .....	8
13	Alternative Tenders .....	8
14	Tender Prices and Discounts .....	8
15	Documents Establishing the Eligibility of the Tenderer .....	9
16	Documents Establishing the Conformity of the Goods and Related Services.....	9
17	Documents Establishing the Qualifications of the Tenderer .....	9
18	Period of Validity of Tenders .....	9
19	Tender Security .....	10
20	Format and Signing of Tender.....	11
21	Submission, Sealing and Marking of Tenders.....	11
22	Deadline for Submission of Tenders .....	11
23	Late Tenders .....	11
24	Withdrawal, Substitution, and Modification of Tenders .....	12
25	Tender Opening .....	12
26	Confidentiality.....	13
27	Clarification of Tenders.....	13
28	Responsiveness of Tenders.....	13
29	Non-conformities, Errors, and Omissions .....	14
30	Preliminary Examination of Tenders.....	14
31	Examination of Terms and Conditions; Technical Evaluation.....	14

32	Evaluation of Tenders .....	15
33	Comparison of Tenders .....	15
34	Post-qualification of the Tenderer .....	16
35	Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders .....	16
36	Award Criteria .....	16
37	Procuring Entity's Right to Vary Quantities at Time of Award.....	16
38	Notification of Award .....	16
39	Standstill Period .....	16
40	Debriefing by the Procuring Entity.....	17
41	Signing of Contract .....	17
42	Publication of Procurement Contract .....	17
43	Performance Security .....	17
44	Procurement Related Complaints and Administrative Review .....	17

## 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, 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 prices 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.

<b>GCC 1.1(i)</b>	The Procuring Entity is: <b>Eswatini Water Services Corporation</b>
<b>GCC 1.1 (n)</b>	The Project Site(s)/Final Destination(s) is/are: <b>DWA Groundwater Stores at Matsapha, Eswatini (26°29'38.4"S, 31°18'15.5"E)</b>
<b>GCC 7.1</b>	For <b>notices</b> , the Procuring Entity's address shall be: Attention: <b>Procurement Manager</b> Street Address: <b>CNR MR103 and Cultural Village Drive</b> City: <b>Ezulwini</b> <b>Eswatini</b> Telephone: <b>+268 2416 9000</b> Electronic mail address: <a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a>
<b>GCC 11.1</b>	Details of Shipping and other Documents to be furnished by the Tenderer are <b>N/A</b> .  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>N/A</b>
<b>GCC 14.1</b>	<b>Sample provision</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: specified in GCC Clause 12. (iii) <b>On Acceptance:</b> One hundred (100) 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.

<b>GCC 14.5</b>	The payment-delay period after which the Procuring Entity shall pay interest to the Tenderer shall be <b>63</b> days.  The interest rate that shall be applied is <b>0 %</b>
<b>GCC 16.1</b>	A Performance Security of <b>10% of the Accepted Contract Amount</b> shall be required
<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>SUPPLY AND DELIVERY OF GROUNDWATER DRILLING ACCESSORIES AND CONSUMABLES</b>
<b>GCC 23.1</b>	The inspections and tests shall be: <b>Conducted when tenderer delivers goods on site further verification and assessments to be done on equipment when using it on site.</b>
<b>GCC 23.2</b>	The Inspections and tests shall be conducted at: <b>DWA Groundwater Stores at Matsapha, Eswatini (26°29'38.4"S, 31°18'15.5"E)</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>10%</b>
<b>GCC 25.3</b>	The period of validity of the Warranty shall be: <b>365</b> days  For purposes of the Warranty, the place(s) of final destination(s) shall be:  <b>N/A</b>
<b>GCC 25.5</b>	The period for repair or replacement shall be: <b>30</b> days on all equipment and goods supplied.



## **Section IX. Contract Forms**

### **Table of Forms**

1. Contract Agreement .....	76
2. Performance Security .....	78
3. Bank Guarantee for Advance Payment .....	79

# 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."