

# **ESWATINI ENERGY REGULATORY AUTHORITY**



## **REQUEST FOR PROPOSALS**

**CONSULTANCY TO DEVELOP A THREE YEAR (2023-2026) STRATEGIC PLAN FOR  
ESWATINI ENERGY REGULATORY AUTHORITY – ESERA/RFP/09/2020-2021**

**APRIL 2021**



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# 1 INVITATION LETTER

## **REQUEST FOR PROPOSALS TO DEVELOP A THREE YEAR (2023-2026) STRATEGIC PLAN FOR ESWATINI ENERGY REGULATORY AUTHORITY – ESERA/RFP/09/2021-2022**

Tenders are hereby invited from suitably qualified service providers to develop a three year (2023-2026) strategic plan for the Authority.

Terms of Reference of this tender may be accessed from the websites of Eswatini Public Procurement Regulatory Agency (ESPPRA) i.e. [www.sppra.co.sz](http://www.sppra.co.sz) and ESERA, [www.sera.org.sz](http://www.sera.org.sz)

**The closing date for submission of tenders is Friday, 07<sup>th</sup> May, 2021 at 11H00.** Requests for clarifications closes on 27th April, 2021

Late, incomplete, telephoned or telegraphic tenders will not be considered. Tenders should be submitted with original receipt as proof of payment of a non-refundable tender fee of E350.00

Completed tenders should be delivered, in a sealed envelope, into the tender box at the Reception of Eswatini Energy Regulatory Authority located at the First floor, RHUS Office Park, Karl Grant Street, Mbabane, Eswatini and should be clearly marked with the words:

### **ESERA/RFP/09/2021-2022: CONSULTANCY TO DEVELOP A THREE YEAR (2023-2026) STRATEGIC PLAN**

Any actions or tendencies that will be interpreted as an attempt to interfere with or influence the tendering process will result in immediate disqualification of the Tenderer. All enquiries relating to this tender may be addressed to Mr. Sabelo Dube, Tel No. 2404 2103/8425, Fax No. 24048474 e-mail: [dubes@ESERA.org.sz](mailto:dubes@ESERA.org.sz)

*ESERA does not bind itself to accepting the lowest or any proposal*



## 2 INTRODUCTION

ESERA has a Strategic Plan in place which provides a roadmap on what the authority will be focusing on for the period 2019 – 2021, the current year (ending 31<sup>st</sup> March 2021) being the final year of the strategic plan period. This strategic plan is anchored on the premise that ESERA has a central role in the implementation of the SIPP Policy and ESI reforms in general in the country. Through the SIPP, government's efforts were geared towards reducing the high dependency on imports, beneficiate local resources and increase security of electricity supply in the Kingdom of Eswatini. Having developed the strategic plan for 2019 – 2021, the Authority has been conducting periodic reviews of its performance the last of which was held at the end of September 2020 for the Financial Year 2020/21.

## 3 BACKGROUND

Eswatini Energy Regulatory Authority is a statutory Energy Regulatory Body established through the Energy Regulatory Act, 2007 (Act No.2 of 2007). The Mandate of ESERA is the administration of Electricity Act, 2007 (Act No.3 of 2007), with the primary and core responsibilities of exercising control over the electricity supply industry (ESI) and regulation of generation, transmission, distribution, supply, use, import and export of electricity in Eswatini. It is also responsible for the regulation of electricity tariffs and quality of supply and services.

Government has recently enacted the Petroleum Act, 2020, an act whose main objective is to consolidate and update all existing pieces of legislation governing the petroleum sector to ensure that the sector is well regulated. It creates a holistic regulatory framework for the petroleum sector in the entire value chain from the upstream activities of exploration and production of crude oil and natural gas, midstream activities of refinery development, bulk storage and pipeline transportation to the downstream activities of wholesaling and distribution of petroleum products.

To promote and ensure safe use of all petroleum products in the country, the Act has introduced the licencing of some activities, which were previously not regulated, such as wholesaling and retailing of Liquid Petroleum Gas (LPG) known as handy gas. The Act also recognizes and licences fuel distributors, fuel storages, supply of Natural Gas, fuel blending, and petrochemical production.

In line with best regional and international regulatory practices and SADC requirements to ensure transparency and efficient regulation of the petroleum sector, the Act allocates some responsibilities, which were previously undertaken by the Ministry of Natural Resources and Energy (MNRE), to the Eswatini Energy Regulatory Authority.

The Eswatini Energy Regulatory Authority (ESERA) is now responsible for the licencing and inspection of downstream petroleum activities. The Regulator is responsible for issuing the following licences; wholesale, retail, commercial consumers, Liquid Petroleum Gas (LPG), distribution, storage, blending, Natural Gas and Petrochemical licences.

The Act also completes the process establishing the National Oil Company (which shall be commonly known as the Eswatini National Petroleum Company (ENPC)). This will enable



Government's participation in the petroleum sector. The National Oil Company is 100% owned by Government and will, amongst other objectives, be responsible for ensuring security of fuel supply in the country through various methods including the establishment of national strategic stocks, and shall ensure availability of adequate and affordable fuel in rural and remote areas.

The MNRE will still be responsible for policy formulation and monitoring as well as the regulation of all upstream activities and midstream activities.

The ESERA's second strategic plan come to an end on 31<sup>st</sup> March 2021.

## **4 STRATEGY REVIEW**

The Authority undertook a strategy review in September 2020, the objective being to assess progress on the implementation of the strategic plan and prepare a budget outlook for the financial year 2021/22.

The review indicated that out of 56 deliverables/tasks contained in the strategic plan 2019 – 2021, 30.4% (17) were accomplished, 37.5% (21) were partially accomplished by 30<sup>th</sup> September 2020, while 32.1% (18) were not accomplished.

Due to a number of projects contained in the current strategic plan either partly completed or unaccomplished it was resolved that the current strategic plan be extended by one year (2021/22) so as to ensure all programmes contained in the plan are completed.

## **5 OBJECTIVE**

To obtain the services of a consultant/consultancy firm with appropriate and relevant expertise in strategy formulation to develop the ESERA 2023 – 2026 Strategic Plan.

## **6 SCOPE OF SERVICE**

The scope of work for the Consultant will include but not limited to:

- a.) Review the legislative framework (Energy Regulatory Act, Electricity Act, Petroleum Act 2020, National Energy Policy, Swaziland/Eswatini Independent Power Producer Policy, National Energy Efficiency Policy and the associated Energy Efficiency Strategy and Action Plan) as well as other Government Energy Sector Policy documents. These should be reviewed with the aim of identifying the Authority's position and role in the energy sector, and therefore the activities for incorporation into ESERA's strategic plan;
- b.) Develop a roadmap for the implementation of the Petroleum Act, 2020. The roadmap must result from a gap analysis undertaken to determine the interventions required to ensure orderly development of the petroleum sector. It must also contain activities/programmes and projects that must be carried out over the next three years.



- c.) Review the Authority's current Strategic Plan (2019 - 2021) with the aim of determining the level of implementation/performance; and also review and update the ESERA Risk Matrix which was prepared by ESERA Management;
- d.) Analyse and review the effectiveness, on the local electricity supply industry (ESI) of the interventions and programmes that were carried out by the Authority over the strategic planning period 2019 – 2021;
- e.) An analysis must be done on the local electricity and petroleum supply industry in order to identify the challenges and opportunities facing the Eswatini electricity and petroleum supply industry and to ensure the framework for the electricity and petroleum supply industry recognises evolving Government policies;
- f.) The above analysis would involve direct interviews with key stakeholders in the local electricity and petroleum supply industry. For the ESI these include: Eswatini Electricity Company, , Royal Eswatini Sugar Corporation, ILLOVO, Montigny as well as a few exempted entities. The Petroleum Sector these include: Oil Companies, National Retailers Association Transporters, LPG Association etc;
- g.) A desktop review of the SADC, specifically other SADC energy sector organs/institutions, energy sector strategies, initiatives and programmes must be done so as to ensure local activities and programmes are aligned, converge and harmonise with regional programmes where necessary;
- h.) Develop an optimum market structure for the petroleum and LPG industries in Eswatini
- i.) Analyse and advise the Authority on the areas where information technology can be used effectively to drive ESERA processes;
- j.) The strategic plan must also take into account other ESERA initiatives such as the communication strategy, high performance organisation framework (HPO), etc.
- k.) Review the vision and mission based on ESERA mandate;
- l.) Undertake stakeholder mapping and analysis;
- m.) Undertake a situation analysis of ESERA operations to date;
- n.) Through a consultative process and application of an appropriate tool of analysis, identify focus areas and develop strategic objectives and key result areas for the same;
- o.) Review the institutional capacity, organisational set-up, financial and administrative systems against the ESERA mandate and identified strategic objectives and key result areas; and make recommendations, if any;
- p.) development of a strategy implementation plan (Balanced-Score-Card), including how strategic objective and key results will be achieved, and a results and resources framework for the strategy period.
- q.) Hold stakeholder meeting(s) to validate the draft Strategic Plan;
- r.) Finalise Strategic Plan and submit to ESERA and develop a professional PowerPoint presentation of the strategic plan and 2022/23 business plan and budget;
- s.) Note that the first year of the strategic plan period shall include a business plan and budget of the Authority for financial year 2022/23 and should be easily extractable as so;
- t.) Develop a 2022/23 strategy map for the Authority/Regulator;



- u.) Note that the first year of the strategic plan period shall be business plan and budget of the Authority for financial year 2018/19 and should be easily extractable as so;
- v.) Develop a 2022/23 strategy map for the Authority/Regulator;
- w.) Advise and propose an optimal petroleum industry structure.

## **7 DELIVERABLES**

- a.) An inception report that will include analysis and findings, observations and conclusions made from the analysis of the local electricity and petroleum industries and SADC energy sector strategies, initiatives and programmes
- b.) Strategic plan containing the reviewed and revised mission, vision, strategic objectives, strategies, strategic objective outcomes and benefits of objectives, implementation programme and review framework. This should be delivered in both hard and soft copy format
- c.) Strategy map for the Authority
- d.) Business plan and budget for the Eswatini Energy Regulatory Authority for the financial year 2022/23
- e.) Staff and Board workshops
- f.) A three-year strategic plan including a results and resources framework (Balanced-Score-Card), delivered in hard copy and also in appropriate soft copy (Microsoft Word and Excel) and a PowerPoint presentation of the strategic plan, and budget for 2022/23
- g.) Report on the process including stakeholder consultations and workshops

## **8 GENERAL REQUIREMENTS APPLICABLE TO THE PROJECT**

- 8.1 The general requirements of the project include the following:
  - a) The process must be very interactive and closely involve the ESERA in the development of the new strategic plan. An internal committee will be tasked to oversee the development of the new strategic plan and there must be continuous interaction with this committee. Further interaction includes at least one scheduled meeting/workshop with the full Board. Another meeting/workshop shall be with the staff of the Authority and some key stakeholders that will be identified by ESERA. Cost of this break-away session must be EXCLUDED from the financial proposal.
  - b) The ESERA will designate a senior manager who will be the consultant's contact person and who will be responsible for the project within the ESERA.





- c) After appointment, the consultant will be responsible for the project within the ESERA.
- d) After appointment, the consultant will convene a conceptual meeting with the ESERA to formalise an agreement on the project and to establish a mutual understanding on the implementation thereof.
- e) The final strategic plan will be provided to the ESERA in both electronic (Microsoft Office Word 2016) and hard copy format.
- f) Copyright of all documents forthcoming from this project to vest with the ESERA.

**8.2 Additional requirements the bidders must comply with include the following:**

- a) The Bid should contain proof of legality of the firm/entity i.e., company registration documents (Certificate of Incorporation/Registration, valid tax clearance certificate, valid company trading licence, etc). Also, to be enclosed is proof of payment for the tender document.
- b) The Bid should contain a concise but clear methodology on how the Bidder intends to approach and complete each step of the project.
- c) Details of similar projects and assignments handled/completed during the last 5 years along with contact names of the clients, addresses, emails, telephone and facsimile numbers together with the total cost of the job.
- d) A detailed inventory of resources to be used must be provided. This includes but is not limited to, human resources, transport, logistical support, etc.
- e) The bidders must set out its organizational structure, qualifications of personnel to be involved in the project and their experience related to the project.
- f) An authorized representative of the firm should sign and initial all pages of the proposal. A letter of consent from all personnel or partners to be involved in the project should be provided.
- g) A detailed 2 envelope system will be followed and the Bidders must submit its technical and financial proposal separately in sealed envelopes.

**8.3 The technical proposal shall contain at least the following:**

- a) Profile on all consultants/consultancy firms participating in the tender,
- b) Proposed methodology and work plan to be implemented,
- c) Proposed key human resource (project team) and their qualifications and experience related to the project,

**8.4 The financial proposal shall contain at least the following:**

- a.) All amounts must be quoted in Emalangeni,
- b.) Amounts must be inclusive of all taxes, fees and levies,

- c.) The final amount tendered must be inclusive also of all professional fees, transportation and subsistence costs and all administration costs.
- d.) All proposals must be submitted in hard copy to the offices of the ESERA or by registered post.
- e.) Submissions must remain valid for a period of at least ninety days from closing date.
- f.) The Eswatini Energy Regulatory Authority reserves the right to accept/reject
- g.) proposals or stop the process of approval at any stage, at its sole discretion without assigning any reason and shall bear no liability whatsoever consequent upon such decision.
- h.) Tenderers must note that a 15% withholding tax shall be deducted on all invoices submitted. The withholding tax is reclaimable at the country of domiciling if that country has a double taxation agreement with Eswatini.

## 9 EXPERTISE REQUIRED

The project team must be well balanced in terms of skills and expertise. The team should include legal, economic, technical (electricity and petroleum) and human resources experts.

## 10 QUALIFICATIONS OF CONSULTANT

- 10.1 The Consultant/firm to undertake the study shall possess relevant experience and expertise in the following areas:
  - 10.1.1 A demonstrable understanding of Strategic Planning, experience in developing and implementing Strategic Plans;
  - 10.1.2 Proof of similar (previous) work done for reputable organization(s).
  - 10.1.3 At the minimum, personnel required for this assignment must have at least a Master's Degree in Finance/Economics/Engineering
  - 10.1.4 Knowledge of the electricity and petroleum sector is a **must**
  - 10.1.5 Knowledge and experience in the regional electricity and petroleum sectors

## 11 REPORTING/SUPERVISION

- 11.1 The consultant shall report to the General Manager Finance and Administration on the day-to-day running of the study.

## 12 EVALUATION CRITERIA

- 12.1 The bids will be evaluated using a two-envelope system whereby the technical proposals will be evaluated first and only those passing will be evaluated on the financial proposal.
- 12.2 The Bidders, short-listed on the basis of the technical evaluation, may be asked to make a technical presentation before the evaluation committee. In this regard, a separate communication shall be sent to all the short-listed Bidders.
- 12.3 Criteria, sub-criteria, and point system for the evaluation of Technical Proposals are:
- |       |   |                   |
|-------|---|-------------------|
| (i)   | Specific experience of the Consultants relevant to the assignment:  | <b>20</b>         |
|       | (a) Experience of the firm in Strategic Plan development  | 10                |
|       | (b) Assignment of similar nature  | 05                |
|       | (c) Experience and knowledge of the energy industry locally, regionally and internationally (Petroleum and Electricity) | 05                |
| (ii)  | Adequacy of the proposed methodology and work plan in responding to the Terms of Reference:                             | <b>45</b>         |
|       | (a) Technical approach and methodology  | 20                |
|       | (b) Work plan   | 20                |
|       | (c) Organization of work and staff (resources: operation, logistical, Human)  | 05                |
| (iii) | Key professional staff qualifications and competence for the assignment:  | <b>35</b>         |
|       | a) Team Leader  | 15                |
|       | b) Support Staff  | 10                |
|       | <b>Total weight:</b>  | <b>100 points</b> |

12.4 The minimum technical score required to pass is: **70 points**

### 12.5 Financial proposal evaluation

Financial proposals of bidders attaining the minimal score of 70 points in the Technical Proposals will be opened during the evaluation. Financial proposals from consultants that have not attained the minimum technical score required of 70 points will be returned to bidders unopened.

The lowest cost financial proposal of a bidder who passed the technical evaluation will be awarded maximum points of 100, and then the following formula will be applied to remaining Bidders:

$$\text{Financial Score (Sf)} = \text{Lowest Bid Price} / \text{Bid Price under consideration} * 100$$

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1).



$$S = S_t \times T\% + S_f \times P\%.$$

**Note:** The firm achieving the highest combined technical and financial score will be invited for negotiations.

If negotiations are unsuccessful, the next best evaluated bidder will be considered, the same process will apply until an agreement is reached.

- 12.6** The technical proposal shall carry 80% of the total weighting and the financial proposal shall carry 20%.

## **12.7 Contract award**

- 12.7.1 A bidder who scores the highest final score shall be selected as the preferred bidder and recommended for the award of the contract. Approval of award of contract does not constitute a contract award.

- 12.7.2 An intention of a notice to award in terms of the circular no.3 of 2015 issued by the Eswatini Public Procurement Authority shall be issued. The notice shall allow for a notice period of at least 10 working days from the despatch and publication of the notice before the award of the contract.

## **13 TENDER DOCUMENTS**

Terms of Reference of this tender may be accessed from the websites of Eswatini Public Procurement Regulatory Agency (ESPPRA) i.e. [www.sppra.co.sz](http://www.sppra.co.sz) and ESERA, [www.sera.org.sz](http://www.sera.org.sz).

Tenders should be submitted with original receipt as proof of payment of a non-refundable tender fee of E350.00

The payment of the E350.00 can be made to the following account:

Name	:	ESWATINI Energy Regulatory Authority
Bank	:	NedBank ESWATINI
Account Number	:	20000596311
Branch code	:	360164
SWIFT	:	NESWSZMX

## **14 CONTACT PERSON**

The Contact person for this project is Mr. Sabelo Dube: Finance and Administration Manager. Mr. S. Dube will be responsible for all interaction with the bidders and consultants and coordination of the project.



## 15 INFORMATION TO BE SUBMITTED WITH PROPOSAL

- 15.1 Power of Attorney
- 15.2 Certificate of Incorporation or equivalent
- 15.3 Original and Valid Tax Compliance Certificate or equivalent or a confirmation letter from relevant authorities in the jurisdiction of the consultant affirming exemption from holding the same.
- 15.4 Certified copy of original Trading Licence or equivalent, or a confirmation letter from relevant authorities in the jurisdiction of the consultant affirming exemption from holding the same.
- 15.5 Submission of a company current Form J or equivalent, endorsed by the Registrar of Companies.
- 15.6 Submission of a company current Form C or equivalent, endorsed by the Registrar of Companies
- 15.7 Submission of Labor compliance certificate or equivalent
- 15.8 The directors as listed in form C should provide certified copies of identity documents and police clearance.

***Note:** Omissions and non-conformance to any of the above conditions, or any conditions stated anywhere else in this document will lead to disqualification unless a waiver is allowed by the evaluation committee from ESERA.*

## 16 DURATION

The whole exercise should be completed within a period of 60 days (two months).

## 17 ENQUIRIES REGARDING DOCUMENTS

All enquiries must be directed in writing to the General Manager Finance and Administration, Eswatini Energy Regulatory Authority, and Cell: +268 76024384; Telephone: +268 2404 2103 / 8425; Fax: +268 2404 8474 email: [dubes@esera.org.sz](mailto:dubes@esera.org.sz) (Mr Sabelo Dube).

## 18 SUBMISSION OF BIDS

The Proposal documents must be enclosed in a plain wrapped, sealed and clearly marked on the outside and deposited on the ESERA tender box situated at the reception.

**CONTRACT NO: ESERA/RFP/09/2020-2021 – REQUEST FOR PROPOSAL: CONSULTANCY TO DEVELOP A THREE YEAR (2023-2026) STRATEGIC PLAN FOR ESWATINI ENERGY REGULATORY AUTHORITY (ESERA))**



They must be delivered by the Date of Closure of Proposals to:

Eswatini Energy Regulatory Authority  
First Floor, RHUS Office Park  
Kar Grant Street  
**MBABANE**  
Eswatini

## **19 DEADLINE FOR SUBMISSION OF PROPOSALS**

The deadline for submission of proposals is the 08<sup>th</sup> May at 11H00

***ESERA is not bound to accept the lowest bidder.***

### **19.1 Validity of Bids**

Bids shall be valid for a period of 3 calendar months from the submission deadline.

### **19.2 Language of Bids**

All bids must be written in English and be submitted in 5 hard copies (i.e., one original and four copies)

### **19.3 Currency of Bids**

All bids must be denominated in Eswatini Lilangeni (SZL). Risks associated with exchange rates movements shall rest with the bidder.

## 20 CONTRACT TERMS AND CONDITIONS

### 20.1 Definitions

- 20.1.1 The clause headings in this Contract are used for convenience and reference purposes only and shall not be used in the interpretation nor be deemed to modify or amplify the terms of this Agreement or any clause thereof.
- 20.1.2 Unless the context clearly indicates a contrary intention, any words importing or connoting any gender includes all genders;
- 20.1.3 The singular included the plural and vice versa;
- 20.1.4 Natural persons include artificial person and vice versa and shall in the eventuality of a change in the Law in Eswatini to provide for the same, insolvency shall include judicial management;
- 20.1.5 The following expressions shall bear the meanings assigned to them below and cognate expression shall bear corresponding meanings: -
  - 20.1.5.1 *“ESERA “ means The Eswatini Energy Regulatory Authority, a Government parastatal established in terms of the Energy Regulatory Act, 2007 with its principal place of business at First Floor, RHUS Office Park, Karl Grant Street, Mbabane, Hhohho Region, for purposes of executing this agreement into binding force, herein represented by Sabelo Dube, in his capacity as Acting Chief Executive Officer, he being duly authorised to so representatively act herein and he too, hereby warranting his lawful authorisation to so act herein.*
  - 20.1.5.2 *The Consultant” means the entity that will be successful in the bid process.*
  - 20.1.5.3 *“The Parties” shall mean ESERA and the Consultant.*
  - 20.1.5.4 *“Day” means the period from one midnight to the next midnight in any day of the Gregorian calendar, other than a Sunday or any official public holiday within the Kingdom of Eswatini;*
  - 20.1.5.5 *“Commencement Date” means the date on which the last signature necessary to complete the formal signing of this agreement into existence is appended;*
  - 20.1.5.6 *“Project Manager” means a person appointed by ESERA to act as Project Manager for the purposes of this contract;*
  - 20.1.5.7 *“Contract Price” shall mean the fixed sum provided in the financial proposal of the successful bidder.*



- 20.1.6 Expressions or words defined in this agreement shall bear their ordinary meaning unless otherwise defined in this contract or by law.
- 20.1.7 Annexure to the Agreement shall be deemed to be incorporated into and to form part of the Agreement. Provided that in the event there is a conflict between a particular provision of the main body of this agreement and any annexure thereof, the provision in the main body of the agreement prevails and shall be deemed to state the final intention of the parties in that regard.
- 20.1.8 The terms of this agreement having been negotiated, the rule of construction that provisions are to be constructed against the Party drafting an agreement, or part of an agreement, or on whose behalf an agreement or part of an agreement has been drafted, shall not apply to this Agreement.

## **20.2 Commencement, Execution and Completion of the Project.**

### **20.2.1 Commencement**

The services to be carried under the Contract are to commence from the date of signature of the Contract.

- 20.2.2 In the event that any delay in the completion of the project is occasioned by any fault and/or delay by either party, the project shall be completed within such extended time frame as the parties may agree in writing; provided that both parties shall avoid any delays to the project.

## **20.3 Execution**

- 20.3.1 The project shall be executed during the contract period and completed by the Consultant on or before the completion date.
- 20.3.2 ESERA will appoint a person to be a Project Manager to administer the Contract on her behalf.
- 20.3.3 The Project Manager shall be the liaison person for ESERA and shall be responsible for directing the performance of this contract. The Consultant shall constantly report and/or update ESERA on progress of the project at all material times where necessary or when required to do so. The Consultant appoint will appoint a person to be a Liaison person for the Consultant.





## 20.4 Payment

- 20.4.1 When claiming payment, the Consultant shall submit an invoice to ESERA. The invoice shall be submitted together with supporting documentations, addressed to The Eswatini Energy Regulatory Authority.
- 20.4.2 ESERA shall make payments to the Consultant within 30 days of receipt of a valid invoice.
- 20.4.3 Payment shall be made to an account specified by the Consultant free of any deductions, save for withholding tax due under the tax laws of Eswatini; Provided that ESERA will provide the Consultant with all necessary documentation in order to enable the Consultant to claim any withholding tax withheld or deducted by ESERA on such invoice.
- 20.4.4 The payment terms shall be as follows: *As agreed with the successful bidder.*
- 20.4.5 Currency of Payment
  - 20.4.5.1 *The currency of payment of the Contract shall be in Eswatini Lilangeni.*
- 20.4.6 Indirect Payment
  - 20.4.6.1 *The remuneration of the Consultant charged to the Contract shall constitute his only remuneration in connection with the Contract and the Consultant shall not accept any trade Commission, discount, allowance or indirect payment or other consideration in connection with or in relation to the Contract or to the discharge of Consultant's obligations.*

## 20.5 Postponement, Variation and Termination.

### 17.2.1 Postponement and Termination.

- 20.5.1.1 *Either party may, by written notice to the other party and at any time, give prior notice of his intention to postpone or abandon the project, in whole or in part, or terminate this contract.*
- 20.5.1.2 *The effective date of termination of the project shall not be less than fifteen (15) days after receipt of such notice, or such other longer or shorter period as may be agreed between the Parties.*
- 20.5.1.3 *Upon receipt of such notice the Consultant shall take immediate steps to bring the Services to a close and to reduce expenditure to a minimum.*
- 20.5.1.4 *Termination of the Contract, for whatever reasons, shall not prejudice or affect the accrued rights or claim and liabilities of either party to this Contract.*

## **20.6 Variation**

17.2.2 This agreement can only be varied by agreement in writing entered into by the parties.

17.2.3 Either one of the parties can initiate negotiations with a view to reach such said agreement.

## **20.7 Claims for Default**

Any claim for damages arising out of default and termination shall be agreed between ESERA and the Consultant or, failing agreement, shall be referred to arbitration in accordance with Clause 28.

## **21 FORCE MAJEURE**

21.1 Neither party shall be liable under this Contract if so, far as either or both of them are prevented from carrying out the same by “force majeure”, that is to say an act of God, act of war, warlike operations, civil commotion, strikes or any industrial action whatsoever, fire, tempest or any other cause or happening beyond its control.

21.2 If conditions of force majeure persist in respect of a party for a period in excess of 60 (sixty) days and have material adverse effect on the other party, and the parties are within such period unable to reach written agreement on amendments to the relevant provisions of this contract to take into account such conditions, the other party may terminate this agreement with immediate effect on written notice.

## **22 APPLICABLE LAW**

This Contract shall be deemed to be concluded in Eswatini and shall accordingly be governed and construed according to the laws for the time being in force in the Kingdom of Eswatini.

## **23 RELAXATION**

23.1 No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this contract or stop such party enforcing, strict and punctual compliance with each and every provision or terms hereof.

## **24 SKILLS, CARE AND DILIGENCE**

The Consultant shall exercise all professional skill, care and diligence in the performance of the services under the Contract and shall carry out its responsibility at the best professional engagement.

## **25 COPYRIGHTS**

- 25.1 The copyright of all documents prepared by the Consultant in connection with the Project shall be vested with ESERA.
- 25.2 The Consultant may take copies of such documents but shall not use the contents thereof for any purposes unrelated to the Contract without the prior written consent of ESERA.

## **26 OBLIGATIONS OF ESERA**

### **26.1 Furnish data and information**

#### **26.1.1 ESERA shall:**

- Furnish without charge and within a reasonable time all pertinent data and information requests by the Consultant in executing this Contract.
- Give such assistance as shall be reasonably required by the Consultant for the carrying out of its duties under the Contract.
- Give decisions on all reports, documents, recommendations and other matters properly referred to for decision by the Consultant in such reasonable time as not to delay or disrupt the performance by the Consultant of its obligations under this Contract.
- Any data they may require.
- Any assistance with regard to making appointments with Industry participants

### **26.2 Approval of amended documents**

Where ESERA approved a report or document subject to modification by the Consultant, the changes requested shall be incorporated into the document within a reasonable period and in any case before the end of the Contract period.

### **26.3 Assistance to the Consultant**

- 26.3.1 ESERA shall, whenever, possible assist the Consultant in obtaining necessary visas, permits, and customs clearance.



- 26.3.2 ESERA shall deduct the withholding tax to ensure that the Consultant complies with the tax laws of Eswatini. ESERA shall provide the consultant with the withholding Tax Certificate.

## **27 BREACH**

Either one of the parties shall be entitled after giving the other one of the parties 10 (ten) days' notice in writing, to terminate this agreement and to claim damages from the other one of the parties, should such other one of the parties commit any breach of the agreement and fail to remedy such breach within the said 10 (ten) days of notice.

## **28 SETTLEMENT OF DISPUTES / ARBITRATION**

- 28.1 This Agreement relies for its efficacy on the exercise by the Parties of utmost good faith. Therefore, the general and specific terms and conditions of this Contract are to be construed accordingly and will be interpreted where necessary by mutual agreement.
- 28.2 If the parties are unable to resolve any dispute resulting from this Contract by means of joint co-operation or discussion between them within two weeks after a dispute arises, then it shall be resolved by way Arbitration in accordance with the Arbitration Laws of Eswatini.
- 28.3 The arbitrator shall be chosen and appointed through consensus. The Arbitrator's decision shall be final and binding on both parties. The resulting award (if any) shall be in lieu of any other remedy.

## **29 PERSONNEL**

The personnel of the Consultant shall all be involved, each within his/her expertise and experience in the execution of the project.



## 30 DOMICILIUM

- 30.1 The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this agreement.
- 30.2 Either party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.
- 30.3 All notice, demands, communications or payments intended for either party shall be made or given at such party's *domicilium* for the time being.
- 30.4 A notice sent by one party to another party shall be deemed to be received:
- 30.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## 31 DEADLINE FOR REQUEST FOR CLARIFICATION AND SUBMISSION OF PROPOSALS

### 31.1 Request for Clarification, Deadline for Clarification and Amendments of RFPs

Request for Clarification closes on the **27<sup>th</sup> April, 2021 at 11H00**. All requests for clarification shall be in writing and directed to the Project Manager, Mr Sabelo Dube, email; [dubes@esera.org.sz](mailto:dubes@esera.org.sz). Responses to request for clarification will be sent to all tenderers, at the same time without disclosing the source of the request.

In cases of amendment to tender documents, amendments will be attached as addenda to the original documents. The Regulator will send, by electronic means, any clarifications and amendments to all consultants who have purchased the Terms of Reference and the amendments will also be published in the Regulator's website. All clarifications and addenda will be binding to all bidders.

### 31.2 Submission Deadline

The deadline for submission of proposals is the **07<sup>th</sup> May 2021 at 11H00**.



## 32 FORMAT OF CURRICULUM VITAE FOR PROPOSED PROFESSIONAL STAFF

- i. **Proposed Position** *[only one candidate shall be nominated for each position]:*
- ii. **Name of Firm** *[Insert name of firm proposing the staff]:* \_\_\_\_\_  
\_\_\_\_\_
- iii. **Name of Staff** *[Insert full name]:* \_\_\_\_\_
- iv. **Nationality:** \_\_\_\_\_
- v. **Education** *[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment]:*  
\_\_\_\_\_
- vi. **Membership of Professional Associations:** \_\_\_\_\_
- vii. **Other Training** *[Indicate significant training since degrees under 5 - Education were obtained]:* \_\_\_\_\_
- viii. **Countries of Work Experience:** *[List countries where staff has worked in the last ten years]:* \_\_\_\_\_
- ix. **Languages** *[For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]:* \_\_\_\_\_
- x. **Employment Record** *[Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]:*  
  
From [Year]: To [Year]: \_\_\_\_  
  
Employer: \_\_\_\_\_  
  
Positions held: \_\_\_\_\_





### 33 THE BID SUBMISSION

The bid form below shall be filled and submitted with the technical proposal.

#### Bid Submission Form

Item	Tick
Certificate of Incorporation	
Form C and Form J	
Directors 'national IDs and Police Clearances	
Company Registration Certificate	
Tax Registration Certificate	
Power of Attorney	
Labour Compliance Certificate	
Three (3) Trade References	

### 34 STRUCTURE FOR TECHNICAL PROPOSAL

#### 34.1 Submission Letter (Responding to The Request for Proposal)

A letter responding to the Request for Proposal, introducing associate firms in the assignment and a statement affirming that information provided is true and correct.

**The Chief Executive Officer  
Eswatini Energy Regulatory Authority  
P.O. Box 7137  
MBABANE  
Eswatini**

If there are any letters from associate firms and statements of confidentiality, can also be attached in this section, after the former. The consultant must also include the **Submission form** provided in the Request for Proposals, indicating that the documents or information required is included.





### **34.2 Organization Background**

Under this section, the consultant is expected to give background information of their organisation and staff, which must at minimum cover the following:

- The physical address of the organisation
- A company profile and key projects that have been done by the company
- Team members' profile (e.g., summary of qualifications and experience)

### **34.3 Approach and Methodology**

In this section, the consultant must demonstrate a comprehensive understanding of the assignment and must include but not limited to:

- Comments or suggestions on the Terms of Reference
- Detailed explanation of the Methodology to be adopted
- A work plan and projected timeframe
- Manpower plan and associated man hours to be worked by each team member

### **34.4 Know-How Transfer**

At the end of the study, the consultant is expected to train ESERA staff and other relevant stakeholders on the application and use of models developed. The consultant must give a clear plan on how they propose to go about with trainings. Furthermore, skills transfer to locals is desirable and can add weight in the evaluation of the proposal. At minimum, the training plan proposed in the Terms of Reference must be covered.

### **34.5 Attachments- Company Documents**

The documents listed in the Terms of Reference as mandatory must be attached. These documents include:

- Company Registration Certificate
- Trading License
- Tax Identity Number
- VAT Certificates
- Company Form C and Form J
- Certified copies of Directors' national IDs and police clearances

Please note that the above list is not exhaustive, kindly check in the Terms of Reference on the required documentation. In the case a company is not required to hold any of the documents in its jurisdiction, then the company must provide a letter from its Authority confirming such.

### 34.6 Attachments- Curriculum Vitae

In this section, the consultant is expected to attach curriculum vitas of team members, showing detailed academic credentials and work experience. Other information about the team members 'credentials which the in the opinion of the consultant can add weight, can also be attached in this section.

### 34.7 Financial Proposal

All costs must be denominated in Eswatini Lilangeni (Szl).

**Please note:** Financial proposals have to be submitted in separate and sealed envelopes, clearly marked 'Financial Proposal'. Failure to adhere to this requirement will lead to disqualification and the Technical Proposal will not be evaluated.

A summary of charges must be given in the price submission form below.

#### Price Schedule Form

Item	Cost
Professional Fees	
Reimbursable Costs	
Local Taxes	
<b>Total (Szl)</b>	

### 35 DECLARATION OF ELIGIBILITY

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

To:

**The Chief Executive Officer  
Eswatini Energy Regulatory Authority  
P.O. Box 7137  
MBABANE  
Eswatini**

#### **REQUEST FOR PROPOSAL: CONSULTANCY TO DEVELOP A THREE YEAR (2023-2026) STRATEGIC PLAN – ESERA/RFP/09/2020-2021**

Dear Sir,

We hereby declare that: -

- a. I/We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract;
- b. I/We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing;
- c. I/We have fulfilled our obligations to pay taxes and social security contributions;
- d. I/We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- e. I/We do not have a conflict of interest in relation to the procurement requirement.
- f. I/We do not have any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or 13 misrepresentations as to its qualifications to enter into a procurement contract within a period of five years preceding the commencement of procurement proceedings;
- g. I/We are not subject to suspension in accordance with section 55, and none of its directors or officers have been involved in a tenderer or supplier currently subject to suspension.

Signed ..... Authorised Representative

Date .....

