



# **MATSAPHA TOWN COUNCIL**

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**PROPOSED INSTALLATION OF CONCRETE PALLISADE  
FENCE AND BOUNDARY WALL FENCE AT MATSAPHA  
TOWN COUNCIL LANDFILL**

**TENDER NUMBER: 39 OF 2021/22**

**12<sup>th</sup> DECEMBER 2021**

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## Section I. Instructions to Bidders

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## INVITATION TO TENDER

### PROPOSED INSTALLATION OF CONCRETE PALLISADE FENCE AND BOUNDARY WALL FENCE- TENDER NUMBER AT MATSAPHA TOWN COUNCIL LANDFILL

#### TENDER NUMBER: 39 OF 2020/21

The Matsapha Town Council (MTC or “Council”) is inviting tenders from suitable local contractors (CIC Category - B2 and above) for **PROPOSED INSTALLATION OF CONCRETE PALLISADE FENCE AND BOUNDARY WALL FENCE- TENDER NUMBER: 39 OF 2021/2022.**

The works consist of the installation of Concrete palisade fence and wall fence. It will involve excavations for trench foundation, concrete, 230mm block work, plastering and the installation of the concrete palisade.

Council shall hold a compulsory pre-bid meeting with the prospective bidders on Thursday, 16<sup>th</sup> December 2021, 1100 hours Matsapha Town Council, Meeting Hall. Shortly after the meeting there will be a site inspection tour which is also compulsory. BoQS, Drawings, other necessary documents are attainable at the Council Offices or can be requested via the listed email address.

Tender Documents together with drawings may be obtained from:

**Matsapha Town Council Civic Centre  
The Town Treasurer Office  
Corner of Police College Road & Airport Road  
Matsapha  
Eswatini**

The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES.”

To be eligible for consideration for this proposal, the Tenderer should provide in its proposal the documents specified in “Instructions to Tenderers”, including the following;

Number	DOCUMENTS
1	Certified copy of valid Trading License,
2	Original/Valid Tax Compliance Certificate Certified,
3	Certified copy of current Labour Compliance Certificate,
4	Certified copy of Swaziland National Provident Fund Certificate
5	Certified copy of Form J and Form C (Company Ownership and Shareholding)
6	Financial Statements for the past 3 years,
7	Names and Contacts of at least (5) Reference Customers,
8	Certified copy of a Certificate of Incorporation,
9	Certified copy of Police Clearance for All company Directors,
10	Certified copy of CIC registration certificate (CIC Category - B2 and above)
11	General receipt (E1,000.00) for proof of payment of the tender document.

The Tenders must be deposited in the Tender Box situated at the

**Matsapha Town Council,  
Corner Police College and Airport Road,  
Matsapha**

at the latest by **10.00 am (Eswatini time) on 20<sup>th</sup> January 2022**. Late tenders, as well as tenders received by telegram, facsimile, email or similar medium will not be considered. Tenders received in time by the latest date and time for submission will be opened at Council's Offices at **10.00am (Eswatini time) on 20<sup>th</sup> January 2022**. Tenderers may attend the opening procedure.

Requests for clarifications, which must be in writing, should be addressed, via email, to **procurement@matsapha.co.sz** Council will strive to promptly respond in writing via e-mail to any requests for clarification. All request and clarification should be filed with Council ten (ten) calendar days' (13<sup>th</sup> January 2022) prior the tender opening date. Written copies of Councils response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective Bidders.

**SITE INSPECTION CERTIFICATE**

This is to certify that (*Tenderer*).....of

(*Address*).....

.....  
was represented by the person(s) named

below at the compulsory meeting held for all tenderers at the .....,  
Contract No.

**MTC/CIP/WKS/039/2021/22** on .....2021 starting at .....

I / We acknowledge that the purpose of the meeting was to acquaint myself /  
ourselves with the site of the works and / or matters incidental to doing the work  
specified in the tender documents in order for me / us to take account of everything  
necessary when compiling our rates and prices included in the tender.

**Particulars of person(s) attending the meeting:**

Name: .....Signature:.....

Capacity: .....

**Attendance of the above person(s) at the meeting is confirmed by the Client's  
Agent, namely:**

Name:.....Signature:.....

For and on behalf of Matsapha Town Council



## Instructions to Bidders (ITB)

### A. General

1. **Scope of Bid**
  - 1.1 The Employer as defined in Section II “Bidding Data Sheet” (BDS), invites bids for the construction of Works, as described in the BDS and Section VI, “Particular Conditions of Contract” (PCC). The name and identification number of the Contract are provided in the BDS and the PCC.
  - 1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion Date specified in the BDS and PCC 1.1 (r).
  - 1.3 Throughout these Bidding Documents:
    - (a) the term “in writing” means communicated in written form and delivered against receipt;
    - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
    - (c) “day” means calendar day.
2. **Source of Funds**
  - 2.1 Matsapha Town Council intend to construct and fund the cost of the project by covering all eligible payment under the Contract for the works using public funds under the Capital Investment Project (CIP).

- 3. Fraud and Corruption**
- 3.1 It is the Matsapha's policy and the Eswatini Procurement Act of 2011 requirement that bidders, suppliers, and contractors and their subcontractors under Public-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    - (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
    - (iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    - (v) "obstructive practice" is
      - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- 3.2 Furthermore, bidders shall be aware of the provision stated in GCC Sub-Clause 59.2 (h).
- 4. Eligible Bidders**
- 4.1 A Bidder, and all parties constituting the Bidder, may have the nationality of any country, subject to the provisions of Section III, Eligible Countries. A Bidder shall be deemed to have the

nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors.

- 4.2 A Bidder shall not have a conflict of interest. All Bidders found to have conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they are associated, or has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Borrower to provide consulting services for the preparation or supervision of the Works, and any of its affiliates **shall not be eligible to bid**.
- 4.3 A Bidder that is under a declaration of ineligibility by the Bank in accordance with ITB Clause 3, at the date of contract award, shall be disqualified. The list of such debarred firms is available at the electronic address **specified in the BDS**.
- 4.4 A firm that has been determined to be ineligible by the Bank in relation to the Bank Guidelines On Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants shall be not be eligible to be awarded a contract.
- 4.4 Government-owned enterprises in the Employer's country may be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) that they are not a dependent agency of the Borrower or Sub-Borrower.
- 4.5 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

## 5. Qualifications of the Bidder

- 5.1 All bidders shall provide in Section IV, "Form of Bid, Qualification Information, Letter of Acceptance, and Agreement," a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that prequalification of potential bidders has been undertaken, only bids from prequalified bidders shall be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.
- 5.3 If the Employer has not undertaken prequalification of

potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise **stated in the BDS**:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business of the Bidder; written power of attorney of the signatory of the Bid to commit the Bidder;
- (b) total monetary value of construction works performed for each of the last five years;
- (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
- (d) major items of construction equipment proposed to carry out the Contract;
- (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to seek references from the Bidder's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the Bidder was/is involved, the parties concerned, and the disputed amounts; and awards;
- (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price. The ceiling for sub contractor's participation is **stated in the BDS**.

5.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise **stated in the BDS**:

- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
- (b) the Bid shall be signed so as to be legally binding on all partners;
- (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the partners shall be nominated as being in

charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and

- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- (f) a copy of the Joint venture Agreement entered into by the partners shall be submitted with the bid; or a Letter of Intent to execute a joint venture agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed Agreement.

5.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria

- (a) an average annual financial amount of construction work over the period specified in the **BDS** of at least the product resulting from multiplying the estimated annual cash flow for the Contract **indicated in the BDS** by the multiple **indicated in the BDS**;
- (b) experience as prime contractor in the construction of at least the number of works of a nature and complexity equivalent to the Works over the period **specified in the BDS** (to comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**;
- (d) a Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount **specified in the BDS**.

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

5.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clauses 5.5 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria of ITB Sub-Clauses 5.5 (a), (b), and (e) for an individual Bidder, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement shall result in rejection of the joint venture's Bid. Subcontractors' experiences and resources shall not be taken into account in determining the Bidder's compliance with the qualifying

criteria, unless otherwise **stated in the BDS.**

- 5.7 Domestic bidders and joint ventures of domestic bidders applying for eligibility for a 7½-percent margin of preference in bid evaluation shall supply all information to satisfy the criteria for eligibility as described in ITB Clause 31.
6. **One Bid per Bidder** 6.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) shall cause all the proposals with the Bidder's participation to be disqualified.
7. **Cost of Bidding** 7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer shall in no case be responsible or liable for those costs.
8. **Site Visit** 8.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

## B. Bidding Documents

9. **Contents of Bidding Documents** 9.1 The set of Bidding Documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 11:
- |              |                                                                          |
|--------------|--------------------------------------------------------------------------|
| Section I    | Instructions to Bidders                                                  |
| Section II   | Bidding Data Sheet                                                       |
| Section III  | Eligible Countries                                                       |
| Section IV   | Forms of Bid, Qualification Information, Letter of acceptance, Agreement |
| Section V    | General Conditions of Contract                                           |
| Section VI   | Particular Conditions of Contract                                        |
| Section VII  | Specifications                                                           |
| Section VIII | Drawings                                                                 |
| Section IX   | Bill of Quantities                                                       |
| Section X    | Forms of Securities                                                      |
|              | Invitation for Bids                                                      |
10. **Clarification of Bidding Documents** 10.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Employer in writing at address [procurement@matsapha.co.sz](mailto:procurement@matsapha.co.sz). The Employer shall respond to any request for clarification received earlier than 4 days prior to the deadline for submission of bids. Copies of the Employer's response shall be forwarded to all purchasers of the Bidding Documents, including a description of the inquiry,

but without identifying its source.

- 11. Amendment of Bidding Documents**
- 11.1 Before the deadline for submission of bids, the Employer may modify the Bidding Documents by issuing addenda.
- 11.2 Any addendum thus issued shall be part of the Bidding Documents and shall be communicated in writing to all purchasers of the Bidding Documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.
- 11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

### C. Preparation of Bids

- 12. Language of Bid**
- 12.1 All documents relating to the Bid shall be in the language specified in the BDS.
- 13. Documents Comprising the Bid**
- 13.1 The Bid submitted by the Bidder shall comprise the following:
- (a) The Bid (in the format indicated in Section IV);
  - (b) Bid Security, or Bid-Securing Declaration, in accordance with ITB Clause 17, if required;
  - (c) priced Bill of Quantities;
  - (d) Qualification Information Form and Documents;
  - (e) Alternative offers where invited;
- and any other materials required to be completed and submitted by bidders, as specified in the BDS.
- 14. Bid Prices**
- 14.1 The Contract shall be for the whole Works, as described in ITB Sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Bidder.
- 14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Bidder shall not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.
- 14.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by the Bidder.
- 14.4 The rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract if

**provided for in the BDS** and PCC and the provisions of Clause 47 of the General Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Particular Conditions of Contract and GCC Clause 47.

- 15. Currencies of Bid and Payment**
- 15.1 The unit rates and prices shall be quoted by the Bidder entirely in the currency of the Employer's country as **specified in the BDS**. Foreign currency requirements shall be indicated as percentages of the Bid price (excluding provisional sums) and shall be payable at the option of the Bidder in up to three foreign currencies.
- 15.2 The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentages mentioned in para. 15.1 above shall be the selling rates for similar transactions established by the authority **specified in the BDS** prevailing on the date 28 days prior to the latest deadline for submission of bids. These exchange rates shall apply for all payments so that no exchange risk shall be borne by the Bidder. If the Bidder uses other rates of exchange, the provisions of ITB Clause 29.1 shall apply; in any case, payments shall be computed using the rates quoted in the Bid.
- 15.3 Bidders shall indicate details of their expected foreign currency requirements in the Bid.
- 15.4 Bidders may be required by the Employer to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices, **if required in the BDS**, are reasonable and responsive to ITB Sub-Clause 15.1.
- 16. Bid Validity**
- 16.1 Bids shall remain valid for the period of **120 days**.
- 16.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 17, it shall be extended up to 28 days after the deadline of the extended bid validity period. A Bidder may refuse the request without forfeiting the Bid Security or execution of its Bid Securing Declaration. A Bidder agreeing to the request shall not be required or permitted to modify its Bid, except as provided in ITB Clause 17.
- 16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended beyond 56 days, the amounts payable in local and foreign currency to the Bidder selected for award, shall be adjusted as specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking the above correction into consideration.
- 17. Bid Security and Bid-Securing**
- 17.1 **If required in the BDS**, the Bidder shall furnish as part of its Bid, a Bid Security or a Bid-Securing Declaration in original form as specified in the BDS.



- Declaration**      17.2 The Bid Security shall be in the **amount specified in BDS** and denominated in the currency of the Employer’s country or the currency of the Bid or in another freely convertible currency, and shall:
- (a) at the bidder’s option, be in the form of either a letter of credit, or a bank guarantee from a banking institution, or a bond or surety issued by an insurance or bonding institution;
  - (b) be issued by a reputable institution selected by the bidder and located in any country. If the institution issuing the bond or surety is located outside the Employer’s Country, it shall have a correspondent financial institution located in the Employer’s Country to make it enforceable.
  - (c) be substantially in accordance with one of the forms of Bid Security or Bid-Securing Declaration included in Section X “Security Forms,” or other form approved by the Employer prior to bid submission;
  - (d) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Clause 17.5 are invoked;
  - (e) be submitted in its original form; copies shall not be accepted;
  - (f) remain valid for a period of 28 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Clause 16.2.
- 17.3 If a Bid Security or a Bid- Securing Declaration is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive Bid Security or Bid-Securing Declaration in accordance with ITB Sub-Clause 17.1, shall be rejected by the Employer as non-responsive.
- 17.4 The Bid Security or the Bid- Securing Declaration of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s furnishing of the performance security.
- 17.5 The Bid Security may be forfeited or the Bid-Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub-Clause 16.2; or
  - (b) if the Bidder does not accept the correction of its Bid Price pursuant to ITB Sub-Clause 28.
  - (c) if the successful Bidder fails within the specified time to:

- (i) sign the Contract; or
- (ii) furnish the required performance security.

17.6 The Bid Security or Bid Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent.

17.7 If a bid security is **not required in the BDS**, and

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 16.2, or
- (b) if the successful Bidder fails to: sign the Contract in accordance with ITB 34; or furnish a performance security in accordance with ITB 35;

the Borrower may, **if provided for in the BDS**, declare the Bidder disqualified to be awarded a contract by the Employer for a period of time **as stated in the BDS**.

**18. Alternative Proposals by Bidders**

18.1 Alternatives shall not be considered, unless specifically **allowed in the BDS**. If so allowed, ITB Sub-Clauses 18.1 and 18.2 shall govern, and BDS shall specify which of the following options shall be allowed:

- (a) Option One. A bidder may submit alternative bids with the base bid and the Employer shall only consider the alternative bids offered by the Bidder whose bid for the base case was determined to be the lowest-evaluated bid, or
- (b) Option Two. A bidder may submit an alternative bid with or without a bid for the base case. All bids received, for the base case, as well as alternative bids meeting the technical specifications and performance requirements pursuant to Section VII, shall be evaluated on their own merits.

18.2 Alternative bids shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.

**19. Format and Signing of Bid**

19.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 13, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

19.2 The original and all copies of the Bid shall be typed or written

in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to ITB Sub-Clause 5.3 (a). All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

19.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

19.4 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

#### D. Submission of Bids

##### 20. Submission, Sealing and Marking of Bids

20.1 Bidders may always submit their bids by mail or by hand. When so **specified in the BDS**, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the procedures **specified in the BDS**. The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES."

20.2 The inner and outer envelopes shall

- (a) be addressed to the Employer at the address **provided in the BDS**;
- (b) bear the name and identification number of the Contract as **defined in the BDS** and PCC; and
- (c) provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS**.

20.3 In addition to the identification required in ITB Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.

20.4 If the outer envelope is not sealed and marked as above, the Employer shall assume no responsibility for the misplacement or premature opening of the Bid.

##### 21. Deadline for Sub-mission of Bids

21.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date **specified in the BDS**.

21.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline shall then

be subject to the new deadline.

- 22. Late Bids** 22.1 Any Bid received by the Employer after the deadline prescribed in ITB Clause 21 shall be returned unopened to the Bidder.
- 23. Withdrawal, Substitution and Modification of Bids** 23.1 Bidders may withdraw, substitute or modify their Bids by giving notice in writing before the deadline prescribed in ITB Clause 21.
- 23.2 Each Bidder's withdrawal, substitution or modification notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20, with the outer and inner envelopes additionally marked or "WITHDRAWAL," "SUBSTITUTION," OR "MODIFICATION" as appropriate.
- 23.3 No Bid may be substituted or modified after the deadline for submission of Bids.
- 23.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the Bidding Data or as extended pursuant to ITB Sub-Clause 16.2 may result in the forfeiture of the Bid Security or execution of the Bid -Securing Declaration pursuant to ITB Clause 17.
- 23.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids, by submitting Bid modifications in accordance with this clause or included in the initial Bid

## E. Bid Opening and Evaluation

- 24. Bid Opening** 24.1 The Employer shall open the bids, including modifications made pursuant to Clause 23, in the presence of the bidders' representatives who choose to attend at the time and in the place **specified in the BDS**. Any specific opening procedures required if electronic bidding is permitted in accordance with ITB Sub-Clause 20.1, shall be as specified in the BDS.
- 24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.
- 24.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid withdrawals, substitutions, or modifications, the presence or absence of Bid Security or Bid-Securing Declaration, if required, and such other details as the Employer may consider appropriate, shall be announced by the Employer at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to ITB Clause 22. Substitution Bids and modifications submitted pursuant to ITB Clause 23 that are not opened and read out at bid opening shall not be considered for further evaluation regardless of the circumstances. Late, withdrawn and

substituted bids shall be returned un-opened to bidders

24.4 The Employer shall prepare Minutes of the Bid Opening, including the information disclosed, to those present, in accordance with ITB Sub-Clause 24.3.

- 25. Confidentiality** 25.1 Information relating to the Examination, Clarification, Evaluation, and Comparison of Bids and Recommendations for the Award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the award to the successful Bidder has been announced pursuant to ITB Sub-Clause 34.4. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of its Bid. Notwithstanding the above, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.
- 26. Clarification of Bids** 26.1 To assist in the examination, evaluation, and comparison of Bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with ITB Clause 28.
- 27. Examination of Bids and Determination of Responsiveness** 27.1 Prior to the detailed evaluation of Bids, the Employer shall determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the Security or the Bid Securing Declaration, if required; and (d) is substantially responsive to the requirements of the Bidding Documents.
- 27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the Bidding Documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 27.3 If a Bid is not substantially responsive, it shall be rejected by the Evaluation team, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 28. Correction of Errors** 28.1 Bids determined to be substantially responsive shall be checked by the Employer for any arithmetic errors. Errors shall

be corrected by the Employer as follows:

- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern; and
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted shall govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall govern, and the unit rate shall be corrected.

28.2 The amount stated in the Bid shall be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid shall be rejected, and the Bid Security may be forfeited or the Bid-Securing Declaration executed in accordance with ITB Sub-Clause 17.5 (b).

**29. Currency for Bid Evaluation**

29.1 Bids shall be evaluated as quoted in the currency of the Employer's Country in accordance with ITB Sub-Clause 15.1, unless a Bidder has used different exchange rates than those prescribed in ITB Sub-Clause 15.2, in which case the Bid shall be first converted into the amounts payable in different currencies using the rates quoted in the Bid and then reconverted to the Employer's currency using the exchange rates prescribed in ITB Sub-Clause 15.2.

- 30. Evaluation and Comparison of Bids**
- 30.1 The Employer shall evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.
- 30.2 In evaluating the bids, the Employer shall determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to ITB Clause 28;
  - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Daywork,<sup>1</sup> where priced competitively;
  - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18; and
  - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5.
- 30.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Bidding Documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in Bid evaluation.
- 30.4 The estimated effect of any price adjustment conditions under GCC Clause 47, during the period of implementation of the Contract, shall not be taken into account in Bid evaluation.
- 31. Preference for Domestic Bidders**
- 31.1 If so indicated in the BDS, domestic contractors may receive a margin of preference in Bid Evaluation, for which this clause shall apply.
- 31.2 Domestic bidders shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 7½ percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. They should:
- (a) be registered within the country of the Employer's country;
  - (b) have majority ownership by nationals of the country of the Employer's country;
  - (c) not subcontract more than 10 percent of the Contract Price, excluding provisional sums, to foreign contractors.
- 31.3 The following procedure shall be used to apply the margin of
-

preference:

- (a) Responsive bids shall be classified into the following groups:
  - (i) Group A: bids offered by domestic bidders and joint ventures meeting the criteria of ITB Sub-Clause 31.2; and
  - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 7½ percent of the evaluated Bid prices determined in accordance with ITB Sub-Clause 30.2 shall be added to all bids classified in Group B.

## F. Award of Contract

- 32. Award Criteria** 32.1 Subject to ITB Clause 33, the Employer shall award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding Documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.
- 33. Employer's Right to Accept any Bid and to Reject any or all Bids** 33.1 Notwithstanding ITB Clause 32, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.
- 34. Notification of Award and Signing of Agreement** 34.1 The Bidder whose Bid has been accepted shall be notified of the award by the Employer prior to expiration of the Bid validity period in writing. This letter (hereinafter and in the GCC called the "Letter of Acceptance") shall state the sum that the Employer shall pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").
- 34.2 The Letter of Acceptance shall constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with ITB Clause 35 and signing the Agreement in accordance with ITB Sub-Clause 34.3.
- 34.3 The Agreement shall incorporate all agreements between the Employer and the successful Bidder. It shall be signed by the Employer and sent to the successful Bidder, within 5 days following the Letter of Acceptance's date. Within 5 days of receipt, the successful Bidder shall sign the Agreement and deliver it to the Employer.
- 34.4 The Employer shall publish in the Public Procurement Agency



website *www.sppra.com online* and in the the results identifying the bid and lot numbers and the following information: (i) name of each bidder who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. The employer shall allow a period of 10 working days to elapse before a contract is awarded.

After publication of the award, unsuccessful bidders may request in writing to the Employer for a debriefing seeking explanations for the failure of their bids. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after publication of contract award requests the Employer in writing to explain on which grounds its bid was not selected.

### 35. Performance Security

- 35.1 Within 5 working days after receipt of the Letter of Acceptance, the successful Bidder shall sign the contract and deliver to the Employer a Performance Security in the amount stipulated in the GCC and in the form (Bank Guarantee or Bond) **stipulated in the BDS**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the GCC.
- 35.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued at the Bidder's option, by a bank located in the country of the Employer, or by a foreign bank acceptable to the Employer through a correspondent bank located in the Employer's country.
- 35.3 If the Performance Security is to be provided by the successful Bidder in the form of a Bond, it shall be issued by a surety which the Bidder has determined to be acceptable to the Employer.
- 35.4 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clauses 35.1 and 34.3 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security or execution of the Bid-Securing Declaration. Upon the successful Bidder's, signing of the Agreement and furnishing of the Performance Security pursuant to ITB Clause 35.1, the Employer shall promptly notify the name of the winning bidder to each unsuccessful bidder and shall discharge the Bid Securities of the unsuccessful bidders pursuant to ITB Clause 17.4.

### 36. Adjudicator

- 36.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has

not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the BDS and the PCC at the request of either party.

## Section II. Bidding Data Sheet

A. General																									
ITB 1.1	<p>The Employer is <b>Matsapha Town Council</b></p> <p><b>PROJECT NAME: PROPOSED INSTALLATION OF CONCRETE PALLISADE FENCE AND BOUNDARY WALL FENCE- TENDER NUMBER AT MATSAPHA TOWN COUNCIL LANDFILL</b></p> <p><b>TENDER NO: MATSAPHA/MTC/WRKS/039/2021-2022</b></p>																								
ITB 1.2	The Intended Completion Date is <b>1 (one) month from commencement date.</b>																								
ITB 5.3	<p>The information required from bidders in ITB Sub-Clause 5.3 is modified as follows: <b>Any additional materials required to be completed and submitted by the Bidders are:</b></p> <table border="1"> <thead> <tr> <th>No</th> <th>DOCUMENTS</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Certified copy of valid Trading License,</td> </tr> <tr> <td>2</td> <td>Original/Valid Tax Compliance Certificate Certified,</td> </tr> <tr> <td>3</td> <td>Certified copy of current Labour Compliance Certificate,</td> </tr> <tr> <td>4</td> <td>Certified copy of Swaziland National Provident Fund Certificate</td> </tr> <tr> <td>5</td> <td>Certified copy of Form J and Form C (Company Ownership and Shareholding)</td> </tr> <tr> <td>6</td> <td>Financial Statements for the past 3 years,</td> </tr> <tr> <td>7</td> <td>Names and Contacts of at least (5) Reference Customers,</td> </tr> <tr> <td>8</td> <td>Certified copy of a Certificate of Incorporation,</td> </tr> <tr> <td>9</td> <td>Certified copy of Police Clearance for All company Directors,</td> </tr> <tr> <td>10</td> <td>Certified copy of CIC registration certificate (CIC Category - B2 and above)</td> </tr> <tr> <td>11</td> <td>General receipt (E1,000.00) for proof of payment of the tender document.</td> </tr> </tbody> </table>	No	DOCUMENTS	1	Certified copy of valid Trading License,	2	Original/Valid Tax Compliance Certificate Certified,	3	Certified copy of current Labour Compliance Certificate,	4	Certified copy of Swaziland National Provident Fund Certificate	5	Certified copy of Form J and Form C (Company Ownership and Shareholding)	6	Financial Statements for the past 3 years,	7	Names and Contacts of at least (5) Reference Customers,	8	Certified copy of a Certificate of Incorporation,	9	Certified copy of Police Clearance for All company Directors,	10	Certified copy of CIC registration certificate (CIC Category - B2 and above)	11	General receipt (E1,000.00) for proof of payment of the tender document.
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ITB 5.4	<p>The Bidder that does not own the copyright of the goods it offers to supply shall be required to submit with its bid, the Copyright Authorization using the form included in Section IV Bidding Forms.</p> <p><b>None</b></p>																								
ITB 5.5	The qualification criteria in ITB Sub-Clause 5.5 are modified as follows: <b>N/A</b>																								
ITB 5.5 (a)	<p>The Multiple is: <b>2</b></p> <p>Average annual financial amount of the construction work is <b>E 1.0 Million</b></p> <p>The period is: <b>5 Years</b></p>																								

	The estimated annual cash flow for the Contract is <b>E 1.0 Million</b>
ITB 5.5 (b)	The number is: <b>2</b> The period is: <b>5 years</b>
ITB 5.5 (c)	The essential equipment to be made available for the Contract by the successful Bidder shall be:  Concrete mixer  Tipper truck  Surveying equipment
ITB 5.5 (e)	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be <b>E 100,000.00</b>
ITB 5.6	Subcontractors' experience and resources shall be taken into account.
<b>B. Bidding Documents</b>	
ITB 10.1	The Employer's address for clarification is:  <b>The Town Clerk Matsapha Town Council P. O. Box 1790 Matsapha Corner Police College Road and Airport Road Tel : 25186637 Fax: 25186646</b>
<b>C. Preparation of Bids</b>	
ITB 12.1	The language of the bid is: <b>English</b>
ITB 14.4	The Contract is <b>not</b> subject to price adjustment in accordance with GCC Clause 47.
ITB 15.1	The currency of the Employer's country is <b>Eswatini Lilangeni (SZL)</b> .
ITB 15.2	The authority for establishing the rates of exchange shall be <b>The Central Bank of Eswatini</b> .
ITB 15.4	Bidders <b>are</b> required to substantiate the rates and prices
ITB 16.1	The Bid shall be valid for <b>120 days</b> .
ITB 17.1	<ul style="list-style-type: none"> <li>• Bid shall include a Bid Security issued by a bank or a by a surety using the form for bid security (bank guarantee or bid bond)</li> </ul>

	included in Section X Security Forms. The Bid Security shall be <b>E 5,000.00</b> .
ITB 17.2	The Bid Security amount is <b>E 5,000.00</b>
ITB 17.7	N/A
ITB 18.1	Alternative Bids <b>shall not be</b> considered.
ITB 19.1	The number of copies of the Bid to be completed and returned shall be <b>1 (One) Original and 2 (Two) Copies</b>
<b>D. Submission of Bids</b>	
ITB 20.1	Bidders may submit their bids electronically: <b>No.</b>
ITB 20.2 (a)	The Employer's address for the purpose of Bid submission is  Attention: <b>The Town Clerk Matsapha Town Council P. O. Box 1790 Matsapha Corner Police College Road and Airport Road Floor/Room number: Procurement Offices - Ground Floor Town: Matsapha Country: Swaziland</b>
ITB 20.2 (b)	Name and Identification number of the contract as given in ITB 1.1 above in this sheet. <b>TENDER NO: MATSAPHA/WRKS/039/2021-2022</b>
<b>E. Bid Opening and Evaluation</b>	
ITB 24.1	The bid opening shall take place at:  <b>The Matsapha Town Council Street Address: Corner Police College Road and Airport Road Floor/Room number: Council Civic Center -1<sup>st</sup> Floor City: Matsapha Country: Swaziland Date: 20th January 2021 10.00am (Eswatini time).</b>
ITB 31.1	Domestic/Swati Contractors shall receive a margin of preference in Bid evaluation.
<b>F. Award of Contract</b>	
ITB 35.1	The Standard Form of Performance Security acceptable to the Employer shall be a <b>Bank Guarantee of 5% or a Performance Bond of 10% of the</b>

	<b>Contract Sum, respectively.</b>
<b>ITB 36.1</b>	<p>The Adjudicator proposed by the Employer is <b>Mahadeva Gopinath</b></p> <p>The hourly fee for this proposed Adjudicator shall be <b>E1 270.00</b> per hour (Emalangeni). The biographical data of the proposed Adjudicator is as follows:</p> <p>Please see attached Curriculum vitae for the above mentioned].</p> <p>The Appointing Authority is The South African Association of Arbitrators</p>

### **Section III. Eligible Countries**

#### **Eligibility for the Provision of Goods, Works and Services in Public Procurement**

1. In accordance with Part V of the Procurement Act, 2011 Gazetted dated September 2011, it permits firms and individuals from all countries to offer goods, works and services for public-financed projects.





**Section IV. Forms of Bid, Qualification Information, Letter of Acceptance, and Agreement**

**1. Contractor’s Bid**

.....[date]

Identification No and Title of Contract: .....

To: [name and address of Employer]

Having examined the Bidding Documents, including addenda [insert list], we offer to execute the [name and identification number of Contract] in accordance with the GCC accompanying this Bid for the Contract Price of [insert amount in numbers], [insert amount in words] [insert name of currency].

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [insert local]	Inputs for which foreign currency is required
(a)			
(b)			

We accept the appointment of [insert name proposed in Bid Data Sheet] as the Adjudicator.

**[or]**

We do not accept the appointment of [insert name proposed in Bid Data Sheet] as the Adjudicator, and propose instead that [insert name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity and, if required, Bid Security or Bid-Securing Declaration as required by the Bidding Documents and specified in the BDS.

We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB Sub-Clause 4.1;

We have no conflict of interest in accordance with ITB Sub-Clause 4.2;

Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the contract—has not been declared ineligible by the Bank, or under the Employer’s country laws or official regulations, in accordance with ITB Sub-Clauses 4.3 and 4.4.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state “none”)

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

## 2. Qualification Information

1. Individual Bidders or Individual Members of Joint Ventures
- 1.1 Constitution or legal status of Bidder: *[attach copy]*  
Place of registration: *[insert]*  
Principal place of business: *[insert]*  
Power of attorney of signatory of Bid: *[attach]*
- 1.2 Annual amounts of construction works performed during the last *[insert number pursuant to BDS sub clause 5.5(a)]* years *[insert amounts in the national currency equivalent]*
- 1.3 Number *[insert number pursuant to BDS sub clause 5.5 (b)]* of works of a nature and amount similar to the Works performed as prime Contractor over the last *[insert number pursuant to BDS 55(b)]* years. *[The amounts should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date(s).]*

Project name and country	Name of client and contact person	Type of work performed and year of completion	Value of contract (national currency equivalent )
(a)			
(b)			

- 1.4 Major items of Contractor's Equipment proposed for carrying out the Works. *[List all information requested below. Refer also to ITB Sub-Clause 5.3 (d).]*

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. *[Attach biographical data. Refer also to ITB Sub-Clause 5.3 (e) and GCC Sub-Clause 9.1.]*

Position	Name	Years of experience (general)	of	Years of experience in proposed position
(a)				
(b)				

1.6 Proposed subcontracts and firms involved. Refer to GCC Clause 7.

Sections of the Works	Value of subcontract	Subcontractor (name and address)	Experience in similar work
(a)			
(b)			

1.7 Financial reports for the last 3 years: balance sheets, profit and loss statements, auditors' reports, etc. *[List below and attach copies.]*

1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.

1.10 Information on current litigation(s) in which the Bidder is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

1.11 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Bidding Documents.

- 2. Joint Ventures**
- 2.1 The information listed in 1.1 - 1.10 above shall be provided for each partner of the joint venture.
  - 2.2 The information in 1.11 above shall be provided for the joint venture.
  - 2.3 Attach the power of attorney of the signatory (ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.
  - 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:
    - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
    - (b) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
    - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 3. Additional Requirements**
- 3.1 Bidders should provide any additional information required in the BDS.

### 3. Letter of Acceptance

*[letterhead paper of the Employer]*

*[insert date]*

Identification No and Title of Contract: *[insert identification number and title of the Contract]*

To: *[insert name and address of the Contractor]*

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and identification number, as given in the BDS]* for the Contract Price of *[insert amount in numbers and words]* *[Emalangeni]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

*[insert one of the following (a) or (b) options]*

- (a) We accept that *[insert name proposed by bidder]* be appointed as the Adjudicator.
- (b) We do not accept that *[insert name proposed by bidder]* be appointed as Adjudicator, and by sending a copy of this Letter of Acceptance to *[insert name of the Appointing Authority]*, we are hereby requesting *[insert name]*, the Appointing Authority, to appoint the Adjudicator in accordance with ITB Clause 37.1.

You are hereby instructed to (a) proceed with the execution of the said Works in accordance with the Contract Documents, (b) sign and return the attached Contract Documents, and (c) forward the performance security pursuant to ITB Sub-Clause 35.1, i.e., within 21 days after receipt of this Letter of Acceptance, and pursuant to GCC Sub-Clause 52.1

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Attachment: Agreement

#### 4. Agreement

This Agreement, made the *[insert day]* day of *[insert month]*, *[insert year]* between *[insert name and address of Employer]* (hereinafter called “the Employer”) and *[insert name and address of Contractor]* (hereinafter called “the Contractor”) of the other part.

Whereas the Employer is desirous that the Contractor execute *[insert name and identification number of Contract]* (hereinafter called “the Works”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

Now this Agreement witnessed as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of *[Witness entity]* \_\_\_\_\_  
was hereunto affixed in the presence of: \_\_\_\_\_

Signed, Sealed, and Delivered by the said \_\_\_\_\_  
in the presence of: \_\_\_\_\_

Binding Signature of Employer *[signature of an authorized representative of the Employer]*

Binding Signature of Contractor *[signature of an authorized representative of the Contractor]*



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## **Section V. General Conditions of Contract**

These General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract (PCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

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**General Conditions of Contract****A. General****1. Definitions****1.1 Boldface type is used to identify defined terms.**

- (a) The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) Bank means the financing institution **named in the PCC**.
- (e) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
- (f) Compensation Events are those defined in GCC Clause 41 hereunder.
- (g) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 52.1.
- (h) The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (i) The Contractor is the party whose Bid to carry out the Works has been accepted by the Employer.
- (j) The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.
- (k) The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) Days are calendar days; months are calendar months.
- (m) Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (n) A Defect is any part of the Works not completed in accordance with the Contract.
- (o) The Defects Liability Certificate is the certificate issued by

- Project Manager upon correction of defects by the Contractor.
- (p) The Defects Liability Period is the period **named in the PCC** pursuant to Sub-Clause 33.1 and calculated from the Completion Date.
  - (q) Adjudicator means the single person appointed under Clause 23.
  - (r) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
  - (s) The Employer is the party who employs the Contractor to carry out the Works, **as specified in the PCC**.
  - (t) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
  - (u) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
  - (v) The Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.
  - (w) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
  - (x) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
  - (y) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
  - (z) The Project Manager is the person **named in the PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
  - (aa) PCC means Particular Conditions of Contract
  - (bb) The Site is the area **defined as such in the PCC**.
  - (cc) Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
  - (dd) Specification means the Specification of the Works included in

the Contract and any modification or addition made or approved by the Project Manager.

- (ee) The Start Date is **given in the PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ff) A Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (gg) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (hh) A Variation is an instruction given by the Project Manager which varies the Works.
- (ii) The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the PCC**.

- 2. Interpretation
  - 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
  - 2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
  - 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
    - (a) Agreement,
    - (b) Letter of Acceptance,
    - (c) Contractor's Bid,
    - (d) Particular Conditions of Contract,
    - (e) General Conditions of Contract,
    - (f) Specifications,
    - (g) Drawings,
    - (h) Bill of Quantities, and
    - (i) any other document **listed in the PCC** as forming part of the Contract.
- 3. Language and Law
  - 3.1 The language of the Contract and the law governing the Contract are **stated in the PCC**.
- 4. Project Manager's
  - 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor

- Decisions** in the role representing the Employer.
- 5. Delegation** 5.1 Otherwise specified in the PCC, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communica-  
tions** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracti  
ng** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other  
Contractors** 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 9. Personnel  
and  
Equipment** 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 10. Employer's  
and  
Contractor's  
Risks** 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

- 11. Employer's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
    - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
  - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
  - (c) the activities of the Contractor on the Site after the Completion Date.
- 12. Contractor's Risks**
- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
- 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - (d) Personal injury or death.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval



before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

**14. Site Data** 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.

**15. Contractor to Construct the Works** 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

**16. The Works to Be Completed by the Intended Completion Date** 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

**17. Approval by the Project Manager** 17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

**18. Safety** 18.1 The Contractor shall be responsible for the safety of all activities on the Site.

**19. Discoveries** 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such

- discoveries and carry out the Project Manager's instructions for dealing with them.
- 20. Possession of the Site** 20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the PCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
- 21. Access to the Site** 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 22. Instructions, Inspections and Audits** 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall permit, and shall cause its Subcontractors and sub-consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).
- 23. Appointment of the Adjudicator** 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the PCC** at the request of either party, within 14 days of receipt of such request.
- 24. Procedure for Disputes** 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of

receipt of a notification of a dispute.

24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.

24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the PCC**.

## B. Time Control

### 25. Program

25.1 Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

25.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

25.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

### 26. Extension of the Intended Completion Date

26.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking

steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

26.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

**27. Acceleration**

27.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.

27.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

**28. Delays Ordered by the Project Manager**

28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

**29. Management Meetings**

29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

**30. Early Warning**

30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

30.2 The Contractor shall cooperate with the Project Manager in

making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

### C. Quality Control

- 31. Identifying Defects**      31.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 32. Tests**      32.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 33. Correction of Defects**      33.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 34. Uncorrected Defects**      34.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

### D. Cost Control

- 35. Contract Price**      35.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site

separately on the Activity Schedule.

**36. Changes in the Contract Price**

36.1 In the case of an admeasurement contract:

- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
- (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

**37. Variations**

37.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

37.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

37.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the

quantity of work above the limit stated in Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

- 38. Cash Flow Forecasts** 38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 39. Payment Certificates** 39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 39.3 The value of work executed shall be determined by the Project Manager.
- 39.4 The value of work executed shall comprise:
- (a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
  - (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 39.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 39.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 40. Payments** 40.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which

payments are made.

- 40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 40.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

#### **41. Compensation Events**

- 41.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
  - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
  - (e) The Project Manager unreasonably does not approve a subcontract to be let.
  - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
  - (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
  - (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.



- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

41.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

41.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

41.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

#### 42. Tax

42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

#### 43. Currencies

43.1 Where payments are made in currencies other than the currency of the Employer's country **specified in the PCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

#### 44. Price Adjustment

44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Imc/loc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency “c.”

$A_c$  and  $B_c$  are coefficients<sup>2</sup> **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

$I_{mc}$  is the index prevailing at the end of the month being invoiced and  $I_{oc}$  is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c.”

44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

#### 45. Retention

45.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until Completion of the whole of the Works.

45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank guarantee.

#### 46. Liquidated Damages

46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

#### 47. Bonus

47.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the PCC** for each day (less any days for

which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

- 48. Securities**      48.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.
- 49. Dayworks**      49.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 49.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 49.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 50. Cost of Repairs**      50.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

#### **E. Finishing the Contract**

- 51. Completion**      51.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.
- 52. Taking Over**      52.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 53. Final Account**      53.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to

the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

**54. Operating and Maintenance Manuals**

54.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC**.

54.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to GCC Sub-Clause 55.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.

**55. Termination**

55.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

55.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required;
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
- (h) if the Contractor, in the judgment of the Employer, has

engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC Clause 57.1.

55.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

55.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

55.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

**56. Fraud and Corruption**

57.1 If the Employer determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, sub consultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56 shall apply as if such expulsion had been made under Sub-Clause 56.5 [Termination by Employer].

57.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

57.3 For the purposes of this Sub-Clause:

- (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>3</sup>;
  - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation<sup>4</sup>;
  - (iii) "collusive practice" is an arrangement between two or more parties<sup>5</sup> designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - (iv) "coercive practice" is impairing or harming, or
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threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>6</sup>;

- (v) “obstructive practice” is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 22.2.

- 57. Payment upon Termination**
- 57.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 57.2 If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 58. Property**
- 58.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default.
- 59. Release from Performance**
- 59.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a
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commitment was made.





## Section VI. Particular Conditions of Contract

<b>A. General</b>	
<b>GCC 1.1 (s)</b>	The Employer is: <b>Matsapha Town Council</b> <b>Civic Offices, Corner Police College Road and Airport Road</b> <b>P. O. Box 1790, Matsapha</b> <b>Swaziland</b> <b>Contact Person : Mr. Lucky N. Sukati</b>
<b>GCC 1.1 (w)</b>	The Intended Completion Date for the whole of the Works shall be <b>01 Months after the Commencement Date</b>
<b>GCC 1.1 (y)</b>	The Project Manager is: <b>Matsapha Town Council</b> <b>Civic Offices, Corner Police College Road and Airport Road</b> <b>P. O. Box 1790, Matsapha</b> <b>Swaziland</b> <b>Contact Person: Town Engineer</b>
<b>GCC 1.1 (aa)</b>	The Site is located at <b>Matsapha Town Council Depot</b>
<b>GCC 1.1 (dd)</b>	The Start Date shall be <b>14 days after the signing of the Contract</b>
<b>GCC 1.1 (hh)</b>	The Works consist of the Proposed installation of a Concrete palisade fence and boundary wall fence
<b>GCC 2.3(i)</b>	The following documents also form part of the Contract:  <i>i. Form of Bid and Qualification Information</i>  <i>ii. Letter of Acceptance</i>
<b>GCC 3.1</b>	The language of the contract is <b>English</b> .  The law that applies to the Contract is the law of <b>The Kingdom of Swaziland</b> .
<b>GCC 5.1</b>	The Project manager may delegate any of his duties and responsibilities.
<b>GCC 13.1</b>	The minimum insurance amounts and deductibles shall be:  (a) for loss or damage to the Works, Plant and Materials: <b>E100,000.00 min and the deductible is E10,000.00</b>  (b) for loss or damage to Equipment: <b>Covered under Contractors All Risk Insurance</b>

	<p>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>is E100,000.00 and the deductible is E10,000.00.</i></p> <p>(d) for personal injury or death:</p> <p>(i) of the Contractor's employees: <i>E1000,000.00</i></p> <p>(ii) of other people: <i>E1000,000.00</i></p>
GCC 14.1	Site Data is the <i>Topographical Survey and Beacons</i>
GCC 20.1	The Site Possession Date(s) shall be: <i>14 Days after the signing of the Contract.</i>
GCC 23.1 & GCC 23.2	Appointing Authority for the Adjudicator: <i>The Engineering Council of South Africa (ECSA).</i>
GCC 24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>shall be the current rates as published by</i> The South African Association of Arbitrators
GCC 24.4	The Appointing Authority is The South African Association of Arbitrators The place of Arbitration shall be: <i>Matsapha Town Council Offices</i>
<b>B. Time Control</b>	
GCC 25.1	The Contractor shall submit for approval a Program for the Works within <i>14</i> days from the date of the Letter of Acceptance.
GCC 25.3	The period between Program updates is 7 days.  The amount to be withheld for late submission of an updated Program is <i>E500/day.</i>
<b>C. Quality Control</b>	
GCC 33.1	The Defects Liability Period is: <i>12 months.</i>
<b>D. Cost Control</b>	
GCC 43.1	The currency of the Employer's country is: <i>Eswatini Lilangeni (SZL)</i>
GCC 44.1	The Contract <i>is not</i> subject to price adjustment in accordance with GCC Clause 44, and the following information regarding coefficients <i>does not</i> apply.  The coefficients for adjustment of prices are: <i>N/A</i>

GCC 45.1	The proportion of payments retained is: <b>10 percent</b>
GCC 46.1	The liquidated damages for the whole of the Works are <b>0.07 percent of the final Contract Price per day</b> . The maximum amount of liquidated damages for the whole of the Works is <b>5 percent</b> of the final Contract Price.
GCC 49.1	The Performance Security shall be as follows:  (a) Bank Guarantee: <b>5 percent</b> .  (b) Performance Bond: <b>30 percent</b> .
<b>E. Finishing the Contract</b>	
GCC 55.1	The date by which operating and maintenance manuals are required is <b>10 days after completion</b>  The date by which “as built” drawings are required is <b>10 days after completion</b> .
GCC 55.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <b>E2,500 (Emalangen) per Calendar Week</b> .
GCC 56.2 (g)	The maximum number of days is: <b>32 days</b> .
GCC 58.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is <b>10 percent</b> .



## Section VII. Project Specifications

Project Specifications

(COLTO)

**A). Description of the Works****1) Scope of Works**

The standard specification that form part of this contract have been written to cover all phases of work normally required for fencing contracts, and may therefore cover items of work not applicable for this particular contract.

The project specification form integral part of the contract documents, supplement the standard specifications and take precedence in the event of discrepancies with the standard specification, the schedule of quantities or the drawings.

**2) Major Items of Works**

The major items of work to be executed under this contract include the following:

**(a) The Sites**

The contract will be executed within the Matsapha Municipal Boundaries (see Locality Map)

**(b) The Works**

The works included in this contract will essentially consist of the following:

- i). The Site establishment.
- ii). Setting out of works
- iii). Clearing and grubbing of the areas on which fence installation will take place;
- iv). Excavation of trenches, cast concrete to footing and blockwork, plastering and painting of boundary wall fence.
- v). Installation of fencing poles and pouring of concrete
- vi). Levelling and installation of concrete palisade fencing.
- vii). Landscaping
- viii). Maintenance of the works for a period of twelve (12) months

**B). Climatic Conditions**

Climatic conditions on the site are typical of those prevailing in the Swaziland Middleveld Region. Average annual rainfall is approximately 900mm of which the majority falls between October and March. Summer months are hot and humid with frequent rain whilst winter months are generally warm and dry.

**C). Access**

Access for construction to the site will be off the Police College road, then King Sobhuza II Avenue road after approximately 0.5km turn to King Mswati III East the turn to Usutu Crescent on the left toward the Matsapha Landfill Site.

**D). Nature of Ground and Subsoil Conditions*****Natural Ground***

Essentially the soil conditions consist of very fine in-situ gravel material. The provision of this data does not relieve the Contractor of his responsibilities in terms of the General Conditions of Contract to satisfy himself concerning all matters relating to site soil conditions.

***Construction Material***

The Contractor shall be responsible for identifying sources of suitable borrow materials, obtaining the necessary permission and permits, and for payment of all royalties due on materials obtained on or off site. He will also be required to obtain approval from the Engineer for each source of materials as detailed in the relevant sections of these Specifications.

**E). Royalties**

Royalties are payable on sand, stone and gravel used for construction. Where royalties are paid by the Contractor, these will be reimbursed upon written proof being submitted to the Engineer. **Royalties will therefore be included as a Provisional Sum in the tendered rates of which if exceeded shall not be paid unless authorized by the Engineer.**

**F). Access, Construction and Service Roads**

Any and all existing roads utilised for construction purposes shall be strictly maintained in their original condition. Should any road be damaged by the Contractor, it shall be immediately reinstated to its original condition at his expense. Dust on site by the Contractor shall be suppressed through continuous watering.

The responsibility for ensuring that all anticipated costs in the above regard for all affected roads and access are included in this Quotation rests with the Bidder. The affected roads vary in typical standard and both surfaced and unsurfaced roads are present. The Bidder shall make full allowance for this work in his Quotation submission and all costs shall be included in the listed items.

**G). Site Facilities Available****Source of Water Supply**

The Contractor will be required to make his own arrangements for obtaining both domestic and construction water.

**Source of Power Supply**

The Contractor will be required to make his own arrangements for a temporary electrical connection.

**Location of Construction Camp**

The Contractor's construction camp may be located in the vicinity of the area designated for such by the Engineer. The Contractor is to provide a separate fenced-off compound within this area.

**Accommodation for Workers**

Neither housing nor shelters are available for the Contractor's employees, and the Contractor shall make his own arrangements to house his employees and transport them to site.

**H). Site Facilities Required****Temporary Offices**

Accommodation for the Engineer's staff is not required on site, however the Contractor shall provide a suitably furnished office, as part of his own establishment, for the conduction of site meetings.

**Sanitary Facilities**

The Contractor shall provide and maintain adequate ablution facilities, using chemical toilets with a flushing mechanism and a hand basin at the site camp for his employees and visitors

**I). Features Requiring Special Attention****Flexibility of Construction Activities**

All construction activities are under the direct control of the Engineer and as such the Engineer has the right to instruct the Contractor to deviate/adjust/direct/modify the Contractor's schedule and/or activities to serve the best interest of the project. The Contractor shall be flexible and able to adapt to changing circumstances.

***Quality control and quality assurance measures***

It will be the full responsibility of the Contractor to undertake appropriate quality control and quality assurance measures on Site. The Contractor shall submit to the Engineer for approval before the commencement of any major activity, his proposed quality control assurance methodology and proceedings to be observed during the Contract. Should the Engineer deem the QA system to be inadequate to ensure construction to specification, the Contractor shall adapt the system to conform. The Engineer shall audit the Contractor's QA system on a regular basis to ensure that adequate independent checks and tests are being carried out and to ensure that the Contractor's own controls are sufficient to identify any possible quality problems which could cause a delay on the project, or construction outside specification.



The Contractor shall keep a life cycle history, in check-list format, of the following aspects, inter-alia (The actions, tests, results, remedial measures etc taken and the dates on which they were executed shall be described)

- |                            |                                                     |
|----------------------------|-----------------------------------------------------|
| 1) Vegetation clearing.    |                                                     |
| 2) Topsoil stripping:      | Conservation, stockpiling, reinstatement thickness. |
| 3) Services:               | Position, authority informed, damage, protection.   |
| 4) Survey:                 | Pre-excavation, setting out, ground levels.         |
| 5) Excavation:             | Width, profile, water,                              |
| 6) Underground services    | Position, jointing invert level.                    |
| 7) Blocks/ Concrete works: | Slump, cube strength, curing.                       |
| 8) Electricals             | Quality, EEC approvals                              |
| 9) Materials               | Compliance with specification.                      |
| 10) Existing Services      |                                                     |

- The Contractor shall make himself acquainted with the position of all existing services before any excavation or other work likely to affect the existing services is commenced.
- The Contractor will be held responsible for any damage to existing services caused by or arising out of his operations and any damage shall be made good at his own expense.
- In as much as their positions are known, existing services will be indicated on the construction plans.

**J). Site supervision and testing**

The Contractor shall ensure that sufficient qualified and experienced supervisory staff, the required transport, instruments, equipment and tools are available to control his own workmanship. The Engineer or his representative will not act as foreman or surveyor and in instances where this should be required due to inadequate/inexperienced supervision, the cost thereof shall be borne by the Contractor.

The Contractor shall furnish the Employer and the Engineer with a list of addresses and telephone numbers of key personnel in the Contractor's organization who may be contacted in an emergency both during and outside normal office working hours. This list will be required prior to any payments.

Key personnel listed above will be available for the duration of the Contract and may not be removed or re-allocated by the Contractor without the written permission of the Engineer.

**K). Ordering of accessories**

The Contractor shall check all dimensions and quantities shown on the drawings and/or in the Schedule of Quantities. The dimensions and quantities of all accessories shall be agreed upon between the Contractor and the Engineer before said accessories are ordered.

On acceptance of his Quotation the Contractor is to ascertain if all materials and equipment to be supplied can be obtained in South Africa and if not, the Contractor is to take steps to import the same so that the Works are not delayed. Delay in the Works owing to non-delivery of materials and equipment will not be considered a cause for delay in completing the Works.

**L). Restriction on blasting**

Blasting shall only be permitted on the instruction of the Engineer.

**M). Site Meetings**

The Engineer will hold regular site meetings and keep and circulate minutes. The Contractor shall attend and shall ensure that all Sub-Contractors are represented.

**N). Drawings**

All construction drawings issued from time to time must be properly mounted on suitable material and kept in a good condition. Any drawings becoming bleached or otherwise obscured so that they cannot be properly read must be replaced. All drawings issued for construction shall have the date of issue clearly stamped on, the receipt thereof shall be acknowledged in writing by the Contractor.

Any errors due to misreading of damaged or obscured drawings or superseded drawings shall be made good by the Contractor at his own expense. The Contractor shall keep a register of drawings of the Site which shall be brought up to date, at least once a week. Any drawings required must be brought to the attention of the Engineer, in writing, at least one month in advance of date required.

**O). Existing Services**

The Contractor shall obtain copies of record drawings showing the location of services from all the relevant authorities and all services indicated on these plans shall be deemed to be indicated on the Contract drawings as per the standard specifications.

The Contractor shall take particular care to avoid damage to all services on the site, and shall carefully expose existing pipes and underground cables at intervals so as to determine their exact depth and location before commencing excavation in the immediate vicinity.

**P). Survey Beacons**

All known survey beacons will be shown to the Contractor on site at the handover meeting, and noted.

**Q). Spoiling Locations**

Contractor will be required to identify suitable spoiling locations and obtain permission for their use. He will also be responsible for meeting all costs arising from the use of a particular dumping site.

The Contractor is to obtain approval from the Engineer for the use of each spoiling location before utilising it.

**R). Ground Conditions**

The Contractor will be responsible for keeping excavations free from ground water and for the safety of such excavations.

**S). Rejected work and materials**

Materials which do not conform to the requirements of the Contract Document, are not equal to samples approved by the Employer or Engineer or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected. Any defective work, whether as the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed within ten (10) days after written notice is given by the Employer or Engineer, and the work shall be re-executed by the Contractor. The fact that the Employer or Engineer may have previously overlooked such defective work shall not constitute an acceptance of any part of it. Such remedial work shall be for the Contractor's account and no claims for extras or extension of time shall be entertained.

**T). Environmental Control**

The following generic environmental control measures are required to be implemented by the Contractor.

**i). General**

The Contractor will be held responsible for any claims or damages resulting from incidents such as the following:

- 1.Excessive dust. Final effluent may be used for dust control.
- 2.Burning of the veld or grazing.
- 3.Damage to fauna and flora.
- 4.Damage to private or rented property.
- 5.Damage to existing or new structures and services.
- 6.Uncontrolled dumping.
- 7.Damage to the works being carried out by subcontractors.

- The contractor shall plan and conduct all his construction activities in such a way that the above incidents are avoided at all costs.
- No burning of the trees and timber will be allowed on the Site. All necessary precautions must be taken to ensure that acceptable noise levels are adhered to.

**ii). Other generic mitigation measures include:**

- The Contractor shall minimise the areas of disturbance outside of the construction areas. Avoid clearing any trees over 5m in height.
- The Contractor shall ensure that any topsoil and subsoil excavated during construction, is stockpiled.

- The Contractor shall ensure that runoff water exiting the project area is done so in a non-erodible manner with stones pitched or concreted drains all the way to the edge of the property and then a miter drain to spread the discharge in a non-erodible manner. All culvert outfalls must be protected by rock fill (or similar) to minimize erosion.
- Both headwalls of the culverts are to be protected from erosion (usually achieved with use of blocks or natural materials)
- The Contractor shall ensure that all disturbed areas are rehabilitated as soon as the disturbing force has been removed.
- If any activity causes complaints from neighboring residents, the Contractor shall investigate the source of the noise causing the complaint and make counteractive measures to reduce the level of the noise to an acceptable level.
- As part of the project and Contractors environmental responsibility, rehabilitation of all disturbed areas shall be carried out by the Contractor. Such areas include the access roads, Contractors camp and borrow areas.
- The Contractor shall make available rubbish bins at the Contractors site offices and works areas. Arrange for the regular removal of collected refuse to the refuse dump. Collected waste is to be burned regularly to keep volumes down and sanitized. The rubbish pit is to be fenced off to prevent scavengers from gaining entry.
- Contractor is to ensure that workers receive consistent education from the Family Life Association of Swaziland (FLAS) or other suitably experienced NGO on HIV/AIDS/STDs; freely available condom supplies to be maintained on site.
- Contractor is to ensure that all the Covid-19 regulation as stipulated by government are followed.
- The Contractor is responsible for the health and safety of his employees and as such must abide by all employment, health and safety regulations that currently govern this type of project. All disciplinary matters must be handled by existing legal structures.
- All temporary structures and their foundations used in any of the construction activities must be removed and disposed of in an approved manner

***The costs associated with the above generic environmental specifications and all other reasonable environmental controls required to ensure a clean, healthy and sustainable environment shall be deemed to be included in the tendered rates.***

### **Section VIII. Drawings**





**Section IX. Bill of Quantities**





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## Section X. Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

### Table of Forms

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**Form of Bid Security (Bank Guarantee)**

\_\_\_\_\_

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

**Beneficiary:** \_\_\_\_\_ *[Name and Address of Employer]*

**Date:** \_\_\_\_\_

**BID GUARANTEE No.:** \_\_\_\_\_

We have been informed that *[name of the Bidder]* (hereinafter called "the Bidder") has submitted to you its bid dated (hereinafter called "the Bid") for the execution of *[name of contract]* under Invitation for Bids No. *[IFB number]* ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the Instructions to Bidders.

This guarantee will expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful bidder; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

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

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

\_\_\_\_\_

*[signature(s)]*

**Form of Bid Security (Bid Bond)**

BOND NO. \_\_\_\_\_

BY THIS BOND [*name of Bidder*] as Principal (hereinafter called “the Principal”), and [*name, legal title, and address of surety*], **authorized to transact business in [*name of country of Employer*]**, as Surety (hereinafter called “the Surety”), are held and firmly bound unto [*name of Employer*] as Obligee (hereinafter called “the Employer”) in the sum of [*amount of Bond*]<sup>7</sup> [*amount in words*], for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, for the construction of [*name of Contract*] (hereinafter called the “Bid”).

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

- (a) withdraws its Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity; (i) fails or refuses to execute the Contract Form, if required; or (ii) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

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

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Employer at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

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

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

Corporate Seal (where appropriate)

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

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

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

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

<sup>7</sup> The amount of the Bond shall be denominated in the currency of the Employer’s country or the equivalent amount in a freely convertible currency.

**Bid-Securing Declaration**

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

Bid No.: *[insert number of bidding process]*

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

To: *[insert complete name of Employer]*

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Employer for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

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

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

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

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

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

Corporate Seal (where appropriate)

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

**Letter of Acceptance**

*[ on letterhead paper of the Employer]*

..... *[date]*. .....

To: ..... *[ name and address of the Contractor]* .....

Subject: ..... *[Notification of Award Contract No]*. .....

This is to notify you that your Bid dated . . . . *[insert date]* . . . . for execution of the . . . . . *[insert name of the contract and identification number, as given in the Appendix to Bid]* . . . . . for the Accepted Contract Amount of the equivalent of . . . . . *[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section IX (Contract Forms) of the Bidding Document.

***[Choose one of the following statements:]***

We accept that \_\_\_\_\_ *[insert the name of Adjudicator proposed by the Bidder]* be appointed as the Adjudicator.

***[or]***

We do not accept that \_\_\_\_\_ *[insert the name of the Adjudicator proposed by the Bidder]* be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to \_\_\_\_\_ *[insert name of the Appointing Authority]*, the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with ITB 42.1 and GCC 23.1.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement

## Contract Agreement

THIS AGREEMENT made the . . . . .day of . . . . ., . . . . ., between . . . . . **[name of the Employer]**. . . . . (hereinafter “the Employer”), of the one part, and . . . . . **[name of the Contractor]**. . . . .(hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as . . . . . **[name of the Contract]**. . . . .should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) the Letter of Acceptance
  - (b) the Bid
  - (c) the Addenda Nos . . . . . **[insert addenda numbers if any]**. . . . .
  - (d) the Particular Conditions
  - (e) the General Conditions;
  - (f) the Specification
  - (g) the Drawings; and
  - (h) the completed Schedules,
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of The Kingdom of Swaziland on the day, month and year indicated above.

Signed by: \_\_\_\_\_  
for and on behalf of the Employer

Signed by: \_\_\_\_\_  
for and on behalf the Contractor

in the  
presence of: \_\_\_\_\_

in the  
presence  
of: \_\_\_\_\_

Witness, Name, Signature, Address,  
Date

Witness, Name, Signature, Address, Date



**Performance Security**

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

**Beneficiary:** .....*Matsapha Town Council , Box 1790, Matsapha*

**Date:**.....

**Performance Guarantee No.:** .....

We have been informed that . . . . . *[name of the Contractor]*. . . . . (hereinafter called “the Contractor”) has entered into Contract No. . . . . . *[ ]*. . . . . dated . . . . . .with you, for the execution of *.Upgrading of Tubungu Access Road in the Matsapha Urban Area . . .* (hereinafter called “the Contract”). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we . . . . . *[name of the Bank]*. . . . . hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of . . . . . . . . . . . *[Emalangen]* <sup>1</sup>. . . . . (. . . . .*[amount in words]*. . . . . ) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the . . . . . Day of . . . . . , . . . . . <sup>2</sup>, and any demand for payment under it must be received by us at this office on or before that date.

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

.....  
*[Seal of Bank and Signature(s)]*

## Performance Bond

By this Bond, *[insert name and address of Contractor]* as Principal (hereinafter called “the Contractor”) and *[insert name, legal title, and address of surety, bonding company, or insurance company]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name and address of Employer]* as Obligee (hereinafter called “the Employer”) in the amount of *[insert amount of Bond]* *[insert amount of Bond in words]*,<sup>8</sup> for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Contractor has entered into a Contract with the Employer dated<sup>9</sup> the *[insert number]* day of *[insert month]*, *[insert year]* for *[insert name of Contract]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

Now, therefore, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this

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<sup>8</sup> An amount is to be inserted by the Surety, representing the percentage of the Contract Price specified in the Contract Data, and denominated either in the currency(ies) of the Contract or in a freely convertible currency of type and amount acceptable to the Employer.

<sup>9</sup> Date of Letter of Acceptance or Agreement.

paragraph, shall mean the total amount payable by the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or

- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this *[insert day]* day of *[insert month]*, *[insert year]*.

Signed by *[insert signature(s) of authorized representative(s) ]*  
on behalf of *[name of Contractor]* in the capacity of *[insert title(s)]*

In the presence of *[insert name and signature of witness]*  
Date *[insert date]*

Signed by *[insert signature(s) of authorized representative(s) of Surety]*  
on behalf of *[name of Surety ]* in the capacity of *[insert title(s)]*

In the presence of *[insert name and signature of witness]*

Date *[insert date]*

