

LETTER OF INVITATION

MINISTRY OF PUBLIC WORKS AND TRANSPORT

The Ministry of Public Works and Transport invites suitably qualified local contractors registered under Category C1 with the Construction Industry Council for the 2020/2021 Financial Year for the Construction of the MR21 (SIPHAMBANWENI – NSALITJE) road.

The Tender Documents shall be available from the **1st October 2021**, upon payment of non-refundable **One Thousand Emalangeni (E1,000.00)** payable at any Eswatini Government Revenue offices under the Payment code; **Head 53 Responsibility Centre 2101, Item code 21132**

Upon payment of the above-mentioned amount, Documents can be obtained from the following address:

Eswatini Public Procurement Regulatory Agency Website

The following must be submitted no later than **09H00 on Friday, 26th November, 2021**:

1. A Valid Trading Licence:
2. An Original and Valid Tax Compliance Certificate:
3. A Valid Labour Compliance Certificate:
4. Tender Security in amount of E25,000 (Bank Guaranteed cheques only);
5. Original General Receipt (E1,000):
6. ENPF Compliance Certificate
7. Form J and Form C
8. Proof of Registration with the Construction Industry Council **(CIC) C1**;
9. VAT Registration
10. Director's Certified Copies of National Identification Documents
11. Director's Police Clearance Certificates
12. Certificate of Incorporation
13. Completed Tender Documents with two hard copies and one soft copy
14. Certificate of Attendance of the Clarification Meeting;
15. Proof of Authority of Signatory.

Each completed tender should be in a sealed envelope and endorsed in the correct tender title and the original and copy documents correctly labeled and all addressed to;

**The Secretary
Government Tender Board
Treasury Department
P. O. Box 443
Mbabane**

- **N.B.** There will be a **Compulsory Pre-Tender Briefing** at the Ministry of Public Works and Transport Conference Room at **10H00** on the **27th October, 2021** after which no sale of Tender Documents shall take place.
- No late or telegraphic tenders will be accepted. The tender shall be valid for 90 days calculated from the 26th November, 2021.
- Please be advised that, being the lowest tenderer does not guarantee any contractor to be awarded all the jobs. The Government of Eswatini does not bind itself to accept the lowest Tender or any Tender.
- For further information, please contact in writing/telephone the office of Chief Roads Engineer; 2409 9000 or 7606 3833

Yours Sincerely,

KHANGEZIWE MABUZA
PRINCIPAL SECRETARY

ADVICE TO TENDERERS ON KEY REQUIREMENTS

These documents should be read carefully by the Tenderer before preparing the Tender to ensure compliance with the key requirements. Failure to fulfil these requirements will result in disqualification of the tender. Special attention should be given to the following areas:

1. Price Schedule and Tender Form

The price schedule must be completed and must include all taxes.

2. Tender Form

The Tender Form is the Tenderer's offer and shall therefore be completed, signed by the Tenderer's authorized representative and stamped with the Tenderer's stamp.

3. Documents Required

All documents stated in the "Instruction to Tenderers" and "Tender Data Sheet" must be included in the offer.

4. Partial Offers

When the Tender Documents calls for complete offers all items must be priced, as the offer otherwise will be rejected. Notes on this can be found in the "Schedule of Requirements"

5. Envelope with the Original Tender and a Number of Copies

The envelope with the original Tender Document must also include the number of copies specified in the "Tender Data Sheet". The original Tender must clearly be marked "original", while the copy/copies should must be marked "copy". The envelope must clearly be marked according to instructions in the "Tender Data Sheet".

6. Tender Security

When a Tender Security is required, it can be provided in the form of a Bank Guarantee, an Insurance Company Bond or a Banker's Guaranteed Cheque. The original Tender document shall in such cases be accompanied by the original Tender Security. Photocopies, company or personal cheques are not accepted and will lead to rejection of the offer.

7. Performance Security

When the "Tender Data Sheet" states that a Performance Security is required, this is only applicable to the successful Tenderer, who at the time of the contract signing will be expected to provide such Performance Security to ensure that the contractor carries out his contract obligations. The Performance Security can be provided in the form of a Bank Guarantee or an Insurance Company Bond.

8. Contract Form

Tenderers should examine the Contract Form in the Tender Document, as it contains information about the contract, which will be signed by the successful Tenderer following the Award of Contract.

TABLE OF CONTENT

Part 1 Tendering Procedures

Section 1 – Instructions to Tenderers

Section 2 – Tender Data Sheet

Section 3 – Tender Form and Price Schedule

- Authority for signatory
- Construction Programme
- Sub-Contractors
- Schedule of Plant
- Experience
- Certificate of Attendance at Pre-Tender Conference
- Evaluation Criteria

Section 4 – Tender Forms:

- Declaration of Eligibility
- Form for Tender Bond or Guarantee

Part 2 Statement of Requirements

Section 5 – Specifications

Section 6 – Scope of Works

Part 3 Contract

Section 7 – Contract Form

Section 8 – General Conditions of Contract

Section 8 – Special Conditions of Contract

Section 9 – Performance Security Form

INSTRUCTIONS TO TENDERERS

Tenderers should read these Instructions in conjunction with the attached Tender Data Sheet.

1. ELIGIBILITY AND QUALIFICATION OF TENDERERS

Tenderers must be eligible to tender and be qualified and capable to perform the resulting contract prior to being awarded a contract.

The Tender Data Sheet shall specify the eligibility and qualification criteria.

2. TENDERER'S RESPONSIBILITIES

The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Invitation to Tender documents. Failure to furnish all information required by the Invitation to Tender documents or to submit a Tender not substantially responsive to the Invitation to Tender documents will be at the Tenderer's risk and may result in the rejection of its Tender.

The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Ministry of Public Works & Transport will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

3. CORRUPT COLLUSIVE, FRAUDULENT AND COERCIVE PRACTICES

Tenderers should be aware that the Government of Eswatini has embarked on a 'procurement reform program' with the objective of achieving greater transparency, accountability and value for money in the use of public funds.

Tenderers participating in public procurement at all times are to abide by their obligations and are not to commit or abet corrupt, fraudulent, collusive or coercive practices.

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

The Government of Eswatini has established an Anti Corruption Commission to investigate specific instances of alleged corrupt, collusive, fraudulent or coercive procurement practices.

"Corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence the action of a public officer in the procurement process or in contract execution;

"Collusive" practice means a scheme or arrangement between two or more tenderers, with or without the knowledge of the procuring entity, designed to establish tender prices at artificial, non-competitive levels;

"Fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;

"Coercive practice" means harming or threatening to harm, directly or indirectly, persons, or their property, to influence their participation in a procurement process or affect the execution of a contract.

4. CONFLICT OF INTEREST

Contractors are required to provide professional, objective, and impartial advice and at all times hold the Client's interest's paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.

Without limitation on the generality of the foregoing, Contractors and any of their affiliates, shall be considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below:

A firm hired to provide consulting services for the preparation or implementation of a project, and any of

its affiliates, shall be disqualified from subsequently providing services or works or non-consulting services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation.

For the purpose of this paragraph, non-consulting services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.

Contractors (including its Personnel and Sub-Consultants) that has a business or family (parents, spouse(s) and children including adopted children) relationship with a member of the Client's staff, who is directly or indirectly involved in any part of: (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, shall not be awarded a Contract.

Contractors have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the contractor or termination of its contract.

5. TENDER PREPARATION

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Ministry of Public Works & Transport shall be written in the English language.

6. PRE-TENDER MEETING/SITE INSPECTION

Tenderers shall be invited to a pre-tender meeting/site inspection, is so stated in the Tender Data Sheet. The date, time and location are stated in the Data Sheet for the Tenderers. Tenderers are encouraged to provide questions in writing to the Ministry of Public Works & Transport before the event.

If a pre-tender meeting/site inspection is described as compulsory, as it is on this tender, tenderers will not be eligible to tender, if they fail to attend.

7. VALIDITY

Tenders shall be valid for the number of days specified in the Tender Data Sheet from the date for submission. Tenders with a shorter validity will be rejected.

8. DOCUMENTARY REQUIREMENTS

Tenders shall be submitted on the forms provided in the Invitation to Tender document and in the number of copies stated in the Tender Data Sheet. Tenders must be typewritten and signed in black ink by the Tenderer's authorized representative. Incomplete or unsigned Tenders may be rejected.

9. DOCUMENTS COMPRISING THE TENDERER'S TENDER

The Tender must comprise the following:

- a) **Tender Form** duly completed and signed by the Tenderer (and any joint venture partners) **together with Priced Schedule/s**
- b) A signed **Declaration of Eligibility** in the form provided in this document.
- c) A **Tender Security** for the value and validity indicated in the Tender Data Sheet. The Tender Security may be forfeited, if a Tenderer:
 - withdraws its Tender during the period of Tender validity specified on the Tender Form;
 - does not accept the correction of errors; or
 - in the case of a successful Tenderer, if the Tenderer fails to sign the contract; or to furnish a performance guarantee if required.
- d) A certified copy of a relevant current **Trading Licence**.
- e) Original and Valid **Tax Compliance Certificate**.
- f) The **Tenderers Certificate of Attendance**,

g) Organisational Structure of the team to be deployed on site for the project

h) Technical Approach & Methodology to the Works

i) The Tenderer's Construction Programme to contain sufficient detail to indicate the Tenderer's ability to construct within the specified time.

j) Any other documents specified in the Tender Data Sheet.

Failure to provide any of the required documents may result in rejection of the Tenderer's offer.

10. PRICES

This is a Design and Build Lump Sum Contract where payments are made as agreed per schedule.

11. TENDERER'S REQUEST FOR CLARIFICATION

A Tenderer requiring any clarification of the "Invitation to Tender" documents may notify the Ministry of Public Works & Transport in writing or electronic mail; The Ministry of Public Works and Transport will respond in writing to any request for clarification of the Invitation to Tender documents. Written copies of the Ministry of Public Works & Transport's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all tenderers that have received the tender documents.

12. SUBMISSION OF TENDERS

Original, signed and sealed Tender shall be clearly marked "Original", while each copy shall be marked "Copy".

The Original, signed and sealed Tender must together with the required number of copies Tenderer shall be in a sealed envelope, which shall be addressed and marked according to the requirements of the Tender Data Sheet.

The Tender and the copies shall be in "hard copy", as electronic submissions will not be accepted.

The Tender and the copies must be received at the location specified in the

Tender Data Sheet on or before the specified date and time.

Delivery means depositing the Tender in the Tender Box or as otherwise instructed.

13. LATE TENDERS

Any Tender received by the Ministry of Public Works & Transport after the deadline for submission specified in the Tender Data Sheet will be rejected and returned unopened to the Tenderer.

14. MODIFICATIONS AND WITHDRAWAL OF TENDERS

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

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

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

15. TENDER OPENING

The date, time and place for the opening of Tenders and proposals shall be as specified in the Tender Data Sheet. All Tenderers have the right to attend the opening at their own expense.

The name of each Tenderer and the total amount of its Tender will be read aloud and the Tender Form and Price Schedules shall be signed by the Tender Opening Committee.

Minutes of the Tender Opening will be kept and copies provided to any interested party upon request.

16. PRELIMINARY EXAMINATION

Prior to the detailed evaluation, the Ministry of Public Works & Transport will determine the substantial responsiveness of each Tender. For purposes of this clause, a substantially responsive Tender is one, which conforms to all the terms and conditions of the Invitation to Tender document without material deviations.

The Ministry of Public Works and Transport's determination of a Tender's responsiveness is based on the contents of the Tender itself without recourse to extrinsic evidence.

If a Tender is not substantially responsive, the Ministry of Public Works & Transport shall reject it. The Tender must not subsequently be made responsive by the Tenderer by correction of the nonconformity.

The Ministry of Public Works & Transport will examine the Tenders to determine, whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the Tenders are generally in order.

The Ministry of Public Works & Transport shall reject any Tender when:

- The Tenderer has failed to demonstrate an ability to perform according to the requirements indicated in the Invitation to Tender documents;
- The Tenderer refuses to accept the correction of an arithmetical error;
- The Tenderer is not substantially responsive to the requirements of the Invitation to Tender documents or the technical specifications;
- The Tenderer has failed to comply with a request for clarification of Tenders.
- If a Tender Security has been requested and this does not accompany the Tender.

17. DETAILED EVALUATION

Only Tenders found to be substantially responsive will be subjected to detailed examination.

The Ministry of Public Works & Transport shall appoint a committee of evaluators to examine and evaluate all Tenders.

In the evaluation of Tenders, the following criteria will be taken into account.

- Responsiveness to the required specifications.
- Price of services or equipment.
- Any other Criteria specified in the Tender Data Sheet and Technical Evaluation Criteria

During evaluation of the Tenders, the Ministry of Public Works & Transport may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Tender shall be sought, offered, or permitted. Tenderers who do not respond to requests for clarification will have their tenders rejected.

Any effort by a Tenderer to influence the Ministry of Public Works & Transport in its decisions on Tender evaluation, Tender comparison, or contract award may result in the rejection of the Tenderer's Tender.

18. LOCAL PREFERENCE

This tender is only for Eswatini companies registered with the Construction Industry Council of Eswatini under Category C1 (Civil Works Contractors). For purposes of this Clause, a Swati company is one, which is registered in Eswatini and majority owned by ESwatini citizens.

19. AWARD OF CONTRACT

Prior to recommending an award of contract, the Ministry of Public Works & Transport shall publish a Notice of Intention to Award in line with Section 45 of the Public Procurement Act of 2011. This award shall be published on the

ESPPRA website for at least 10 days before contract award.

The Ministry of Public Works & Transport will subsequently award the contract to the Tenderer that has submitted the lowest evaluated, substantially responsive Tender, and who is recognized to have the capability to undertake and complete a contract.

Prior to the expiration of the Tender's validity, the Ministry of Public Works & Transport will notify the successful Tenderer in writing that its Tender has been accepted. The successful Tenderer will be expected to sign a contract and, if required in the Tender Data sheet, provide a Performance Security within 14 (fourteen) days of the notification of award. The Performance Security will be valid for the period of the contract including any warranty obligations.

Where a Tender Security has been provided, this will be returned to the successful Tenderer on furnishing of the Performance Guarantee.

The Tender Securities of the unsuccessful tenderers will be returned at the same time.

20. REJECTION OF TENDERS

The Ministry of Public Works & Transport reserves the right to accept or reject any tender, and to annul the tendering process at any time prior to the award of a contract, without thereby incurring any liability to the affected Tenderer(s) or any obligation to provide information on the grounds for its action.

21. CHANGES OR REDUCTIONS AT AWARD

The Ministry of Public Works & Transport reserves the right at the time of contract award to increase or decrease, by up to 15% (fifteen percent), the quantity of services originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions.

22. CONTRACT FORMATION

The Tenderer's response to the Invitation to Tender document is an offer to the Government.

A Tender becomes a binding contract only when officially accepted in writing by the Government. Payment for any procurement under this tender is dependent upon a Contract duly signed by both parties.

23. CONTRACT PERFORMANCE

Contract performance of awarded tenders will be measured against:

- Delivery against agreed Specification;
- Delivery of road works against agreed Delivery Schedule; and
- Delivery of road works against Agreed Price.

Contract performance will be considered in future tenders.

TENDER DATA SHEET

TENDER DATA SHEET

This Tender Data Sheet shall be read in conjunction with the foregoing “Instructions to Tenderers”

Section No.	Section description.	Additional or modifying data to the Instructions to Tenderers
1.	Eligibility Criteria	Tenderers must provide a signed ‘Declaration of Eligibility’ in the format as included in this Tender Document. In case of a joint venture or consortium all members must sign each their declaration. In addition, tenderers must be registered with the Construction Industry Council of Eswatini under Category C1
2	Qualification Criteria	The Bidder is to provide a list of projects undertaken in the past five (5) years. These must be accompanied by the Client, Project Name, Project Value, Supervising Consulting Firm, Project Duration and Project Status. Additionally, tenderers are to provide a list of equipment and technical staff to be deployed to the project.
3.	Pre-tender Meeting	A pre-tender meeting will be held at; Venue: Ministry of Public Works and Transport Conference Room Date and time: 27 th October, 2021 at 10:00 hrs Attendance is compulsory.
4.	Validity Period of the Tender	The validity period of the Tender shall be 90 days from the date of submission.
5.	Documentary Requirements	One original and two copies are required, together with a must soft copy . Mark clearly on the front page, which is the original and which are the copies.
6.	Documents comprising the Tenderers Offer	In addition to the documents stated in the “Instructions to Tenderers”, the following documents are required: <ul style="list-style-type: none"> • Original General Receipt (E1,000) • E 25,000.00 Tender Bond (Bank Guarantee Cheque) • Certificate of Attendance at Clarification Meeting • Proof of Authority of Signatory • Original and Valid Tax Clearance Certificate • Certified copy of original Valid Trading License • Certified copy of Certificate of Incorporation • Proof of registration with the CIC • Submission of a Company Current Form J, endorsed by the

TENDER DATA SHEET

Section No.	Section description.	Additional or modifying data to the Instructions to Tenderers
		<p>Registrar of Companies (2020 or newer)</p> <ul style="list-style-type: none"> • Submission of a Company Current Form C, endorsed by the Registrar of Companies (2020 or newer) • Submission of certified copies of national identity documents for the people listed in Form C • Submission of the ENPF Compliance Certificate. • A copy of each Notice to Tenders (if any) issued to Tenderers by the Employer shall be endorsed (stamped and signed) by the Tenderer. • Tenderers are to complete all forms and schedules included in this Tender document. • The Tenderer's Construction Programme to contain sufficient detail to indicate the Tenderer's ability to construct within the specified time. • Technical Approach & Methodology to the Works. • Organisational Structure of the team to be deployed on site for the project
7.	Prices	This is a Design and Build Lump Sum Contract where payments are made as agreed per schedule.
8.	Tender Submission.	<p>The location for submission of Tenders is:</p> <p style="text-align: center;">The Secretary to Government Tender Board Treasury Building, Mhlambanyatsi Road, MBABANE</p> <p>Tenders must be deposited in the Treasury Tender Box. The Tender Box Closing Time is as per the Clock in the Foyer of the Treasury Building adjacent to the Treasury Tender Box.</p> <p>The date and time for submission of Tenders is before 9.00 A.M on the:</p> <p style="text-align: center;">26th November, 2021 - Category C1 Contractors</p> <p>The envelope SHALL be sealed and must be marked:</p> <p style="text-align: center;">The Secretary to Government Tender Board Treasury Building Mhlambanyatsi Road MBABANE</p> <p>Further, the envelope must be marked with: Ministry of Public Works and Transport Tender No.131 of 2021/22: Construction of MR21 (Siphambanweni – Nsalitje) Road and "Do not open before 09:00 hours on</p>

TENDER DATA SHEET

Section No.	Section description.	Additional or modifying data to the Instructions to Tenderers										
		<p>the 26th November 2021.</p> <p>Note: Envelopes not clearly marked will be rejected and returned unopened.</p> <p>The envelope must contain the original, which are marked 'original' and an envelope containing the copy/copies, which are marked 'copy'.</p>										
9.	Tender Opening	Tenders will be opened at Tender Board, Room 109 Treasury Building, Mhlambanyatsi Road, Mbabane on Friday on the 26 th November 2021 at 0900 hrs.										
10.	Detailed Evaluation	The Criteria stated in the "Instruction to Tenderer" and the "Technical Evaluation Criteria" will be used in the evaluation. Only complete offers that are found to be compliant under the Preliminary Evaluation shall be considered for technical and financial evaluation.										
10.1	Technical Proposal	<p>Criteria, sub-criteria and point system for the evaluation of Full Technical Proposals are given under Technical Evaluation at the end of the Tender Data Sheet.</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: right; width: 20%;">Points</th> </tr> </thead> <tbody> <tr> <td>1. (i) Adequacy of the Proposed Methodology and Work Plan</td> <td style="text-align: right;">40</td> </tr> <tr> <td style="padding-left: 20px;">(ii) Personnel</td> <td style="text-align: right;">40</td> </tr> <tr> <td style="padding-left: 20px;">(iii) Adequacy of Plant & Experience</td> <td style="text-align: right;">20</td> </tr> <tr> <td>Total Technical Points</td> <td style="text-align: right;">100</td> </tr> </tbody> </table> <p>The minimum technical score required to pass the technical evaluation is 70 points</p>		Points	1. (i) Adequacy of the Proposed Methodology and Work Plan	40	(ii) Personnel	40	(iii) Adequacy of Plant & Experience	20	Total Technical Points	100
	Points											
1. (i) Adequacy of the Proposed Methodology and Work Plan	40											
(ii) Personnel	40											
(iii) Adequacy of Plant & Experience	20											
Total Technical Points	100											
10.2	Financial Proposal	<p>The formula for determining the Financial Score is the following: $S_f = 100 \times F_m / F$, in which S_f is the financial score, F_m is the lowest price and F the price of the proposal under consideration.</p> <p>The weights given to the Technical and Financial Proposals are:</p> <p>$T = 0.7$</p> <p>$P = 0.3$</p>										
11.	Contract Validity Period	The Contract shall be valid for the FY2021/2022 – FY2022/2023										
12.	Award of Contract	<p>Prior to the Award of a Contract, the Ministry of Public Works and Transport shall publish an Intention to Award Notice in line with Section 45 of the Procurement Act of 2011.</p> <p>Additionally, a Performance Security is required to the value of 10%. The Performance Security shall be provided in the form stated in Special</p>										

TENDER DATA SHEET

Section No.	Section description.	Additional or modifying data to the Instructions to Tenderers
		<p>Conditions of the Contract and shall be valid for the period of the Contract including any warranty obligations.</p> <p>This will only be required from the successful bidder and it shall be in the form of a Bank Guarantee or Insurance Bond from any Insurance Company recognised as such by the Financial Services Regulatory Authority.</p> <p>The Performance Security shall be released in full upon the lapse of the Defects Liability period after the Ministry of Public Works and Transport has satisfied itself on the quality of the Works which are being covered.</p>

TENDER FORMS

TENDER FORM

Date.....

Tender No. 131 of 2021/2022

**To: The Principal Secretary
Ministry of Public Works and Transport
Government of Eswatini**

Having examined the Invitation to Tender documents the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply services for the **Construction of the MR21 (Siphambanweni – Nsalitje) road** in conformity with the said "Invitation to Tender" documents for the sum of or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender and which are inclusive of all taxes.

We undertake, if our Tender is accepted, to deliver the services in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Tender is accepted, and if required in the Special Conditions of Contract, we will obtain the performance security of a reputable bank or an insurance company in a sum equivalent to of the Contract Price for the due performance of the Contract, and in the form prescribed by the Procuring Entity.

We agree to abide by this Tender for a period of 90 days from the date fixed for Tender opening, as stated in the Tender Data Sheet Section 15, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

(signature)

(in the capacity of)

Duly authorized to sign Tender for and on behalf of _____

PRICE SCHEDULE

BILL OF QUANTITIES

A PRICED SCHEDULE TO BE PROVIDED BY THE CONTRACTOR.

TENDER FORMS

KEY STAFF REQUIRED

The Tenderer will ensure that the following key personnel are available for the work. Tenderers bidding for more than one road will need to demonstrate full sets of personnel to be deployed in each project as projects will run simultaneously

No.	Position	Qualification	Experience
1.	Contract Manager	BSc./ B.Tech Civil Engineering	10 years
2.	Site Agent	BSc./B.Tech Civil Engineering	8 years
3.	Materials Engineer	BSc. Civil Engineering	8 years
3.	General Foreman	Diploma in Civil Engineering	10 years
4.	Surveyor	Diploma in Civil Engineering	10 years
5.	SHEQ Officer	Diploma in Environmental Science or Equivalent	5 years

SUB-CONTRACTORS

The Tenderer shall indicate the name, address and specialisation field of the Sub-Contractors he reserves the right to select, if any.

1. Portion of the Works to be Sublet

Name of Sub-Contractor

Address of Head Office

.....

Specialisation

2. Portion of the Works to be Sublet

Name of Sub-Contractor

Address of Head Office

.....

Specialisation

Signature of Tenderer

Date

For and on behalf of

TENDER FORMS

SCHEDULE OF PLANT

The Tenderer shall indicate the particulars of plant and equipment he will provide to satisfactorily complete the works including details of ownership. All plant shall be in good working order. Tenderers bidding for more than one road will need to demonstrate full sets of plant to be deployed in each project as projects will run simultaneously.

Description	Minimum Quantity	Tenderer's Quantity	Age	Ownership		
				Hired	Owned	Hire Purchase
Tipper Trucks	10					
Pad Foot Roller	2					
Smooth Roller	2					
Grader	2					
Bulldozer	1					
Water Truck	3					
Excavator	1					
Chip Spreader	1					
Bitumen Distributor	1					

Signature of Tenderer

Date

For and on behalf of

TENDER FORMS

EXPERIENCE

The Tenderer shall provide information on as many projects as he deems necessary to illustrate his experience in works of a similar nature. The tenderer is expected to mention projects that are consistent with the following requirements:

- Tenderer must have completed at least 3 road projects in the past 10 years with a value of over E30 million.
- Tenderer must have completed the construction of a paved road of more than 5km in length in the past 5 years.
- Tenderers that have completed at least 1 similar type of project with a single/double seal in the past 5 years will have an added advantage.

Employer	Engineer and Contact No	Description of Works	Value of Works	Year completed

Signature of Tenderer

Date

For and on behalf of

TENDER FORMS

CERTIFICATE OF ATTENDANCE AT PRE-TENDER CONFERENCE

1. This is to certify that I

of the firm of.....
(name of Tenderer)

in the company of
(name of Engineer's Representative conducting the visit)

attended the Pre-Tender Conference in connection with the **Construction of Siphambanweni - Nsalitje Road**
2. Having previously studied the Tender Document, I carefully examined the implications of the Works.
3. I will carry out further investigation as may be necessary to fully evaluate all implications of the Works and Tender.
4. I further certify that I am satisfied with the description of the Works and the explanations given by the said Engineer's Representative.

Signed

Witnessed.....

(ENGINEER'S REPRESENTATIVE CONDUCTING THE VISIT)

Date of Site Inspection Visit.....

TENDER FORMS

EVALUATION CRITERIA

1. Preliminary Evaluation

No.	Description	Yes/No
1.	Original General Receipt	
2.	E25 000.00 Tender Bond	
3.	Certificate of Attendance	
4.	Proof of Authority of Signatory	
5.	Original and Valid Tax Compliance Certificate	
6.	Certified Copy of Original and Valid Trading License	
7.	Certified Copy of Certificate of Incorporation	
8.	Category C1 CIC Registration	
9.	Submission of a Company Current Form Current Form J endorsed by the Registrar of Companies (2020 or newer)	
10	Submission of a Company Current Form C, endorsed by the Registrar of Companies (2020 or newer)	
11.	Submission of certified copies of National Identity Documents for the people listed in Form C	
12.	Submission of the ENPF Compliance Certificate	
13.	A copy of each Notice to Tenders (if any) issued to Tenderers by the Employer shall be endorsed (stamped and signed) by the Tenderer.	
14.	Tenderers are to complete all forms and schedules included in this Tender document.	
15	The Tenderer's Construction Programme to contain sufficient detail to indicate the Tenderer's ability to construct within the specified time.	
16	Technical Approach & Methodology to the Works.	
17.	Organisational Structure of the team to be deployed on site for the project	

NB: Tenderer's that are not fully compliant with this section of the evaluation shall not be considered beyond the preliminary evaluation stage.

TENDER FORMS

2. Technical Evaluation

Parameter	Marks	Bidder *
1. Adequacy of the proposed Methodology and Work Plan		
a. Technical Approach & Methodology	28	
b. Work Plan	10	
c. Organizational Structure	2	
2. Personnel		
a. Contract Manager		
i. Qualification	3	
ii. Experience	2	
iii. Nationality	1	
iv. AESAP Registration	1	
b. Materials Engineer		
i. Qualification	3	
ii. Experience	2	
iii. Nationality	1	
iv. AESAP Registration	1	
c. Site Agent		
v. Qualification	3	
vi. Experience	2	
vii. Nationality	1	
viii. AESAP Registration	1	
d. General Foreman		
i. Qualification	3	
ii. Experience	2	
iii. Nationality	1	
iv. AESAP Registration	1	
e. Surveyor		
i. Qualification	3	
ii. Experience	2	
iii. Nationality	1	
iv. AESAP Registration	1	
f. SHEQ Officer		
i. Qualification	2	
ii. Experience	2	
iii. Nationality	1	
3. Company's Experience & Plant Resources		
a. Company's experience in projects of similar nature, size and complexity.	10	
b. Adequacy of the proposed plant and equipment including indication of status	10	
Total Score	100	

TENDER FORMS

The minimum score required to pass the technical stage of the evaluation is 70%. Following the passing of the stage, financial proposal shall be considered.

3. Financial Evaluation

The formula for determining the Financial Score is the following: $S_f = 100 \times F_m / F$, in which S_f is the financial score, F_m is the lowest price and F the price of the proposal under consideration.

The weights given to the Technical and Financial Proposals are:

$$T = 0.7$$

$$P = 0.3$$

TENDER FORMS

DECLARATION OF ELIGIBILITY

In accordance with the requirements of the Procurement Regulations issued in accordance with the terms of Section 26 of the Finance and Audit Act No. 18 of 1967 all Tenderers must meet the following criteria, to be eligible to participate in public procurement

Tenderers must provide a signed declaration on their company letterhead in the following format. If the Tender is being presented by a joint venture or consortium all members must sign each their declaration.

Dear Sirs

Re: Tender No. 131 of 2021/2022: Construction of MR21 (Siphambanweni – Nsalitje) road

In accordance with the eligibility requirements of the tender documents we hereby declare that:

- (a) We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract;
- (b) We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we not the subject of legal proceedings for any of the foregoing;
- (c) We have fulfilled our obligations to pay taxes and social security contributions;
- (d) We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (e) That we do not have a **conflict of interest** in relation to the procurement requirement.

Signed:

Date:

Note: **Conflict of interest** is defined in Section 4 of the Instructions to Tenderers.

TENDER FORMS

FORM FOR TENDER SECURITY

WHEREAS Messrs.....
of

Hereinafter referred to as the "Tenderer" has on submitted its Tender for the provision of Construction of MR21 (Siphambanweni – Nsalitje) Road. **AND WHEREAS** the said Tenderer has undertaken to abide by his Tender so submitted for a period of 90 calendar days of the date of submission hereinabove stated, or such other period as may mutually be agreed between the Government of Eswatini, represented by the Director of Central Stores of the Government of Eswatini and the Tenderer and notified to us by the Government of Eswatini.

NOW WE, hereby guarantee and undertake to pay to the account of the Government of Eswatini on first demand in writing and without reference to the Tenderer the sum of Emalangi
.....

PROVIDED THAT

- a) This Tender Security remains valid, and
- b) The Government of Eswatini declares in writing that the Tenderer has failed to abide by his undertaking that the Tender shall remain open for acceptance within the specified period, or that the Tenderer is unwilling for some reason (which shall be clearly stated) to abide by his Tender or enter into a contract agreement with the Government of Eswatini for the provision of **Construction of MR21 (Siphambanweni – Nsalitje) Road.**

This Tender Security shall remain valid in the first instance until the earlier of:

- a) 10 days after the expiry of the Tenderer's Tender;
- b) Upon our receipt of copies of the contract signed by the Tenderer and the Performance Security issued to you upon the instruction of the Tenderer; or
- c) Upon our receipt of a copy of a notification from the Government of Eswatini to the Tenderer of the name of the successful Tenderer.

.....
(Authorised Signature)

.....
(Date)

.....
(Name of Signatory)

.....
(Seal / Stamp of Financial Institution)

.....
(Position of Signatory)

CONTRACT FORM

C1.1.1 FORM OF OFFER

The Ministry of Public Works and Transport

PO Box 58

Mbabane

Eswatini

Sir,

TENDER No.131 of 2021/2022: CONSTRUCTION OF MR21 (SIPHAMBANWENI – NSALITJE) ROAD

1. I / we, by signing this part of the forms of offer and acceptance, confirm that we have examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules and am / are duly authorized to represent and commit the tenderer to the contractual obligations contained therein.
2. I / we further confirm that by submitting this offer the tenderer accepts the conditions of tender and offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of tender and the conditions of contract identified in the contract data.

THE OFFERED TENDER RATES FOR THE CONSTRUCTION OF THE MR21 (SIPHAMBANWENI – NSALITJE) ROAD ARE AS PER TENDER SANCTION

(i.e. including all taxes and any contingent sum not in the priced schedule).

3. You may accept this offer by signing and returning to the tenderer one copy of the Form of Acceptance before the end of the period of validity stated in the tender data, (or at the end of any agreed extension thereof), whereupon the tenderer becomes the party named as the contractor in the conditions of contract identified in the contract data.

GENERAL CONDITIONS OF CONTRACT

4. Notwithstanding anything contained in a covering letter to this tender, I / we declare this offer is submitted entirely without variations or deviations other than those stipulated in contract document.

Yours faithfully

SIGNATURE(S):..... DATE:.....

NAME (IN CAPITALS):

CAPACITY:

Date and minute reference of Board Resolution if different from Returnable Schedule

Form A3: Certificate of Authority for Signature

NAME AND ADDRESS OF ORGANISATION:.....

.....

NAME AND SIGNATURE OF WITNESS:

SIGNATURE:..... DATE:.....

NAME (IN CAPITALS):

FORM OF ACCEPTANCE

**TENDER NO 131 of 2021/2022: FOR CONSTRUCTION OF MR21 (SIPHAMBANWENI
– NSALITJE) ROAD**

ACCEPTANCE OF OFFER

It is our pleasure to inform you that the Ministry of Public Works and Transport (the Employer) accepts your offered **RATES FOR THE CONSTRUCTION OF THE MR21 (SIPHAMBANWENI – NSALITJE) ROAD AS PER TENDER SANCTION.**

(i.e. including all taxes and any contingent sum not in the priced schedule).

1. The amount due may not be the accepted price but payment shall be made in accordance with the conditions of contract identified in the contract data.
2. Acceptance shall form an agreement between us according to the terms and conditions contained in this form and in the contract that is comprised of:

Part C1: Agreements and Contract Data (including this form of acceptance);

Part C2: Pricing Data;

Part C3: Scope of the Work;

Part C4: Site Information;

Part C5: Annexures.

together with issued other documents, or parts thereof, which may be incorporated by reference into the Parts listed above.

3. Deviations and/or variations included in your offer as well as any changes to the terms of the offer agreed by us during the process of offer and acceptance shall not be valid unless contained in the appended schedule of deviations. (*If no deviation state "There are no deviations, variations or changes to the documents." Addenda issued during the tender period are deemed not to be deviations to the tender documents and schedules.*)
4. The effective date of the contract shall be the date of this form of acceptance unless the tenderer (now contractor), within seven (7) calendar days of the

**SPECIFICATIONS
(COLTO)**

PART VI: SPECIFICATIONS

GENERAL CONDITIONS OF CONTRACT

SECTION 4

PROJECT SPECIFICATION

PART A: GENERAL		PAGE No.
A1	MISCELLANEOUS	4-3
A2	DESCRIPTION OF THE WORKS	4-3
A3	POWER SUPPLY AND OTHER SERVICES	4-4
A4	CONSTRUCTION IN CONFINED AREAS	4-4
A5	CONTRACTOR'S ACCOMMODATION	4-4
A6	SECURITY	4-4
A7	WATER FOR CONSTRUCTION PURPOSES	4-5
A8	MOVING EXISTING SERVICES	4-5
A9	ADDITIONAL REQUIREMENTS FOR CONSTRUCTION ACTIVITIES	4-5
A10	CONSTRUCTION PROGRAMME	4-6
A11	SAMPLES	4-6
A12	EXTENSION OF TIME DUE TO ABNORMAL RAINFALL	4-6
A13	MATERIALS.....	4-6
A14	TESTING AND QUALITY CONTROL.....	4-7
 PART B: MATTERS RELATING TO THE STANDARD SPECIFICATIONS		
B1	PROJECT SPECIFICATIONS REFERRING TO THE STANDARD COLTO SPECIFICATIONS AND ADDITIONAL SPECIFICATIONS	4-8
B2	SECTION 1200 : GENERAL REQUIREMENTS AND PROVISIONS	4-9
B3	SECTION 1300 : CONTRACTOR'S ESTABLISHMENT ON SITE AND GENERAL OBLIGATIONS	4-11
B4	SECTION 1400 : HOUSING, OFFICES AND LABORATORIES FOR THE ENGINEER'S SITE PERSONNEL	4-12
B5	SECTION 1500 : ACCOMMODATION OF TRAFFIC	4-13
B6	SECTION 1600 : OVERHAUL.....	4-14
B7	SECTION 1700 : CLEARING AND GRUBBING	4-15
B8	SECTION 2100 : DRAINS	4-16
B9	SECTION 2200 : PREFABRICATED CULVERTS	4-17
B10	SECTION 3100 : BORROW MATERIALS.....	4-18
B11	SECTION 3400 : PAVEMENT LAYERS OF GRAVEL MATERIAL.....	4-20
B12	SECTION 8500 : BUS SHELTERS	4-21

GENERAL CONDITIONS OF CONTRACT

SECTION 4

PROJECT SPECIFICATION

GENERAL CONDITIONS OF CONTRACT

PROJECT SPECIFICATIONS

PART A: GENERAL

A1 MISCELLANEOUS

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

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

A2 DESCRIPTION OF THE WORKS

(a) The site

The Government of Eswatini through the Ministry of Public Works and Transport in its bid to improve local and regional road network connectivity as a precursor to stimulating socio-economic development in the country is embarking on a project to upgrade the remaining 5.9km of the MR21 (Siphambanweni - Nsalitje Border) road from gravel surface to tar/bitumen surface. The 5.9km long section of project road commences from Ka-Gamedze area and it traverses in a southerly direction until it reaches the Nsalitje Border.

(b) The Works

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

- (i) Site establishment.
- (ii) Accommodation of traffic.
- (iii) Setting out of works.
- (iv) Preparation of road bed and construction of subsequent pavement layers.
- (v) Installation of new drainage structures as per the Engineer's instructions.
- (vi) Road signs, markings and road furniture.
- (vii) Construction of Concrete Parking Bays at the Nsalitje Border.

GENERAL CONDITIONS OF CONTRACT

(c) **Pavement design**

Upgrading of Road:

Wearing Course: Double Seal.

Base: 150mm (C4) Stabilised Gravel Base Compacted to 96% Modified AASHTO.

Sub-base: 150mm (SSG) Un-Stabilized Gravel Compacted to 95% Modified AASHTO.

Road-bed: 200mm Roadbed Ripped and Compacted to 90% Mod AASHTO.

A3 POWER SUPPLY AND OTHER SERVICES

The Contractor must make his own arrangements concerning the supply of electrical power and all other services. No direct payment will be made for the provision of electrical and other services. The cost of providing these services will be deemed to be included in the rates and amounts tendered for the various items of work for which these services are required.

A4 CONSTRUCTION IN CONFINED AREAS

It may be necessary for the Contractor to work in confined areas. In certain areas the width of the fill material and pavement layers may reduce to zero and the working space may be confined. The method of construction in these confined areas depends on the Contractor's constructional plant. However, the Contractor must note that measurement and payment will be in accordance with the specified cross-sections and dimensions, irrespective of the methods used to achieve these cross-sections and dimensions, and that the rates and amounts tendered will be deemed to include full compensation for any special equipment or construction methods or for any difficulty encountered in working in confined areas and narrow widths, and at or around obstructions, and that no extra payment will be made nor will any claim for payment be considered on account of these difficulties.

A5 CONTRACTOR'S ACCOMMODATION

The Contractor shall make his own arrangements for a suitable site for his camp. The Contractor shall provide and maintain adequate and suitable accommodation for his personnel. This accommodation shall be in accordance with the requirements of the relevant authorities. No accommodation shall be erected within the road reserve without the Employer's permission.

The Contractor shall provide sufficient latrine facilities for the use of his employees and shall be entirely responsible for maintaining such latrines in a clean, orderly and sanitary condition to the satisfaction of the Engineer and the Employer.

Latrines shall be provided at the rate of one for ten persons and where applicable, the Contractor shall make his own arrangement and pay all charges for the removal of sewage.

GENERAL CONDITIONS OF CONTRACT

A6 SECURITY

The Contractor shall be responsible for the security of his personnel and constructional plant on and around the site of the works and for the security of his camp, and no claims in this regard will be considered by the Employer.

A7 WATER FOR CONSTRUCTION PURPOSES

The Contractor must make adequate provision in his tender for all negotiations and procurement of water for construction activities, and all related costs will be deemed to be included in his tendered rates.

A8 MOVING EXISTING SERVICES

Services belonging to Eswatini Electrical Company (EEC), Eswatini Water Services Corporation (EWSC) and Eswatini Post and Telecommunication (EPTC) which require moving shall be dealt with as the manner specified.

A9 ADDITIONAL REQUIREMENTS FOR CONSTRUCTION ACTIVITIES

- (a) Traffic shall be accommodated as approved by the Engineer so that two-directional traffic can be safely accommodated at all times. The Contractor shall keep the Engineer and the Local Traffic Police fully informed with regard to any temporary changes required in the normal traffic flow and shall obtain their approval for these changes. Arrangements with local traffic authorities for assistance with traffic control (if required) must be finalised prior to commencement of the work. Compensation will be deemed to be included under the items in Section B15.

The Contractor shall specifically pay attention to Clauses 1502 (i) and 1503 of the Standard Specifications.

- (b) The Contractor's tendered rates for the relevant items in the Schedule of Quantities shall include full compensation for all possible additional costs which may arise from the above, and no claims for extra payment due to inconvenience as a result of the modus operandi will be considered.
- (c) The traveling public shall have the right of way on all public roads, and the Contractor shall make use of approved methods to control the movement of his constructional plant, vehicles and labourers so as not to constitute a hazard on the road.
- (d) The Contractor may not commence constructional activities before adequate provision has been made to accommodate traffic in accordance with the requirements of this document, the South African Road Traffic Signs Manual and Road Signs Note 13 (Sept 1988) as compiled by the CSRA/CUTA Road Traffic Signs Sub-Committee.
- (e) Failure to maintain temporary traffic control facilities, road signs, warning signs or amber rotating flashing lights, etc, in a good condition shall constitute ample reason for the Engineer to stop the works until these have been repaired or replaced to his satisfaction.

GENERAL CONDITIONS OF CONTRACT

- (f) The Contractor shall schedule his activities so that the road will be open to traffic between 18:00 and 06:00. The Contractor shall take special precautions to allow traffic to use the road during periods of inclement weather. Temporary signs shall be removed or covered to prevent confusion. However, it is the Contractor's sole responsibility to ensure that a safe and free traffic flow is maintained, in alternate directions, during the day.

A10 CONSTRUCTION PROGRAMME

The construction period to complete the works is *eight (8)* months, which period includes all public holidays as gazetted.

The accommodation of traffic will have a marked influence on the programme and the aspect of the work should be accommodated in the programme.

A construction programme in the form of a diagram will be submitted within 7 days after being awarded the Contract in order to indicate the sequence of the works.

A11 SAMPLES

The Contractor is responsible for the implementation of an approved quality control system, testing by an approved independent laboratory, as well as for the submission of samples according to sections 1200 and 8100 of the specifications (contained in Volumes 2 and 3 of the Contract Documents) at his own expense, the cost of which are deemed to be included in the rates tendered for the related items of work.

A12 EXTENSION OF TIME DUE TO ABNORMAL RAINFALL

Extension of time due to abnormal rainfall will be dealt with in accordance with Clause 45 of the General Conditions of Contract, Method (ii) (Critical Path Method) as outlined in Clause 1215 of the Standard Specifications, and Clause B1215 of the Project Specifications contained within this document.

A13 MATERIALS

Commercial sources if required for this contract will be identified by the Contractor and tested during the construction period to the satisfaction of the Engineer.

A14 TESTING AND QUALITY CONTROL

The Contractor shall engage the services of an approved independent testing laboratory for the testing of materials and the quality testing of layerworks, to ensure that his work conforms to the specifications.

The cost of such testing shall be deemed to be included in the rates tendered for the various items of work that require testing and will not be paid for separately.

Should the testing laboratory proposed by the Contractor not be approved by the Engineer, no reason for such rejection will be given and the Contractor shall, at his own cost, negotiate with and propose another laboratory for the Engineer's approval.

GENERAL CONDITIONS OF CONTRACT

PROJECT SPECIFICATIONS

PART B: MATTERS RELATING TO THE STANDARD SPECIFICATIONS

B1 PROJECT SPECIFICATIONS REFERRING TO THE STANDARD SPECIFICATIONS AND ADDITIONAL SPECIFICATIONS

In certain clauses the standard specifications allow a choice to be specified in the project specifications between alternative materials or construction methods, and for additional requirements to be specified to suit a particular contract. Details of such alternatives or additional requirements applicable to this contract are contained in this part of the project specifications. It also contains some additional specifications required for this particular contract.

The number of each clause and each payment item in this part of the project specifications consists of the prefix **B** followed by a number corresponding to the number of the relevant clause or payment item in the standard specifications. The number of a new clause or a new payment item that does not form part of a clause or a payment item in the standard specifications and is included here, is also prefixed by **BS** followed by a new number. The new numbers follow on the last clause or item number used in the relevant section of the standard specifications.

B2 SECTION 1200 : GENERAL REQUIREMENTS AND PROVISIONS

B 1202 SERVICES

ADD THE FOLLOWING:

"Before work commences, the contractor shall contact all private owners or public authorities controlling services to allow them to protect, move or relocate a service as required, or to confirm that all such work has been completed.

B 1207 NOTICES, SIGNS AND ADVERTISEMENTS

REPLACE THE FOURTH PARAGRAPH WITH THE FOLLOWING:

"The signboards shall be painted with the legend in ENGLISH."

B 1209 PAYMENT

(b) Rates to be inclusive

ADD THE FOLLOWING TO THE FIRST PARAGRAPH:

"The schedule of rates and sums and provisions for as a lump sum shall all be inclusive of Tax."

ADD THE FOLLOWING SUBCLAUSE:

"(g) Payment certificates

GENERAL CONDITIONS OF CONTRACT

The Engineer's certificate referred to in the general conditions of contract will only be issued after he has received a draft certificate prepared by the Contractor at his own expense in the form prescribed by the Engineer. The cost of duplicating and delivering copies of the certificate to the Contractor, the Engineer and the Employer shall be borne by the Contractor. The Engineer and the Employer require a total of three sets of A4-sized paper copies."

Payment as per payment schedule based on progress milestones. Payment schedule to be provided with the tender at tender submission.

B 1215 EXTENSION OF TIME RESULTING FROM ABNORMAL RAINFALL

The extension of time due to abnormal rainfall shall be determined according to Method (ii) (Critical Path Method)

The value of 'n' shall be taken as shown in the table below.

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
'n'	4	4	3	1	1	0	0	0	2	2	5	6

B 1227 MONTHLY SITE MEETINGS

ADD THE FOLLOWING:

"The contractor or his authorised representative attending these meetings shall be a person who is empowered to take contractually binding decisions."

B3 SECTION 1300 : CONTRACTOR'S ESTABLISHMENT ON SITE AND GENERAL OBLIGATIONS

B 1303 PAYMENT Item

B13.01 The contractor's general obligations

ADD THE FOLLOWING AFTER THE FOURTH PARAGRAPH:

"The combined total tendered for sub items (a), and (c) shall not exceed 15% of the Tender Sum."

B4 SECTION 1400 : HOUSING, OFFICES AND LABORATORIES FOR THE ENGINEER'S SITE PERSONNEL

B1404 SERVICES

ADD THE FOLLOWING SUBCLAUSE:

GENERAL CONDITIONS OF CONTRACT

"(e) Testing of materials

The contractor shall arrange with an approved laboratory to carry out sufficient tests on a regular basis as agreed between him and the engineer to determine whether the degree of compaction, and, where applicable, the quality of materials used, comply with the specifications and shall submit the results of these tests to the engineer in a form approved by him."

B5 SECTION 1500 : ACCOMMODATION OF TRAFFIC

B 1503 TEMPORARY TRAFFIC-CONTROL FACILITIES

(b) Road signs and barricades

ADD THE FOLLOWING:

"The Engineer reserves the right to instruct the Contractor to replace any road signs which he considers to be ineffective due to dirt build-up or deterioration.

B7 SECTION 1700 : CLEARING AND GRUBBING

B 1703 EXECUTION OF WORK

(a) Areas to be cleared and grubbed

DELETE "normally" IN THE SECOND PARAGRAPH.

(c) Disposal of material

REPLACE THE SECOND PARAGRAPH WITH THE FOLLOWING:

"The Contractor shall dispose of all trees, BOULDERS, tree stumps, rubble, undesirable material removed from hydraulic structures, refuse and all non-combustible rubbish at approved dumping sites provided by the Contractor."

ADD THE FOLLOWING CLAUSE:

B 1705 CLEANING OF HYDRAULIC STRUCTURES

"The cleaning of hydraulic structures involves the removal of all undesirable materials such as earth, sand, gravel, stones and mud until the structures are completely clean, and the disposal of the debris at approved dumping sites provided by the Contractor."

8 SECTION 2100 : DRAINS

GENERAL CONDITIONS OF CONTRACT

B10 SECTION 3100 : BORROW MATERIALS

B 3102 NEGOTIATIONS WITH OWNERS AND AUTHORITIES

REPLACE THE EXISTING SUBCLAUSE (A) WITH THE FOLLOWING SUBCLAUSE (A):

“It shall be the Contractor’s responsibility to undertake negotiations, and obtain approval from owners of land or local chiefs (or sub chiefs) for the use of borrow materials and borrow areas situated on their land. Any compensation due, excepting royalties, will be to the Contractors account”

B 3103 OBTAINING BORROW MATERIALS

DELETE SUB CLAUSES (A) AND (B) AND REPLACE WITH THE FOLLOWING:

(a) General

“It shall be *the Contractor’s responsibility to search for, locate and prove suitable borrows materials for use on the road*, and as specified elsewhere in the Specifications. The Contractor shall undertake sufficient testing to prove to the Engineer that the borrow materials identified do comply with the specifications. *It will be up to the Engineer’s discretion to determine if sufficient testing has been undertaken. The Contractor’s tendered rates shall include full compensation for all activities outlined above*”.

(b) Borrow pit plans

“Borrow pit plans will not be provided to the Contractor. The Contractor will provide the Engineer with Borrow pits plans showing proposed borrow pit location and details of proof testing carried out at these locations, prior to commencement of any activity at these particular borrow areas”.

B 3104 OPENING AND WORKING BORROW PITS AND HAUL ROADS

(d) Excavating borrow material

ADD THE FOLLOWING:

"The Contractor shall at all times ensure that the removal of the material is carried out in such a manner that the stability of the exposed faces is not prejudiced and safe working conditions are maintained."

GENERAL CONDITIONS OF CONTRACT

SCOPE OF WORKS

This tender is a **Design** and **Build** Contract. This being a design and build contract, the tenderer will be expected to provide a schedule of payments for the duration of the project. The scope of works is as detailed below:

- Upgrade the 5.9km long road to double seal paved standard as per the cross section;
- Road width to be 8m wide;
- Stone Pitch Drainage to be provided in the typical details;
- Pipe Culverts as required;
- Subsoils Drainage where required;
- Road Signs;
- Road Marking;
- Installation Guardrails as required;
- Construction of Necessary Parking Bays and Signage at the Nsalitje Border;
- Engineer's Facilities:
 - Provision of a single cab vehicle which reverts back to the contractor for 18 months (8 months construction & 12 months Defect Liability Period; and allow all running costs);
 - 1 No. furnished offices for Engineer's staff;
 - Contractor to provide facilities for client meetings;
 - Communications.
- Allow Provisional Sum for the Environmental Consultant to carry out all requisite environmental compliance processes.

GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

CONTRACT AGREEMENT

GOVERNMENT OF THE KINGDOM OF ESWATINI

MINISTRY OF PUBLIC WORKS AND TRANSPORT

CONTRACT No. 131.....

Contract for the **Construction of MR21 (Siphambanweni – Nsalitje) Road** at_____. In accordance with the Conditions of Tender, Conditions of Contract, Specification, Tender Form dated and letters dated, _____day of _____in the year of Two thousand and twenty _____between _____ hereinafter and in all Contract Documents called “the CONTRACTOR” on the one part and the Principal Secretary, Ministry of Public Works and Transport, hereinafter and in all Contract Documents called “the EMPLOYER” for and on behalf of the Minister of Public Works and Transport on the other part; hereby it is mutually agreed as follows:

That the CONTRACTOR shall at his own risk and cost, executed and perform several works, hereinafter and in all Contract Documents called “the Works”, and provisions and supply and transport to site all the material and supply labour and everything of every kind respectively named, shown, described and referred to in the Tender Documents and the Drawings supplied by the CONTRACTOR for the Works in conformity with the Specification and subject to the Tender and Conditions of contract for the Works issued by the EMPLOYER, , And that the CONTRACTOR on the one part and the EMPLOYER on the other part will perform, fulfil, observe and comply with the conditions and stipulation and all matters and things contained, expressed and shown or reasonably to be referred from the Conditions of Tender, Conditions of Contract, Specification, Information for Tenderers and Drawing that form these Tender Documents for the Works

GENERAL CONDITIONS OF CONTRACT

and other information by and on the part of the CONTRACTOR and EMPLOYER to be performed, fulfilled and observed and other information as before mentioned shall be read and construed as forming part of the contract.

The term CONTRACTOR herein and in all the Contract Documents will bind such persons jointly and severally to be entitled to benefit of this Agreement, and that in consideration of this Agreement the EMPLOYER shall pay the CONTRACTOR the contract price of E.....Emalangeni.....

And that the CONTRACTOR hereby acknowledges that the Tender Documents and other information supplied are sufficient for the intended purposes and that the Works can be successfully executed in accordance therewith without any additional or extra work than such works as in necessarily implied therein or to be inferred therefrom.

In witness thereof the said parties of the one and other parts hereunto set their hands

..... Date
Signature of CONTRACTOR

..... Date
Witness to Signature of CONTRACTOR

..... Date
Signature of Principal Secretary
Ministry of Public Works and Transport

STAMP

..... Date
Witness to Signature of Principal Secretary
Ministry of Public Works and Transport

GENERAL CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT

1.0 DEFINITIONS

2.0.1 "Cost" (except for 'cost plus fixed fees' contracts, see Appendix) includes overhead costs whether on or off the Site of the Works.

2.0.2 "Site" means the lands and other places on, under, in or through which the Works are to be executed and any other lands or places provided by the Employer for the purposes of the Contract.

2.0.3 "Excepted Risks" are riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, military or usurped power, ionised radiation or contamination by radioactivity from any nuclear fuel waste, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds or cause due to the use or occupation by the Employer, his agents, servants or other contractors (not employed by the Contractor) of any part of the Works or to fault, defect, error or omission in the design of the Works.

2.1 ENGINEER

2.1.1 Engineer to be a Named Individual: The Employer will appoint and notify the Contractor in writing of the appointment of the Chief Roads Engineer as the individual to act as the Engineer in the project. If at any time the Engineer is unable to continue the duties required by the Contract, the Employer shall forthwith appoint a replacement and shall notify the Contractor in writing.

2.1.2 The Engineer may appoint a named Resident Engineer, Menzi Mbingo to watch and inspect the Works and the Engineer may delegate to such person in writing any of the powers of the Engineer herein provided that prior notice in writing is given to the Contractor.

2.1.3 The Engineer's has power to give the following instructions:

- a. Any variation to the Works including addition and omission except where the variation will cause the Contract to exceed the Contract sum. To exceed the Contract Sum, the Engineer will obtain the Tender Board's approval for any variation that will increase the approved Contract sum;
- b. Carrying out any test of investigation.
- c. Suspension of the Works or any part of the Works in accordance with Clause 2.1.6 below;
- d. Any change in the intended sequence of the Works;
- e. Measures needed to overcome or deal with any obstruction or condition falling within Clause 2.2.8 below;

GENERAL CONDITIONS OF CONTRACT

- f. Removal and/or re-execution of any work or materials not in accordance with the Contract;
- g. Elucidation or explanation of any matter to enable the Contractor to meet his obligations under the Contract;
- h. Exclusion from the Site of any person employed thereon, which power will not be exercised unreasonably.

2.1.4 The Engineer and/or other suitably experienced person(s) who exercises any delegated power will, upon written request of the Contractor, specify in writing under which of the foregoing powers these instructions are given. Should the Contractor be dissatisfied with any such instruction he will be entitled to refer the matter to the Engineer for his decision.

2.1.5 The Engineer can order in writing that any work be executed on a Day work basis. The Contractor will be then entitled to payment in accordance with the Day work Schedule included in the Contract subject to the production and approval of proper records.

2.1.6 The Engineer will suspend the progress of the Works or any part thereof;

- a. the improper execution of the Works
- b. For the safety of the Works or any part thereof;
- c. By reason of weather conditions;

And in such event will issue instructions as in his opinion will be necessary to protect and secure the Works during the period of suspension.

If permission to resume work is not issued by the Engineer within a period of 60 days from the date written Order of Suspension the Contractor can serve a written notice on the Engineer requiring permission to proceed with the Works within 14 days from the receipt of such notice. The Engineer will grant permission subject to the Contractor may, by written notice served on the Engineer, elect to treat the suspension where it affects part(s) of the Works as an omission under Clause 2.1.6(a) above or where the Employer suspends the whole of the Works as an abandonment of the Contract.

2.1.7 Each party will be bound by and give effect to every instruction and decision of the Engineer unless and until either: it is altered or amended by an agreed settlement following a reference under Clause 2.10 below

GENERAL CONDITIONS OF CONTRACT

and neither party given notice of dissatisfaction therewith; or, it is altered or amended by a decision of an arbitrator under Clause 2.10(c) below.

2.2 GENERAL OBLIGATIONS

2.2.1 The Contractor will perform and complete the Works and will (subject to any provision in the Contract) provide all supervision labour, materials plant, transport and temporary works, which may be necessary therefore.

2.2.2 The Contractor's responsibility for the care of the Works:

a. The Contractor will take full responsibility for the care of

the Works from the commencement until 14 days after the Engineer issues the Certificate of Practical Completion for the whole of the Works under Clause 2.3.5 below.

b. With issuance of the Certificate of Completion by the Engineer with respect to any part of the Works prior to the completion of the whole of the Works the Contractor will cease to be responsible for the care of that part of the Works 14 days thereafter and responsibility for its care will then pass to the Engineer.

c. The Contractor will take full responsibility for the care of any outstanding work, which he has undertaken to finish during the Defects Completion Period until such outstanding work is complete.

2.2.3 The Contractor is to repair and make good at his own expense:

a. In case of damage, loss or injury from any cause, except the Excepted Risks, shall happen to the Works or any part thereof while the Contractor is responsible for its care the Contractor will at his own expense repair and make good the same so that at completion the Works will be in good order and condition and conform in every respect with the requirements of the Contract and the Engineer's instructions.

b. To the extent that any damage, loss or injury arises from any of the Excepted Risks the Contractor will, if required by the Engineer, repair and make good the same at the Employer.

c. The Contractor will also be liable for any damage to the Works caused by him in the course of any operations carried out by him for the purpose of completion outstanding work or complying with obligations under Clauses 2.3.7 and 2.4.2.

2.2.4 The Contractor shall notify the Engineer of the person duly authorized to receive instructions on behalf of the Contractor.

2.2.5 The Contractor will take full responsibility for the setting out of the Works and for adequate stability and safety of his site operations and methods of construction.

GENERAL CONDITIONS OF CONTRACT

- 2.2.6** The Engineer will be responsible for the provision of any necessary instructions, drawings or other information subject to Clause 2.3.
- 2.2.7** The Contractor will not be responsible for the design of the Works except where expressly stated in the Contract. The Contractor will be responsible for the design of any temporary works other than temporary works designed by the Engineer.
- 2.2.8** When the Contractor encounters artificial obstructions or physical conditions other than a weather condition or condition due to weather, and such conditions or conditions could not in his opinion reasonably have been foreseen by an experienced contractor, the Contractor will as early as practicable give written notice to the Engineer. If in the opinion of the Engineer such obstruction or condition could not reasonably have been foreseen by an experienced contractor then the Engineer will certify and the Employer will pay fair and reasonable amount to cover the cost of performing any additional work or using any additional plant or equipment together with a reasonable percentage additional in respect of profit as a result of: complying with the instructions the Engineer will issue and/or condition in the absence of instructions from the Engineer together with such sum as will be agreed as the additional cost to the Contractor due the delay or disruption arising therefrom. Failing agreement on such sums the Engineer will determine the fair and reasonable sum to be paid.
- 2.2.9** The Contractor will, in accordance with the requirements of the Engineer, afford reasonable facilities for any other contractor employed by the Employer and for any other properly authorized authority employed on the Site.

2.3 START AND COMPLETION

- 2.3.1 The starting date will be the date specified in the Appendix or within 28 days after the date of acceptance of the Tender. The Contractor will begin the Works at or as soon as reasonably possible after the starting date.
- 2.3.2 The period of completion will be 8 months or such time as may be granted under Clause 2.3.4 below and will commence on the starting date.
- 2.3.3 The Contractor will within 7 days after the starting date provide a program of his intended activities. The Contractor will at times proceed with the Works with due expedition and reasonably in accordance with his program or any modification thereof which he may provide or which the Engineer may request.
- 2.3.4 Should the progress of the Works or part thereof be delayed for any of the following reasons:

GENERAL CONDITIONS OF CONTRACT

- a. An instruction given by the Engineer under Clauses 2.3.1, 2.3.3 or 2.3.4 above;
- b. An instruction given under Clause 2.3.2 above where test or investigation fails to disclose non-compliance the Contract;
- c. Encountering an obstruction or condition falling within Clause 2.3.4(h) below;
- d. Delay in receipt by the Contractor of necessary instructions, drawing or other information;
- e. Failure by the Employer to give adequate access to the Works or possession of land required to perform the Works;
- f. Delay in receipt by the Contractor of materials to be provided by the Employer under the Contractor;
- g. Exception adverse weather;
- h. Other special circumstances of any kind whatsoever outside the control of the Contractor then provide that the Contractor has taken all reasonable steps to avoid or minimize the delay, the Engineer will upon written request of the Contractor promptly by notice in writing grant such extend such extension of the period for completion of the whole or part of the Works, as may be reasonable. The extended period or periods for completion will be subject to regular review provided that no such review may result in a decrease of time already granted by the Engineer.

2.3.5 Certificate of Completion of Works or Parts of Works:

- a. Practical completion of the whole of the Works will occur when the Works reach a state when notwithstanding any defect or outstanding items therein are taken or are fit to be taken or are fit to be taken into use or possession by the Employer.
- b. Similarly, practical completion of part of the Works may also occur only if it is fit for such part to be taken into use or possession independently of the remainder.
- c. The Engineer will upon the Contractor's request promptly certify in writing the date upon which the Works or any part thereof has reached practical completion or otherwise advise the Contractor in writing of the work necessary to achieve such completion.

2.3.6 Liquidated Damages:

If by the end of the period or extended period/s for completion the Works have not reached practical completion the

GENERAL CONDITIONS OF CONTRACT

Contractor will be liable to the Employer in the sum stated in the Appendix as liquidated damages for every week or prorata for part of a week during which the Works so remain uncompleted up to the limit stated in the Appendix. Similarly, where part or parts of the Works so remain uncompleted the Contractor will be liable to the

Employer in the sum stated in the Appendix reduced in

proportion to the value of those parts which have been certified as complete provide that the said limit will not be reduces.

- 2.3.7 The Contractor will rectify any defects and complete any outstanding items in the Works or any part thereof, which reach practical completion promptly thereafter or in such manner and/or time as may be agreed or otherwise accepted by Engineer. The Contractor will maintain parts, which reach practical completion in the condition required by the Contract until practical completion of the whole of the Works with fair wear and tear accepted.

2.4 DEFECTS

2.4.1 The Defects Correction Period means the period stated in the Appendix and will run from the date certified as practical completion of the whole of the Works or the last period thereof.

2.4.2 Defects in the Works during the Defects Correction Arising from the use of materials or workmanship not in conformance with the Contract will be noted by the Engineer and written notice given thereof to the Contractor. The Contractor will make good the same at his own cost.

2.4.3 For defects not corrected within a reasonable time by the Contractor the Employer will, after giving 14 days written notice to the Contractor, will employ others to correct same and the cost thereof will be payable by the Contractor to the Employer.

2.4.4 Upon expiry of the Defects Correction Period and when all outstanding work notified to the Contractor under Clause above has been made good, the Engineer will upon written request of the Contractor certify the date on which the Contractor completed his obligations under the Contract to the Engineer's satisfaction and issue the Certificate of Completion of the Works.

2.4.5 Nothing in this section on defects shall affect the right of either party in respect of defects appearing after the Defects Correction Period.

2.5 ADDITIONAL WORKS

2.5.1 When the Contractor carries out additional work or incurs additional cost including any cost arising from delay or disruption to the progress of the Works as a result of any of the matters referred to in Clause 2.2.6,

GENERAL CONDITIONS OF CONTRACT

and/or 2.2.8 above the Engineer will certify and the Employer will pay to the Contractor such additional sum as the Engineer, after consultation with The Contractor considers fair and reasonable. Likewise, the Engineer may determine a fair and reasonable deduction to be made in respect of any omission of work.

2.5.2 In determining a fair and reasonable sum under Clause 2.5 for additional work the Engineer will have regard to the prices contained in the Contract.

2.6.1 PAYMENT

2.6.1 The valuation of the Works will be as per the schedule of payment as provided in the contract.

2.6.2 Within 60 days of the delivery of such interim certificates the Engineer will certify and the Employer will pay to the Contractor such sum as the Engineer considers due less retention at the rate of and up to the limit set in the Appendix. Until Practical Completion of the whole of the Works the Engineer will not be required to certify and payment less than the sum stated in the Appendix as the minimum amount of interim certificate. The Engineer may by any certificate delete, correct or modify any sum previously certified by him.

2.6.3 One half of the retention money will be certified by the Engineer and paid to the Contractor within 30 days after the date on which the Engineer issues a Certificate of Practical Completion of the whole of the Works.

2.6.2 The remainder of the retention money will be paid to the contractor within 30 days after the issuance of the Engineer's Certificate of Completion under Clause 2.6.3 above.

2.6.3 Within 28 days after the issuance of the Engineer's certificate under Clause 2.6.3 above the Contractor will submit a final account to the Engineer together with reasonable documentation required to enable the Engineer to ascertain the final contract value. Within 42 days after receipt of this information the Engineer will issue the final certificate. The Employer will pay to the Contractor the amount due thereon with 30 days of the issuance of the final certificate.

2.6.4 The final certificate will, except in the case of fraud or dishonesty relating to or affecting any matter dealt with in the certificate, be conclusive evidence as to the sum due to the Contractor under or arising out of the contract, subject to Clause 2.6.5 above, unless either party has within 28 days after the issuance of the final certificate given notice under Clause 2.10 below.

2.6.5 Failure of the Engineer to certify or the Employer to make payment in accordance with the Contract will require the Employer to pay the Contractor interest on the amount which should have been certified on its final due date or paid on its final due date a daily basis at a rate

GENERAL CONDITIONS OF CONTRACT

equivalent to the base lending rate of the bank specified in the Appendix. Except that no interest on the overdue payments will be made unless it is claimed by the Contractor and documented within one month of it's being payable.

2.7 ASSIGNMENT AND SUB-LETTING

- 2.7.1 Neither the Employer or the Contractor will assign the Contract or any part thereof or any benefit or interest therein or there under without the written consent of the other party.
- 2.7.2 The Contractor will not sub-let the whole of the Works nor will the Contractor sub-let any part of the Works without written consent of the Engineer which consent will not be unreasonably withheld.
- 2.7.3 The Contractor will be responsible for any acts, defaults, or neglects of any sub-contractor, his agents, servants or workmen in the execution of the Works or any part thereof as if they were the acts, defaults or neglects of the Contractor.

2.8 STATUTORY OBLIGATIONS

- 2.8.1 The Contractor will, subject to Clause 2.8.3 below, comply with and give all notices required by any statute, statutory instrument, rule or order or any regulation or bye law applicable to the construction of the Works, hereafter called the Statutory Requirements, and will pay all fees and charges which are payable in respect thereof.
- 2.8.2 The Employer will be responsible for obtaining in due time any consent, approval, license or permission but only to the extent that the same may be necessary for the Works in their permanent form.
- 2.8.3 The Contractor will not be liable for any failure to comply with the Statutory Requirements where and to the extent that such failure results from the Contractor having carried out the Works in accordance with the Contract or with instruction of the Engineer.

2.9 LIABILITIES AND INSURANCE

2.9.1 Insurance of the Works:

- a. The Contractor will maintain the insurance specified in the appendix in the joint names of the Contractor and the Employer in respect to the Permanent Works and the Temporary Works, including for the purpose of this clause any unfixed materials or other things delivered to the Site for incorporation therein, to their full value against all loss and damage whatever cause arising other than the Excepted Risks, for which he is responsible under the terms of the Contract.

GENERAL CONDITIONS OF CONTRACT

- b. Such insurance will be that the Employer and the Contractor are covered for the period specified in Clause 2.3 above and are also covered for loss or damage arising during the Defects Correction Period from such cause occurring prior to the commencement of the Defects Correction Period and for any loss or damage occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligation under Clauses 2.2 and 2.5 above.
 - c. The Contractor will not be liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of the Contract.
- 2.9.2 The Contractor will indemnify and keep the Employer indemnified against all losses and claims for injury and damage to any person or property whatsoever, except for the matter for which the Contractor is responsible under Clause 2.9.1 above, which may arise out of or in consequence to the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereof and subject to Clauses 2.9.3 and 2.9.4 below.
- 2.9.3 The liability of the Contractor to indemnify the Employer under Clause 2.9.2 above will be reduced proportionately to the extent that the act or neglect of the Engineer or the Employer, his servants or agents or other contractors not employed by the Contractor may have contributed to the said loss, injury or damage.
- 2.9.4 The Contractor will not be liable for or in respect of or to indemnify the Employer against any compensation of damage or respect:
 - a. Damage to crops being on the site except in so far as possession has not been given the Contractor;
 - b. The use or occupation of land, provided by the Employer, by the Works or any thereof or the purpose of constructing, completing and maintaining the Works including consequent losses of crops, or interference whether temporary or permanent with any right-of-way, light, air or water or other easement or quasi easement which are the unavoidable result of the construction of the Works in accordance with the Contract;
 - c. The right of the Employer to construct the Works or any part thereof on, over, under, in or through any land;
 - d. Damage, which is the unavoidable result of the construction of Works in accordance with the Contract;

GENERAL CONDITIONS OF CONTRACT

- e. Injury or damage to persons or property resulting from any act or neglect or breach of statutory duty done or committed by the Engineer or the Employer, his agents or other contractors, not being employed by the Contractor, or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect or in relation thereof.

- 2.9.5 The Employer will save harmless and indemnify the Contractor from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of the matters referred to in Clause 2.9.4 above. Provided that the Employer's liability to indemnify the Contractor under Clause 2.9.3 will always be reduced proportionately to the extent that the act or neglect of the Contractor and his sub-contractors, servants or agents may have contributed to the said injury or damage.

- 2.9.6 The Contractor throughout the execution of the Works maintains insurance against damage, loss or injury for which he is liable under Clause 2.9.2 above. Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval will not be unreasonably withheld, for at least the amount stated in the Appendix. The terms of such insurance will include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer the insurer will indemnify the Employer against any such claims and any costs, charges and expenses in respect thereof.

- 2.9.7 The Contractor will comply with the terms of any policy issued in connection with the Contractor and will whenever required produce to the Employer the insurance policy or policies and the receipts for the payments of the current premiums.

2.10 DISPUTES

- 2.10.1 Disputes and/or differences of any kind whatsoever arising between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works, including a dispute as to any act, error or omission of the Engineer, whether arising during the progress of the Works or after their completion, will be settled in accordance with the following provisions:

- a. **Notice of Disputes**

A dispute, according to Clause 2.10.2 below, is deemed to arise when one party serves the other a notice in writing, hereinafter called the Notice of Dispute, stating the nature of the dispute, providing that no Notice of Dispute may be served unless the party wishing to do so has first taken any step or invoked any procedure available elsewhere in the Contract in connection with the subject of such dispute and the other party or the

GENERAL CONDITIONS OF CONTRACT

Engineer as the case may be has: taken such step as may be required, or been allowed a reasonable time to take any such action.

b. Settlement of Disputes

When a dispute arises between the Employer and the Contractor in connection with, or arising out of the Contract, or the execution of the Works, whether during the progress of the Works or after their completion and whether before or after the termination and abandonment or breach of the Contract, it will, in the first place, be referred to and settled by the Engineer who will, within a period of 90 days after being requested by either party to do so, give written notice of his decision to the Employer and Contractor.

Subject to arbitration, as herein provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and will forthwith be given effect to by the Employer and by the Contractor, who will proceed with the execution of the Works with all due diligence whether the Employer or the Contractor or the Contractor requires arbitration or not.

If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor within a period of days from receipt of such notice, the decision will remain final and binding upon the Employer and the Contractor. If the Engineer fails to give notice of his decision within a period of days after being requested, or if either the Employer or the Employer or the Contractor is dissatisfied with any such decision, then and in such cases either the Employer or the Contractor may within days after receiving such decision or within days after the expiration of the first-named period of days, as the case may be, require that the matter or matters in dispute be referred to arbitration as hereinafter provided.

c. Arbitration

Dispute under Clause 2.10 above are carried out under the Eswatini Laws of Arbitration.

SPECIAL CONDITIONS OF CONTRACT

SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract shall supplement the General Conditions of Contract. The corresponding clause number of the GCC is indicated in first colon. Whenever there is a conflict, the provisions in the Special Conditions of Contract shall prevail over those in the General Conditions of Contract.

GCC Clause no	GCC subject	Special Condition(s)
1.1 (a)	Name and address of the Procuring Entity and the Contractor	<p><u>Procuring Entity:</u></p> <p>Principal Secretary Ministry of Public Works and Transport Headquarters P.O. Box 58 Mbabane H 100 ESWATINI</p> <p>Telephone Number: +268 2409 9000 Facsimile Number: +268 2404 2170</p> <p><u>Engineer:</u></p> <p>Attention: Mr. Buhle Vincent Dlamini (Chief Roads Engineer)</p> <p>Ministry of Public Works and Transport Headquarters Second Floor, Office No. 84 P.O. Box 58 Mbabane H 100 ESWATINI</p> <p>Phone: +268 2409 9000 Cell: +268 7606 3833</p> <p>Facsimile Number: +268 2404 2170 Electronic Mail Address: dlaminivin@gov.co.sz</p> <p>Cc: buhlevincent@gmail.com</p>

SPECIAL CONDITIONS OF CONTRACT

GCC Clause no	GCC subject	Special Condition(s)
		<p><u>Contractor:</u></p> <p>Managing Director</p> <p>P.O. Box</p> <p>City</p> <p>Eswatini</p>
2.2.7	General Obligations	This is a Design and Build contract. The contractor is responsible for the design of all works.
2.3.1	Starting Date	
2.3.2	Completion Date	
2.3.6	Liquidated Damages	The Liquidated Damages shall be E3,000.00 per day.
2.4.1	Defects Liability Period	12 months DLP
2.6.5	Payment	Interest on late payment shall be based on the Central Bank Lending Rate plus 4%
4	Performance Security:	
4.2	The amount of the Performance Security	<p>A Performance Security is required to the value of 10%. The Performance Security shall be provided in the form stated in Special Conditions of the Contract and shall be valid for the period of the Contract including any warranty obligations.</p> <p>Once delivery has been completed the Contractor may apply to have the Performance Security reduced to 1% to cover the period of warranty obligations.</p>
4.3	The format of the Performance Security	<p>The Performance Security shall be provided in the form:</p> <ul style="list-style-type: none"> • a bank guarantee issued by a reputable bank located in the Tenderer's country or abroad, acceptable to the Procuring Entity, in the form provided in the Invitation to Tender documents or another form acceptable to the Procuring Entity; or

SPECIAL CONDITIONS OF CONTRACT

GCC Clause no	GCC subject	Special Condition(s)
		<ul style="list-style-type: none"> • an Insurance Company Bond from a reputable Insurance company acceptable to the Procuring Entity. <p>The Performance Security shall be valid for the period of the Contract including any warranty obligations.</p>
14.7. Payment:		
	The method and conditions of payment:	Payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or claim by the Contractor as per payment schedule accompanied by a letter of satisfactory inspection from an Official at the Roads Department.
30. Notices:		
30.1	Procuring Entity's address for notice purposes:	Principal Secretary Ministry of Public Works and Transport Headquarters P.O. Box 58 Mbabane H 100 ESWATINI
30.1	Contractor's address for notice purposes:	Managing Director P.O. Box City Eswatini

PERFORMANCE SECURITY

To: Government of Eswatini
Mbabane
Eswatini.

C/O

Ministry of Public Works and Transport

WHEREAS..... (hereinafter called the “Contractor”) has undertaken, in pursuance of Contract No.131 of 2021/2022 date.....2020.....to undertake the Construction of MR21 (Siphambanweni – Nsalitje) road (hereinafter called the “Contract”) **AND WHEREAS** it has been stipulated by you in the said Contract that the Contractor shall furnish you with a performance security by a reputable Financial Institution for the sum specified therein as security for compliance with the Contractor’s performance obligations in accordance with the Contract. **AND WHEREAS** we have agreed to give the Contractor a performance security. **THEREFORE, WE** hereby affirm that we are Guarantors and responsible to you, on behalf of the Contractor up to a total of..... and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract and without cavil or argument, any sum or sums within the limit of as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Performance Security is valid until theday of.....2023.....

Signature and seal of the Guarantors

.....
(Name of the bank or financial institution)

.....
(Address of the bank or financial institution)

.....
(Date)