



Eswatini Public Procurement Regulatory Agency (ESPPRA)

REQUEST FOR PROPOSALS

FOR

**PROVISION OF RECRUITMENT SERVICES FOR THE
Eswatini Public Procurement Regulatory Agency**

**REFERENCE NUMBER: RFP ESPPRA 01 OF
2021**

09TH June 2021



INVITATION
REQUEST FOR PROPOSALS (RFP)
PROVISION OF RECRUITMENT SERVICES FOR ESPPRA
REFERENCE NUMBER: RFP ESPPRA 01 OF 2021

The Eswatini Public Procurement Regulatory Agency (ESPPRA) invites sealed Proposals for the PROVISION OF RECRUITMENT SERVICES for the Agency. The 'Request for Proposals' document can be downloaded from ESPPRA website or can be obtained from the reception area of the offices of the Eswatini Public Procurement Regulatory Agency, Rhus Office Park, Karl Grant Street, Mbabane for the price of E300.00 (Three Hundred Emalangeneni Only), (non-refundable payment to be made to):

Eswatini Public Procurement Regulatory Agency
Nedbank Mbabane
Branch code; 360164
Account number; 20000596378

The Agency seeks to engage only local suitably qualified consultant with demonstrable expertise and experience in recruitment and selection of executive positions. Consultants are invited to submit their sealed Proposals.

Proposals will be evaluated on a **Quality and Cost basis**, as detailed in the 'Request for Proposals' document, and the resulting contract will be a Time-Based contract, with reimbursable items being on the basis of actual expenses or agreed unit prices, as specified in the document.

The proposal shall consist of a Technical Proposal and a Financial Proposal, which shall be in separate sealed envelopes marked "**Technical Proposal – RFP ESPPRA 01 OF 2021**" and "**Financial Proposal - RFP ESPPRA 01 OF 2021**", respectively. The two envelopes must be enclosed in a sealed outer envelope, which shall be marked: "**Request for Proposal: PROVISION OF RECRUITMENT SERVICES FOR ESPPRA, RFP ESPPRA 01 OF 2021- Do Not Open before 10:30 hours (Eswatini time) on Monday 12th July 2021**" and addressed to "**The Secretary, ESPPRA Tender Board Eswatini Public Procurement Regulatory Agency, Rhus Office Park, Mbabane**". Failure to mark the envelope clearly and accurately may result in rejection of the application.

The Proposal must be deposited in the Tender Box situated in the **Eswatini Public Procurement Regulatory Agency Offices, Rhus Office Park, Karl Grant Street, MBABANE** at the latest by **10:30 hours (Eswatini time) on Monday 12th July 2021**. Late tenders and tenders received by telegram, facsimile, email or similar medium will not be considered.

Requests for clarification, which must be in writing, should be addressed, via email, to procurement@sppra.co.sz. The Agency will strive to promptly respond in writing via e-mail to any



requests for clarification up until close of business on **Friday, 30th June 2021**. Written copies of the Agency's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective Bidders.

For administrative and technical enquiries, please contact Ms Yeyezile Nxumalo in writing at E-mail: procurement@sppra.co.sz





TERMS OF REFERENCE

1. INTRODUCTION

The Eswatini Public Procurement Regulatory Agency (ESPPRA or “the Agency”) is an independent public enterprise established under section 9 of the Public Procurement Act 2011 (the Act). Section 9(2) of the Act mandates the Agency to serve as an independent regulatory body, with responsibility for policy, regulation, oversight, professional development and information management and dissemination in the field of public procurement. Section 11(1) of the Act goes on to require the Agency to have the competence, authority, power and responsibility to enforce the Act and public procurement regulations issued under the Act. In this regard, the Agency oversees all public procurement conducted by procuring entities and the scope of this oversight covers Government Ministries, Departments and Agencies, as well as category “A” public enterprises and Local Government Authorities including municipalities. The Agency is a Category ‘A’ Public Enterprise and reports administratively to the Ministry of Finance with the mandate of regulating public procurement in Eswatini..

2. BACKGROUND AND OBJECTIVE

This Terms of Reference (ToR) is developed to acquire services from an local external service provider to provide relevant recruitment and selection related services for the recruitment of various management positions for the Agency.

Proposals are invited from reputable, eligible and qualified Recruitment Consulting Firms for the recruitment of the Agency’s

1. Executive Director/Chief Executive Director
2. Manager Capacity Building and Advisory
3. Manager Compliance and Audit

A position of prime interest at this time to be filled immediately (before 30 July) is the Executive Director/Chief Executive Officer’s position.

3. SCOPE OF WORK

- ESPPRA shall advertise the positions through organisationally approved advertising platforms.
- Upon receipt of applications, the service provider shall compile and tabulate all the applications received for each position in response to the advertisement and duly screen



each of them against the laid down criteria and short-list the eligible candidates for a further selection process.

- The entire compiled data as above along with five (5) short-listed candidates for each position shall be submitted to ESPPRA within four (4) working days after the deadline for submission of applications.
- The compiled data of shortlisted candidates for each position shall be accompanied by an interim report outlining clear criteria for shortlisting, their CVs and background information, analysis of each candidate as well as the long list of all applicants for ESPPRA approval.
- The Service provider shall conduct vetting and psychometric tests for all shortlisted candidates and develop all interview packs for the interview panels on each position.
- The Service provider shall prepare all interview packs and conduct the interviews together with ESPPRA representatives, consolidate scores and develop a recruitment report with the recommended candidates for each position.
- The consultant shall develop the final reports and present it to the Management /Board.
- The consultant or ESPPRA may propose additional tasks as deemed necessary to complete the assignment.
- Any additional work shall be compensated as agreed upon in the consultant's contract with ESPPRA.
- All applications shall be directed to the Agency (recruitment@sppra.co.sz).
- The consultant shall be available to make presentations that might be required by management/ board or any of its sub committees.
- During the entire period of the assignments, the Consultant and its Personnel shall make themselves available for providing the recruitment services to ESPPRA.
- In providing the services to ESPPRA, the Consultant and its Personnel shall ensure to the best of their reasonable ability the highest professional standards and exercise all due care, skill, and competence so as to ensure that the services provided shall be to the full satisfaction of ESPPRA and requirement of the positions.
- The Consultant shall render the services in a proper and timely manner.
- The Consultant in liaison with ESPPRA Human Capital Office shall always comply with the relevant internal policies of ESPPRA in providing the service.
- The consultant shall now and then update the Agency on progress of the process.
- All reports and documents prepared during the assignments will be treated as ESPPRA's property.



- The reports / documents or any part, therefore, cannot be shared, used and reproduced in any manner without prior written approval of ESPPRA.
- All recoverable expenses incurred during the process shall be reimbursed by the Agency upon receiving valid proof (receipts).
- Additional terms and conditions shall be mentioned in the consultancy agreement.

4. DELIVERABLES

The deliverables of this consultancy for each position are:

- Comprehensive shortlist of candidates
- Compiled data of shortlisted candidates shall be accompanied by an interim report outlining clear criteria for shortlisting, their CVs and background information, analysis of each candidate as well as the long list of all applicants for ESPPRA approval
- Interview packs for the entire interview panel
- A report of psychometric tests results
- Final report with recommendation of the ideal candidate and presented to the Management/ Board/ SCOPE
- 6 bound hard copies and one electronic copy of the final report

QUALIFICATIONS AND EXPERIENCE

- The assigned organization shall have key personnel who possess a Master's degree in Business Administration, Public Administration or Equivalent. – for the Position of CEO
- The assigned organization shall have key personnel who possess a Master's degree preferable in Accounting, Auditing or Public Management or equivalent. – for the position of Manager Compliance and Audit
- Knowledge of Commercial Law. – For the Position of Manager Compliance and Audit
- The assigned organization shall have key personnel who possess a Master's degree in Supply Chain Management or Master's degree in Education – for the position of Manager Capacity Building and Advisory
- Knowledge of Procurement Act or Supply Chain Management.
- At least 5 years of professional experience in consulting field mainly in recruitment and selection, preferably in the public sector.
- Must have conducted at least three (3) executive recruitments with traceable references.
- Flexible, creative, detail-oriented and well organized
- Ability to maintain highest standards of confidentiality and professionalism



TIMEFRAME

The expected completion date for the assignment is the **30th November 2021**

REPORTING LINE

The consultant will report to the ESPPRA Management or Remuneration Committee who shall send the final recommendation to the whole Board/SCOPE.

PROPOSALS SHOULD ALSO INCLUDE:

- Statement of relevant experience i.e. similar assignments executed in/under execution in the last five years;
- Measurable goals, objectives and methodology.
- Indication of availability to carry out the Consultancy during the period from **19th July to 30th November 2021**.
- Proposed separate fees for each of the recruitment process as listed below:
 - Complete Recruitment Service (Starting from shortlisting through to final selection).
 - Partial Recruitment Service (example- only conducting written test or interview etc.)
 - For any services that require substantial time and effort on the consultant's part, a separate fee agreement shall be made on mutual consensus.

SECTION 1

INSTRUCTIONS TO CONSULTANTS

DEFINITIONS

- (a) “Agency” means the Eswatini Public Procurement Regulatory Agency.
- (b) “Coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property, to influence their participation in a procurement process or affect the execution of a contract.
- (c) “Collusive” practices mean a scheme or arrangement between two or more consultants, with or without the knowledge of the procuring entity, designed to establish tender prices at artificial, non-competitive levels.
- (d) “Consultant” means any entity or person that may provide or provides the Services to the Agency under the Contract.
- (e) “Contract” means the Contract signed by the Parties and all the attached documents, i.e. the General Conditions (GCC), the Special Conditions (SCC), and the Appendices.
- (f) “Corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the procurement process or in contract execution.
- (g) “Data Sheet” means such part of the Instructions to Consultants used to reflect specific assignment conditions.
- (h) “Day” means calendar day.
- (i) “Fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.
- (j) “Government” means the government of Eswatini.
- (k) “Instructions to Consultants” means the document which provides Consultants with all information needed to prepare their Proposals.
- (l) “Personnel” means professionals and support staff provided by the Consultant or by any Sub-Consultant and assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside Eswatini; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile inside Eswatini.
- (m) “Proposal” means the Technical Proposal and the Financial Proposal.
- (n) “RFP” means this Request For Proposals.
- (o) “Services” means the work to be performed by the Consultant pursuant to the Contract.



Section 1: Instructions to Consultants

- (p) “Sub-Consultant” means any person or entity with whom the Consultant subcontracts any part of the Services.
- (q) “Terms of Reference” (TOR) means the document included in the RFP which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Agency and the Consultant, and expected results and deliverables of the assignment.



1. Introduction

- 1.1 The Agency will select a consulting firm/organization (the Consultant) in accordance with the method of selection specified in the Data Sheet.
- 1.2 Consultants are invited to submit a Technical Proposal and a Financial Proposal for consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the selected Consultant.
- 1.3 Consultants should familiarize themselves with local conditions and take them into account in preparing their Proposals. To obtain first-hand information on the assignment and local conditions, Consultants are encouraged to visit the Agency before submitting a proposal and to attend a pre-proposal conference if one is specified in the Data Sheet. Attending the pre-proposal conference is optional. Consultants should contact the Agency's representative named in the Data Sheet to arrange for their visit or to obtain additional information on the preproposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 1.4 The Agency will timely make available relevant data, information and reports.
- 1.5 Consultants shall bear all costs associated with the preparation and submission of their proposals and contract negotiation. The Agency is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultants.

2. Conflict of Interest

- 2.1 Consultants are required to provide professional, objective, and impartial advice and at all times hold Agency's interests paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.
- 2.2 Without limitation on the generality of the foregoing, Consultants, and any of their affiliates, shall be considered to have a conflict of interest and shall not be eligible for selection, under any of the circumstances set forth below:
 - (i) A firm that has been engaged by the Agency to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.



- (ii) A Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the same or for another Agency. For example, a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Consultant assisting the Agency in the privatization of public assets shall not purchase, nor advise purchasers of such assets. Similarly, a Consultant hired to prepare Terms of Reference for an assignment shall not be hired for the assignment in question.
- (iii) A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the Agency's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, may not be awarded a Contract.

2.3 Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Agency, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of the Contract.

3. Association

3.1 If a shortlisted Consultant could derive a competitive advantage from having provided consulting services related to the assignment in question, the Agency shall make available to all shortlisted Consultants together with this RFP all information that would in that respect give such Consultant any competitive advantage over competing Consultants.

4. Commissions

4.1 Consultants shall furnish information on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal and during execution of the assignment if the Consultant is awarded the Contract, as requested in the Financial Proposal submission form.

5. One Proposal

5.1 Consultants shall only submit one proposal and the required number of copies. However, this does not limit the participation of the same Sub-Consultant, including individual experts, to more than one proposal for this RFP.

6. Validity

6.1 The Data Sheet indicates how long Consultants' Proposals must remain valid after the submission date. During this period, Consultants shall maintain the availability of Professional staff nominated in the Proposal. The Agency will make its best effort to complete negotiations



within this period. Should the need arise, however, the Agency may request Consultants to extend the validity period of their proposals.

Consultants who agree to such extension shall confirm that they maintain the availability of the Professional staff nominated in the Proposal, or in their confirmation of extension of validity of the Proposal, Consultants could submit new staff in replacement, who would be considered in the final evaluation for contract award. Consultants who do not agree have the right to refuse to extend the validity of their Proposals.

7. Clarification and Amendment of RFP Documents

7.1 Consultants may request a clarification of any of the RFP documents up to the number of days indicated in the Data Sheet before the proposal submission date. Any request for clarification must be sent in writing, or by standard electronic means to the Agency's address indicated in the Data Sheet. The Agency will respond in writing, or by standard electronic means and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Consultants. Should the Agency deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure detailed below.

7.2 At any time before the submission of Proposals, the Agency may amend the RFP by issuing an addendum in writing or by standard electronic means. The addendum shall be sent to all Consultants and will be binding on them. Consultants shall acknowledge receipt of all amendments. To give Consultants reasonable time in which to take an amendment into account in their Proposals the Agency may, if the amendment is substantial, extend the deadline for the submission of Proposals.

8. Preparation of Proposals

8.1 The Proposal, as well as all related correspondence exchanged by the Consultants and the Agency, shall be written in the English language.

8.2 In preparing their Proposal, Consultants are expected to examine in detail the documents comprising the RFP. Material deficiencies in providing the information requested may result in rejection of a Proposal.

9. Preparation of the Technical Proposal

9.1 As required in Form TECH-2, Part D, the following documents must be attached to the Technical Proposal as Appendices:

- Certified copy of a valid Trading Licence, or equivalent for foreign consultants;
- Original and valid Tax Compliance Certificate, or equivalent for foreign consultants;
- Certified copy of an official statement of the Directors and alternative directors or owner/s in the case of unincorporated businesses (i.e. Form 'J' or equivalent);



- Certified copy of an official statement of the annual summary of share capital and shares (i.e. Form 'C' or equivalent); and
- Certified copy of Labour Compliant Certificate
- Police clearance report or affidavit for company directors
- Receipt for the payment of the Tender Document

9.2 Consultants are required to submit a Full Technical Proposal. The Technical Proposal shall provide the information indicated in the following paragraphs, from (a) to (g) using the attached Standard Forms:

- (a) For the Technical Proposal, evidence of the Consultant's financial standing must be provided in the form of certified copies of financial statements and banking details, as stated in Form TECH-2, Part A, followed by a brief description of the Consultants' organization and an outline of the Consultant's recent experience of a similar nature as required in Form TECH-2, Part B and C. For each assignment, the outline should indicate the names of Sub Consultants/ Professional staff who will participate, duration of the assignment, contract amount, and Consultant's involvement. Information should be provided only for those assignments for which the Consultant was legally contracted by the client as a corporation or as one of the major firms within a joint venture. Assignments completed by individual Professional staff working privately or through other consulting firms cannot be claimed as the experience of the Consultant, or that of the Consultant's associates, but can be claimed by the Professional staff themselves in their CVs. Consultants should be prepared to substantiate the claimed experience if so requested by the Agency.
- (b) Form TECH-2 (D) request that the consultant includes certified copies of: trading licence, labour compliance certificate, original tax compliance certificate, form 'J' and form 'C', police clearance report or affidavit for company directors or for foreign consultants similar documents.
- (c) Comments and suggestions on: the Terms of Reference, including workable suggestions that could improve the quality/ effectiveness of the assignment; and on requirements for counterpart staff and facilities including: administrative support, office space, local transportation, equipment, data, etc. to be provided by the Agency (Form TECH-3).
- (d) A description of the approach, methodology and work plan for performing the assignment covering the following subjects: technical approach and methodology, work plan, and organization and staffing schedule. Guidance on the content of this section of the Technical Proposals is provided under Form TECH-4.
- (e) The list of the proposed Professional staff team by area of expertise, the position that would be assigned to each staff team member, and their tasks (Form TECH-5).
- (f) Estimates of the staff input, indicated separately for home office and field activities, and for foreign and local Professional staff.



- (g) CVs of the Professional staff signed by the staff themselves or by the authorized representative of the Professional Staff (Form TECH-6).
 - (h) A detailed description of the proposed methodology and staffing for training, if the Data Sheet specifies training as a specific component of the assignment.
 - (i) A Declaration of Eligibility (Form TECH-7) confirming that the Consultants meet the criteria for eligibility to participate in public procurement.
- 9.3 The Technical Proposal shall not include any financial information. A Technical Proposal, which contains financial information, may be declared non-responsive.

10. Preparation of the Financial Proposal

- 10.1 The Financial Proposal shall be prepared using the attached Standard Forms, which prescribe the required minimum data and information. Consultants may provide additional details if appropriate. It shall list all costs associated with the assignment, including, but not necessarily limited to: (a) remuneration for staff (foreign and local, in the field and at the Consultants' home office); and (b) reimbursable expenses. If appropriate, these costs should be broken down by activity and, if appropriate, into foreign and local expenditures.
- 10.2 All activities and items described in the Technical Proposal must be priced separately; activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.
- 10.3 The Consultant shall be subject to local taxes (such as: value added or sales tax, social charges or income taxes on non-resident Foreign Personnel, duties, fees, and levies) on amounts payable by the Agency under the Contract.
- 10.4 Consultants must express the price of their services in Emalangeni unless otherwise specified in the Data Sheet. Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Form FIN-1

11. Packing and Submission of Proposal

- 11.1 The original proposal (Technical Proposal and Financial Proposal) shall contain no interlineations or overwriting, except as necessary to correct errors made by the Consultants themselves. The person who signed the proposal must initial such corrections. Submission letters for both Technical and Financial Proposals should respectively be in the format of TECH-1 and FIN-1
- 11.2 An authorized representative of the Consultants shall initial all pages of the original Technical and Financial Proposals. The authorization shall be in the form of a written power of attorney accompanying the Proposal or in any other form demonstrating that the representative has been duly authorized to sign. The signed Technical and Financial Proposals shall be marked "Original".
- 11.3 The Technical Proposal shall be marked "Original" or "Copy" as appropriate. All required copies of the Technical Proposal are to be made from the original. If



there are discrepancies between the original and the copies of the Technical Proposal, the original governs.

- 11.4 If the Financial Proposal is not submitted in a separate sealed envelope duly marked as indicated in the Data Sheet, this will constitute grounds for declaring the Proposal non-responsive.

12. Latest Date for Submission

12.1 The Proposals must be sent to the address/addresses indicated in the Data Sheet and received by the Agency no later than the date and time indicated in the Data Sheet or any extension to this date. Any proposal received by the Agency after the deadline for submission shall be returned unopened.

13. Opening of Technical Proposals

13.1 The Agency shall open the Technical Proposal immediately after the deadline for their submission. The envelopes with the Financial Proposal shall remain sealed and securely stored.

13.2 From the time the Proposals are opened to the time the Contract is awarded, the Consultants should not contact the Agency on any matter related to its Technical and/or Financial Proposal. Any effort by Consultants to influence the Agency in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the Consultants' Proposal.

Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

14. Evaluation of the Technical Proposals

The evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria, sub-criteria, and point system specified in the Data Sheet. Each responsive Proposal will be given a technical score (St).

A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP, and particularly the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Data Sheet.

15. Opening of Financial Proposals

15.1 Financial Proposals shall be opened after the evaluation of technical proposals. The Financial Proposal of the Consultants who met the minimum qualifying mark will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded.

16. Evaluation of Financial Proposals

16.1 The Evaluation Committee will correct any computational errors. When correcting computational errors, in case of discrepancy between a partial amount and the



total amount, or between word and figures the former will prevail. Activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items. In case an activity or line item is quantified in the Financial Proposal differently from the Technical Proposal, no corrections are applied to the Financial Proposal in this respect.

- 16.2 The Evaluation Committee will convert prices in various currencies to the single currency specified in the Data Sheet. The official currency exchange rates used, provided by the source indicated in the Data Sheet, will be those in effect on the date indicated in the Data Sheet. The evaluation shall exclude those taxes, duties, fees, levies, and other charges imposed under the applicable law; and to be applied to foreign and non-permanent resident consultants (and to be paid under the contract, unless the consultant is exempted).

17. Evaluation of Quality and Cost based Proposals

- 17.1 The lowest evaluated Financial Proposal (Fm) will be given the maximum financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in the Data Sheet. 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; $T + P = 1$) indicated in the Data Sheet: $S = St \times T\% + Sf \times P\%$. The firm achieving the highest combined technical and financial score will be invited for negotiations.

18. Place and Time for Negotiations

- 18.1 Negotiations will be held at the date and address indicated in the Data Sheet. The invited Consultant will, as a pre-requisite for attendance at the negotiations, confirm availability of all Professional staff. Failure in satisfying such requirements may result in the Agency proceeding to negotiate with the next ranked Consultant. Representatives conducting negotiations on behalf of the Consultant must have written authority to negotiate and conclude a Contract.

19. Technical Negotiations

- 19.1 Negotiations will include a discussion of the Technical Proposal, the proposed technical approach and methodology, work plan, and organization and staffing, and any suggestions made by the Consultant to improve the Terms of Reference. The Agency and the Consultants will finalize the Terms of Reference, staffing schedule, work schedule, logistics, and reporting. These documents will then be incorporated in the Contract as "Description of Services". Special attention will be paid to clearly defining the inputs and facilities required from the Agency to ensure satisfactory implementation of the assignment. The Agency shall prepare minutes of negotiations which will be signed by the Agency and the Consultant.

20. Financial Negotiations

- 20.1 If applicable, it is the responsibility of the Consultant, before starting financial negotiations, to contact the local tax authorities to determine the local tax amount to be paid by the Consultant under the Contract. The financial negotiations will include a clarification (if any) of the firm's tax liability in the Agency's country, and the manner in which it will be reflected in the Contract; and will reflect the agreed technical modifications in the cost of the services. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff nor other proposed unit rates.
- 20.2 Having selected the Consultant on the basis of, among other things, an evaluation of proposed Professional staff, the Agency expects to negotiate a Contract on the basis of the Professional staff named in the Proposal. Before contract negotiations, the Agency will require assurances that the Professional staff will be actually available.
- The Agency will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. If this is not the case and if it is established that Professional staff were offered in the proposal without confirming their availability, the Consultant may be disqualified. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and shall be submitted by the Consultant within the period of time specified in the letter of invitation to negotiate.
- 20.3 Negotiations will conclude a review of the draft Contract. To complete negotiations the Agency and the Consultant will initial the agreed Contract. If negotiations fail, the Agency will invite the Consultant whose Proposal received the second highest score to negotiate a Contract.
- 20.4 After completing negotiations the Agency shall award the Contract to the selected Consultant and after Contract signature. Following the contract award decision Agency shall prepare a notice indicating the name(s) of the best evaluated tenderer(s), the value of the proposed contracts and evaluated values. The Agency shall allow a period of at least ten working days to elapse from the date of despatch of the notice which will be published on ESPPRA website before a contract is awarded
- 20.5 Information relating to evaluation of Proposals and recommendations concerning awards shall not be disclosed to the Consultants who submitted the Proposals or to other persons not officially concerned with the process, until the publication of the award of Contract.

21. Commencement of Assignment

- 21.1 The Consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.
- 21.2 The Agency shall continuously review the performance of the consultant and, if the performance of the consultant is not satisfactory, ESPPRA shall have the



right to terminate the services agreement in line with the agreed terms and conditions of service.

22. Corrupt, collusive, fraudulent or coercive practices

22.1 Consultants should be aware that a consultant who engages in corrupt, collusive, fraudulent or coercive practices will have their proposals rejected and may further be subject to the prosecution under the laws of Eswatini.

23. MODIFICATIONS AND WITHDRAWAL OF TENDERS

A Tenderer may modify or withdraw its Tender after submission, provided that written notice of the modification is received by the ESPPRA prior to the deadline for its submission. A withdrawal notice may also be sent by e-mail, but followed by a signed confirmation copy. A Tenderer's representative shall initial Tender changes or modifications in black ink.

No Tender may be modified after the deadline for submission of Tenders.

No Tender may be withdrawn in the interval between the deadline for submission of Tenders and the expiration of its validity.

INSTRUCTIONS TO CONSULTANTS

Proposal Data Sheet

Paragraph Reference	
1.	Definitions
1.1	Name of the Agency: Eswatini Public Procurement Regulatory Agency (ESPPRA) Method of selection: Quality and Cost Based Selection (QCBS)
1.2	Name of Assignment: PROVISION OF RECRUITMENT SERVICES FOR ESPPRA
2.	Validity
2.1	Proposals must remain valid for 120 (one-twenty) days after the submission date.
3.	Clarification and Amendment of RFP Documents
3.1	Clarifications may be requested in writing (email only), but not later than 30 th June 2021 The address for requesting clarifications is: procurement@sppra.co.sz
4.	Preparation of the Technical Proposal



4.1	<p>As required in Form TECH-2, Part D, the following documents shall be included as Appendices to the Technical Proposal. In case of a joint venture or consortium each member must provide the documents:</p> <ul style="list-style-type: none"> • Certified copy of a valid Trading Licence; • Original and valid Tax Compliance Certificate; • Certified copy of an official statement of the Directors and alternative directors or owner/s in the case of unincorporated businesses (i.e. Form 'J' or equivalent); • Certified copy of an official statement of the annual summary of share capital and shares (i.e. Form 'C' or equivalent); and • Certified copy of Labour Compliant Certificate. • Certified copy of Police Clearance for Directors • Receipt for the payment of the Tender Document
5.	Preparation of the Financial Proposal
5.1	<p>Taxes: All consultants must take note that a withholding tax of 15% on the gross amount paid shall be levied on payment made to non-Swazi residents companies/contractors in respect of services performed in Eswatini and 10% on Swazi resident companies/contractors unless the company/contractor has a tax exemption certificate from the Commissioner of Taxes (Refer to Income Tax Order No. 21 of 1975 as amended)</p>
	<p>Information on taxes may be obtained from the following: The Commissioner of Taxes P.O. Box 186 Mbabane Eswatini Tel. +268 2406 4050 (contact centre)</p>
6.	Packing and Submission of the Proposal
6.1	<p>The Consultant must submit the 1 original and 5 copies of the Technical Proposal and the 1 original and 5 of the Financial Proposal.</p>

6.2

The proposal shall consist of a Technical Proposal and a Financial Proposal, which shall be in separate sealed envelopes marked “**Technical Proposal – RFP ESPPRA 01 OF 2021**” and “**Financial Proposal – RFP ESPPRA 01 OF 2021**”, respectively. The two envelopes must be enclosed in a sealed outer envelope, which shall be marked: “**Request for Proposal: PROVISION OF RECRUITMENT SERVICES FOR ESPPRA, RFP ESPPRA 01 OF 2021- Do Not Open before 10:30 hours (Eswatini time) on Monday 12th of July 2021**” and addressed to:

**Chief Executive Officer
Eswatini Public Procurement Regulatory Agency
Rhus Office Park
Mbabane**

Failure to mark the envelope clearly and accurately may result in rejection of the application.

The Proposal should be deposited in the Tender Box situated at the **Eswatini Public Procurement Regulatory Agency, Rhus Office Park, MBABANE** at the latest by **10:30 hours (Eswatini time) on the 12th July 2021**. Late applications will not be considered.

7.

Evaluation of the Technical Proposals

7.1

Criteria, sub-criteria and point system for the evaluation of Full Technical Proposals are:

Technical Criteria	Technical Sub-criteria	Maximum Points
Overall Response	• Completeness of response	5
	• Overall concurrence between RFP requirements and proposal	5
Maximum Points		10
Company and Key Personnel	• Range and depth of experience with similar projects, including recruitment of personnel in high level positions in other public enterprises	10
	• Adequate staffing for service	10
	• Client references with written testimonials from 3 organisations/entities with contact details and contact person	15
	• Key personnel: relevant experience and qualifications	15

	Maximum Points		50
	Proposed Methodology and Approach	<ul style="list-style-type: none">• Methodology and approach proposed for the entire recruitment exercise• Work plan proposed for the entire recruitment exercise	20 20
	Maximum Points		40
	Total Maximum		100
	The price/cost of each of the technically compliant proposals shall be considered only after evaluation of the above technical criteria.		
7.2	The minimum Technical Score (St) required to pass is: 70 (seventy)		
8.	Evaluation of the Financial Proposals		
8.1	Foreign currency rate will be converted to Lilangeni (SZL) at the official selling rate published by the Central Bank of Eswatini on the day of the latest submission date of the tender. Evaluation will take place in Lilangeni (SZL) only.		
9.	Evaluation of Quality Cost Based Proposals		
9.1	The lowest evaluated Financial Proposal (Fm) will be given the maximum financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as follows: $Sf = 100 \times Fm / F$, in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration. 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) indicated in the Data Sheet: $S = St \times T\% + Sf \times P\%$. The firm achieving the highest combined technical and financial score will be invited for negotiations. The weights given to the Technical and Financial Proposals are: T = 0.7 P = 0.3		
10.	Negotiations		

10.1	Expected address for contract negotiations: Eswatini Public Procurement Regulatory Agency, Rhus Office Park, MBABANE.
11.	Commencement of Assignment
11.1	The assignment is expected to commence on or before 19 July 2021.

SECTION 2

TECHNICAL PROPOSAL - STANDARD FORMS

Paragraph 9 of 'Instructions to Consultants' informs about the format in which the Technical Proposal shall be submitted.

- TECH-1 Technical Proposal Submission Form
- TECH-2 Consultant's Organization, Experience and Financial Standing
 - A. Consultant's Financial Standing
 - B. Consultant's Organization
 - C. Consultant's Experience
- TECH-3 Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Agency
 - A. On the Terms of Reference
 - B. On the Counterpart Staff and Facilities
- TECH-4 Description of the Approach, Methodology and Work Plan for Performing the Assignment
- TECH-5 Team Composition and Task Assignments
- TECH-6 Curriculum Vitae (CV) for Proposed Professional Staff
- TECH-7 Declaration of Eligibility



FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

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

To: **The Entity Tender Board Eswatini Public Procurement Regulatory Agency**
Rhus Office Park P.O. Box 9665 Mbabane

Dear Sirs:

We, the undersigned, offer to provide the consulting services for the **PROVISION OF RECRUITMENT SERVICES FOR ESPPRA** in accordance with your Request for Proposal dated **09th June 2021** and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

We are submitting our Proposal in association with: [>>Insert a list with full name and address of consultant or each associated consultant>>]

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

If negotiations are held during the period of validity of the Proposal, i.e., before the date indicated in Paragraph Reference 2.1 of the Data Sheet, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph Reference 11.1 of the Data Sheet.

We understand the Agency is not bound to accept the lowest or any proposal.

We remain,

Yours sincerely,

Authorized Signature: _____

Name and Title of Signatory: _____ Name of Firm: _____

Address: _____

[Stamp of the Firm]



FORM TECH-2: CONSULTANT'S ORGANIZATION, EXPERIENCE AND FINANCIAL STANDING

A - Consultant's Financial Standing

Following financial information shall be provided:

- Certified copies of the financial statements for the last financial year
- Certified bank account details: name of bank, branch, main account number, type of account and year of account opening.

B - Consultant's Organization

[A brief description of the Consultants' organization]

C - Consultant's Experience

[Use the format below to provide information on each assignment for which your firm and each associate for this assignment were legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this assignment]

Assignment name:	Approx. value of the contract [>>>Amount in Lilangeni (SZL) in figures and in words>>>]:
Country: Location within country:	Duration of assignment (months):
Name of Agency:	Total N° of staff-days/months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract [>>>Amount in Lilangeni (SZL) in figures and in words>>>]:
Start date [>>> month/year>>>]: Completion date [>>> month/year>>>]:	N° of professional staff-months provided by associated Consultants:

Name of associated Consultants, if any:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director, Project Coordinator, Team Leader):
Narrative description of Project:	
Description of actual services provided by your staff within the assignment:	

D – Other Documents Comprising the Proposal

The Technical Proposal must include the following documents:

- Certified copy of a valid Trading Licence;
- Original and valid Tax Compliance Certificate;
- Certified copy of an official statement of the Directors and alternative directors or owner/s in the case of unincorporated businesses (i.e. Form 'J' or equivalent);
- Certified copy of an official statement of the annual summary of share capital and shares (i.e. Form 'C' or equivalent); and
- Certified copy of Labour Compliant Certificate
- Police clearance report or affidavit for company directors
- Receipt for the payment of the Tender Document

[>>Firm's Name and Stamp: _____>>]



FORM TECH-3: COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE AND ON COUNTERPART STAFF AND FACILITIES TO BE PROVIDED BY THE AGENCY

A - On the Terms of Reference

[Present and justify any modifications or improvement to the Terms of Reference proposed to improve performance in carrying out the assignment (such as deleting some activity you consider unnecessary, adding others or proposing a different phasing of the activities). Such suggestions should be concise and to the point, and they shall be part of the Proposal.]

B - On Counterpart Staff and Facilities

[Comment here on counterpart staff and facilities to be provided by the Agency, if any, including: administrative support, office space, local transportation, equipment, data, etc.]



FORM TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

[Technical approach, methodology and work plan are key components of the Technical Proposal. The presentation of the Technical Proposal can be inclusive of charts and diagrams, divided into the following three chapters:

- a) Technical Approach and Methodology,*
- b) Work Plan, and*
- c) Organization and Staffing,*

a) Technical Approach and Methodology. In this chapter please explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output.

Please highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. Please also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach.

b) Work Plan. In this chapter please propose the main activities of each assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Agency), and delivery timelines of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here.

c) Organization and Staffing. In this chapter please propose the structure and composition of the suggested team. List the main disciplines of the assignment, the key expert responsible and proposed technical and support staff.]

FORM TECH-5: TEAM COMPOSITION AND TASK ASSIGNMENTS

Professional Staff				
Name of Staff	Firm	Area of Expertise	Position Assigned	Task Assigned



FORM TECH-6: CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

1. **Proposed Position:** *[Insert relevant position to be assigned for each assignment]* _____
2. **Name of Firm:** *[Insert name of firm proposing the staff]* _____
3. **Name of Staff:** *[Insert full name]* _____
4. **Date of Birth:** _____ **Nationality:** _____
5. **Education:** *[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment]* _____
6. **Membership of Professional Associations:** _____
7. **Other Training:** *[Indicate significant training since degrees under 5 - Education were obtained]* _____

8. **Countries of Work Experience:** *[List countries where staff has worked in the last ten years]* _____

9. **Languages:** *[For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]* _____

10. **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: *[>>Name of employing organization>>]*

Positions held: *[>>Title of the position held>>]*

11. Detailed Tasks Assigned

[List all tasks to be performed under each assignment]

12. Work Undertaken that Best Illustrates the Capability to Handle the Assigned Tasks

[Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.]

Name of assignment or project: _____

Year: _____

Location: _____

Client: _____

Main project features: _____

Positions held: _____

Activities performed: _____

13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

(Signature of staff member or authorized representative)

Date: (Day/Month/Year)



Section 2: Technical Proposal

FORM TECH-7: DECLARATION OF ELIGIBILITY

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

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

To: **The Chief Executive Officer Eswatini Public Procurement Regulatory Agency
Rhus Office Park P.O. Box 9665, Mbabane**

Dear Sirs,

Re Tender Reference: **RFP ESPPRA 01 OF 2021**

We hereby declare that:-

- (a) We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract;
- (b) 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) We have fulfilled our obligations to pay taxes and social security contributions;
- (d) 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) We do not have a **conflict of interest** in relation to the procurement requirement.

Signed

Authorised Representative

Date



SECTION 3

FINANCIAL PROPOSAL - STANDARD FORMS

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal in accordance with instructions provided under paragraph 10 of the 'Instructions to Consultants' section.

- FIN-1 Financial Proposal Submission Form
- FIN-2 Summary of Proposal or Activity Costs



FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

[Note to Consultants: This Financial Proposal Submission Form should be on the letterhead of the Consultants and should be signed by a person with the proper authority to sign documents that are binding on the entity. It should be included by the Consultant in its financial proposal.]

[>>>Location>>>]

[>>>Date>>>]

Procurement Reference No: [>>>insert Proposal Reference number>>>]

To: **The Chief Executive Officer Eswatini Public Procurement Regulatory Agency**
Rhus office Park P.O. Box 9665 Mbabane

Dear Sirs:

We, the undersigned, declare that:

- (a) We offer to provide the consulting services for [>>insert a brief description of the Services>>] in conformity with your Request for Proposals and our technical and financial proposals;
- (b) The schedule of prices of our proposal is attached.
- (c) Our proposal shall be valid for a period of [>>specify the number of calendar days>>] days from the date fixed for the proposal submission deadline in accordance with the Request for Proposals, and it shall remain binding upon us, subject to any modifications resulting from negotiations, and may be accepted at any time before the expiration of that period;
- (d) We understand that you are not bound to accept any proposal that you receive;

Dated on _____ day of _____, _____ *[insert date of signing]*

Name: *[insert complete name of person signing the proposal]*

In the capacity of *[insert legal capacity of person signing the proposal]*

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

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



FORM FIN-2: Summary of Proposal or Activity Cost

[Note to Consultants: Consultants may reproduce this form in landscape format with additional columns, rows or fields]

[Commissions and gratuities, if any, paid or to be paid to agents by Consultants and related to the assignment should be listed]

Cost item	Cost (SZL)	Cost (other currency) (if applicable)	Cost (other currency) (if applicable)
Fees (provide detailed rates and descriptions)			
Reimbursable costs ¹ (provide detailed rates and descriptions)			
Local taxes (provide detailed rates and descriptions)			
Total			

[The above table may be expanded to include more categories and types of relevant data and information as appropriate]

¹ Local transportation costs are not to be included, if local transportation is being made available by the Agency. Similarly, the project site, office rent/accommodations/clerical assistance costs are not to be included if being made available by the Agency.



GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law in Eswatini, as they may be issued and in force from time to time.
- (b) “Consultant” means any private or public entity that will provide the Services to the Agency under the Contract.
- (c) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, i.e. these General Conditions (GCC), the Special Conditions (SCC), and the Appendices.
- (d) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (e) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 2.1.
- (f) “GCC” means these General Conditions of Contract.
- (g) “Government” means the Government of Eswatini.
- (h) “Local Currency” means Lilangeni (SZL).
- (i) “Member” means any of the entities that make up the joint venture/consortium/association, and “Members” means all these entities.
- (j) “Party” means the Agency or the Consultant, as the case may be, and “Parties” means both of them.
- (k) “Personnel” means persons hired by the Consultant or by any Sub-Consultants and assigned to the performance of the Services or any part thereof.
- (l) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented.
- (m) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (n) “Sub-Consultants” means any person or entity to whom/which the Consultant subcontracts any part of the Services.
- (o) “In writing” means communicated in written form with proof of receipt.

1.2 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.



- 1.3 Language** This Contract has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.4 Notices**
- 1.4.1 Delivery of Notice** Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.
- 1.4.2 Change of Address** A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SCC.
- 1.5 Location** The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in Eswatini or elsewhere, as the Agency may approve.
- 1.6 Authority of Member in Charge** In case the Consultant consists of a joint venture/ consortium/ association of more than one entity, the Members hereby authorize the entity specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Agency under this Contract, including without limitation the receiving of instructions and payments from the Agency.
- 1.7 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Agency or the Consultant may be taken or executed by the officials specified in the SCC.
- 1.8 Taxes and Duties** The Consultant, Sub-Consultants, and their Personnel shall pay such indirect taxes, duties, fees, and other impositions levied under the Applicable Law as specified in the SCC, the amount of which is deemed to have been included in the Contract Price.
- 1.9 Fraud and Corruption** Consultants should be aware that a Consultant who engages in corrupt, collusive or fraudulent practices will have their proposals rejected or Contract terminated in accordance with Clause GCC 2.6.1(c), and may further be subject to prosecution under the laws of Eswatini.
- 1.9.1 Commission and Fees** It is required that the successful Consultant will disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both Parties or at such other later date as may be stated in the SCC. The date the Contract comes into effect is defined as the Effective Date.
- 2.2 Commencement of Services** The Consultant shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.
- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause GCC 2.6, this Contract shall expire at the end of the time period after the Effective Date, as specified in the SCC.
- 2.4 Modifications or Variations** Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the Scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
- 2.5 Force Majeure**
- 2.5.1 Definition** For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
- 2.5.3 Extension of Time** Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 2.5.4 Payments** During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.
- 2.6 Termination**
- 2.6.1 By the Agency** The Agency may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GCC 2.6.1. In such an occurrence the Agency shall give not less than thirty (30) days' written notice of termination to the Consultant, and sixty (60) days' in the case of the event referred to in (e).

- (a) If the Consultant does not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Agency may have subsequently approved in writing.
- (b) If the Consultant becomes insolvent or bankrupt.
- (c) If the Consultant, in the judgment of the Agency has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- (d) If, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (e) If the Agency, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (f) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 8 hereof.

2.6.2 By the Consultant

The Consultants may terminate this Contract, by not less than thirty (30) days' written notice to the Agency, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause GCC 2.6.2:

- (a) If the Agency fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 7 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the Agency fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8 hereof.

2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GCC 2.6.1 or GCC 2.6.2, the Agency shall make the following payments to the Consultant:

- (a) Payment pursuant to Clause GCC 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) Except in the case of termination pursuant to paragraphs (a) through (c), and (f) of Clause GCC 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance

The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Agency, and shall at all times support and safeguard the Agency's legitimate interests in any dealings with Sub-Consultants or third Parties.

3.2 Conflict of Interests

The Consultant shall hold the Agency's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

3.2.1 Consultants Not to Benefit from Commissions, Discounts, etc.

The payment of the Consultant pursuant to Clause GCC 6 shall constitute the Consultant's only payment in connection with this Contract or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultant shall use their best efforts to ensure that the Personnel, any Sub-Consultants, and agents of either of them similarly shall not receive any such additional payment.

3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

Except with the prior written consent of the Agency, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

3.4 Insurance to be Taken Out by the Consultant

The Consultant (a) shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at their (or the Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the Agency, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the Agency's request, shall provide evidence to the Agency showing that such insurance has been taken out and maintained and that the current premiums have been paid.



- 3.5 Consultant's Actions Requiring Agency's Prior Approval** The Consultant shall obtain the Agency's prior approval in writing before taking any of the following actions:
- (a) Entering into a subcontract for the performance of any part of the Services,
 - (b) Appointing such members of the Personnel not listed by name in Appendix C, and
 - (c) Any other action that may be specified in the SCC.
- 3.6 Reporting Obligations**
- (a) The Consultant shall submit to the Agency the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix.
 - (b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.
- 3.7 Documents Prepared by the Consultant to be the Property of the Agency**
- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultant under this Contract shall become and remain the property of the Agency, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Agency, together with a detailed inventory thereof.
 - (b) The Consultant may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SCC.

4. CONSULTANT'S PERSONNEL

- 4.1 Description of Personnel** The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to carry out the Services. The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub-Consultants listed by title as well as by name in Appendix C are hereby approved by the Agency.
- 4.2 Removal and/or Replacement of Personnel**
- (a) Except as the Agency may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
 - (b) If the Agency finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Agency's written request specifying the grounds thereof,



provide as a replacement a person with qualifications and experience acceptable to the Agency.

- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. OBLIGATIONS OF THE AGENCY

- 5.1 Assistance** The Agency shall use its best efforts to provide the Consultant such assistance as specified in the SCC.
- 5.2 Change in the Applicable Law Related to Taxes and Duties** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Clauses GCC 6.2 (a) or (b), as the case may be.

6. PAYMENTS TO THE CONSULTANT

- 6.1 Payment** Payments under this unit price contract shall be for the actual quantity delivered or performed, using fixed unit prices for different items specified in the Services described in Appendix A. Payment shall be based on agreed fee rates for nominated personnel and certain type or grade of personnel and reimbursable items, such as transportation and subsistence, using either actual expenses or the agreed unit prices.
- 6.2 Contract Unit Prices and Reimbursables** (a) The unit prices and reimbursables payable in foreign currency/currencies is set forth in the SCC.
(b) The unit price and reimbursables payable in local currency is set forth in the SCC.
- 6.3 Payment for Additional Services** For the purpose of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the unit prices and reimbursables is provided in Appendices D and E.
- 6.4 Terms and Conditions of Payment** Payments will be made to the account of the Consultant and according to the payment schedule stated in the SCC. Unless otherwise stated in the SCC, the first payment shall be made against the provision by the Consultant of an advance payment guarantee for the same amount, and shall be valid for the period stated in the SCC. Such guarantee shall be in the form set forth in Appendix G hereto, or in such other form, as the Agency shall have approved in writing. Any other payment shall be made after the conditions listed in the SCC for such payment have been met, and the Consultant has submitted an invoice to the Agency specifying the amount due.

7. GOOD FAITH

- 7.1 Good Faith** The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

8. SETTLEMENT OF DISPUTES

- 8.1 Amicable Settlement** The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 8.2 Dispute Resolution** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SCC.