



MATSAPHA TOWN COUNCIL

**REQUEST FOR PROPOSALS (RFP) FOR THE LANDFILL HEAVY PLANT
EQUIPMENT HIRE**

TENDER NUMBER: 35 OF 2019/20

03RD MARCH 2020

**Matsapha Town Council
Corner Airport & Police College Rd.
P. O. Box 1790
Matsapha
Eswatini**



SECTION I

ADVERTISEMENT

REQUEST FOR PROPOSALS (RFP) FOR THE LANDFILL HEAVY PLANT EQUIPMENT HIRE

1. PREAMBLE

The Matsapha Town Council requires a competent, registered and reputable company to tender for the supply of Heavy Plant Equipment. These specifications are intended to describe a **(30t) Landfill Compactor** and a **(4X4) Tractor loader backhoe** specifically designed for disposal of waste in a class II landfill application. The plant shall be in good working condition, having operated for hours not exceeding a range of **8000-12000 hours**, OSHA approved, and the latest manufacturer's production model. The limited number of hours to operate plant in the landfill per month shall be **at least 156 hours**. All preventative maintenances will be the responsibility of the Bidder during the period of the lease. Each bidder should submit sufficient data and/or information in their bid response that compares his/her plant to these specifications. Engineering reports, drawings, brochures, and any other information relative to proposed machine, shall be submitted that clearly describes and details the machine's functions.

2. GENERAL CONDITIONS

Tenderers attention is drawn to the general conditions of purchase and conditions of tender:

2.1 This tender document constitutes the contract of engagement on award of the tender.

Aspects of this tender shall be deemed as binding and part of the contract for award.

2.2 Completed tender documents under sealed cover with tenderer's name and addresses on reverse side of the envelope must be made and addressed to the Chief Executive Officer, Plot 829, Matsapha Town Council Corner Police College Road and Airport Road, P. O. Box 1790, Matsapha, and delivered not later than **10:00 pm** on the **18th March 2020**. Tenders will be opened on the same date immediately after delivery deadline at **10:00 pm**.

2.3 All Tenders must be provided in English language

2.4 One original and Three (3) copies are required. Mark clearly on the front page, which is the original and which are the copies.



- 2.5 Late or telegraphic tenders will not be accepted.
- 2.6 The Council does not bind itself to accept any or the lowest tender.
- 2.7 Tenderers shall, together with the complete tender documents, supply technical data, illustrations and/or leaflets which adequately describe the items offered including quality.
- 2.8 If required by the Council the tenderer shall supply sample items and these samples of the accepted tender will be retained by the Council throughout the duration of the contract period. Any items supplied not in accordance with the approved samples will be rejected.
- 2.9 Tenderers may submit prices in the form of standard manufacturer's price lists. However, such list must be supplementary to and not replace the Form of Tender.
- 2.10 Clarifications or questions regarding the RFP may be submitted via email to procurement@matsapha.co.sz not later than the **11th March 2020** close of working business hours.
- 2.11 Any time before the submission deadline, the Council may issue an addendum to the Tender document and notify all Tenderers who received the tender documents. The Tenderers will be allowed at least one week before the tender submission deadline, to effect the changes to bidding document. Where necessary, the deadline for submission would be extended. This will be applicable whenever there are major errors or omissions to tender documents noted by Council before the submission deadline.
- 2.12 All Tenderers are required to provide contact email addresses to the Council through which they will be notified of the intention to award on the day that the Intention is sent to the Eswatini Public Procurement Regulatory Agency (ESPPRA).
- 2.13 Mailed, telegraphic, e-mailed or faxed bids **WILL NOT BE ACCEPTED.**
- 3. Modification or withdrawal of tenders**
- a) Tenderers may modify, or withdraw the tender prior to the deadline for the submission of tenders.
- b) The modification or notice of withdrawal shall be effective if it is received by Council prior to the deadline for submission of tenders.

- c) When a tenderer withdraws his/her bid during the bidding process, it must be in writing, prior to the award of the bid, of which Council holds the right to accept or reject with or without a claim for any damages.
- d) When a tenderer withdraws or cancels the contract after award of the bid to the particular winner of the bid, the awarded tenderer will be held responsible for any damages or administrative expenses incurred prior to the award of the bid.

4. TEST FOR RESPONSIVENESS

4.1 A Bid will be considered non-responsive if:

- 4.1.1 The bid is not in compliance with the specifications;
- 4.1.2 The bidder has not fully completed and signed where required, all the returnable documents as listed in the bid document; and/or
- 4.1.3 The bidder has failed to clarify or submit any supporting documentation within 2-5 business days of being requested to do so in writing.

4.2 The Municipality reserves the right to accept or reject:

- 4.2.1 Any variation, deviation, bid offer, or alternative bid offer; may cancel the bidding process and reject all bid offers at any time before the formation of a contract. Council shall not accept or incur any liability to a bidder for such cancellation and/or rejection, and will only provide written reasons for such action upon receipt of a written request to do so;
- 4.2.2 A bid offer which does not, in the Council's opinion, materially and/or substantially deviate from the terms, conditions and specifications of the bid document.
- 4.2.3 The whole bid or part of a bid or any item or part of any item, or to accept more than one bid (in the event of a number of items being offered), and the Municipality is not obliged to accept the lowest or any bid.

4.3 The bidder shall declare ALL the Council account numbers for which the enterprise or the proprietors or directors in their personal capacity/capacities is/ are responsible or co-responsible for;

- 4.3.1 Council has the right to summarily disqualify any bidder who, either at the date of submission of a bid or at the date of its award, is indebted to the Municipality in respect of any municipal rates and taxes or municipal service charges for more than

three months. However, an agreement signed by the bidder whereby the bidder agrees that a percentage or fixed amount at the discretion of the Municipality, be deducted from payments due to him/her for this bid, until the debt is paid in full, will also be accepted by the Municipality.

5. INCORRECT INFORMATION

Where a contract has been awarded on the strength of the information furnished by the tenderer which after the conclusion of the relevant agreement, is proven to have been incorrect, Council may, in addition to any other legal remedy it has or may have, recover from the contractor all costs, losses or damages incurred or sustained by Council as a result of the award of the contract.

6. PRELIMINARY EXAMINATION

Prior to the detailed evaluation, the Council 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 Council'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 Council shall reject it. The Tender will not be subsequently made responsive by the Tenderer by correction of the nonconformity. The Council 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 Council 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.

7. CONTRACT AWARD PROCEDURES

- The awarding of contract shall be recommended to the best evaluated tenderer, as determined by the evaluation methodology and criteria specified in the invitation document.
- The contract award decision shall be taken by the appropriate approvals authority, but the award decision does not constitute a contract.
- Following the contract award decision, the procuring entity shall prepare a notice indicating the name of the best evaluated tenderer, the value of the proposed contract and any evaluation scores. The notice shall be-

a) Published on the Public Procurement Agency website and sent directly to all tenderers who submitted tenders by letter and where appropriate, by fax or email; and,

b) Council shall allow a period of at least ten working days to elapse from the date of dispatch of the notice before a contract is awarded.

8. NEGOTIATIONS

Expected address for contract negotiations: Matsapha Town Council, Civic Centre, Corner Police College and Airport Road, Matsapha.

9. ELIGIBILITY CRITERIA

The Council will require the tenderers to submit the following information alongside the tender documents:

- A certified copy of an official statement of **ALL** the Directors, alternative directors, managers and auditors of the company (for Eswatini firms: Form 'J')
- A certified copy of an official statement of the annual summary of shares capital and shares (for Eswatini firms: Form 'C')
- Certified copy of the current Labour Compliant Certificate.
- Financial Statements for the previous year
- E500.00 Receipt for payment for the Tender Document
- A Certified Copy of Current Trading License
- An original and valid Tax Compliance Certificate

- A certified Copy of the current SNPF Compliance Certificate
- Certified copy of Police clearance certificate for ALL Directors
- Certified copy for Product quality standards (SWASA, CIC, SABS, ISO)”
- Favourable Health Inspection Report

Tenders without this information will be disqualified at tender opening. Arrangement of documents should be in accordance of Annexure 1 and marked as per the index letters.

10. EVALUATION CRITERIA

Tenders shall be evaluated using, but not limited to the following tender evaluation criteria:
The Evaluation shall be staged into two:

Partial Offers will not be accepted. Only complete offers will be considered for evaluation.

INSTRUCTIONS TO CONSULTANCY FIRMS Proposal Data Sheet

Paragraph Reference	
	Definitions
	Name of Council: Matsapha Town Council Method of selection: Quality and Cost Based Selection (QCBS)
	Name of Assignment:
	Validity
	Proposals must remain valid for 90 (ninety) days after the submission date.
	Clarification and Amendment of RFP Documents
	Clarifications may be requested in writing (email only), but not later than 11TH March 2020 . The address for requesting clarifications is: procurement@matsapha.co.sz
	Preparation of the Financial Proposal
	Taxes: All Consultancy firm(s) must take note that a withholding tax of 15% on the gross amount paid shall be levied on payment made to non-Swazi residents companies/contractors in respect of services performed in Swaziland and 10% on Swazi resident companies/contractors unless the company/contractor has a tax exemption certificate from the Commissioner of Taxes (Refer to Income Tax Order No. 21 of 1975 as amended) Information on taxes may be obtained from the following:

The Commissioner General
P.O. Box 186
Mbabane
Swaziland
Tel. +268 2406 4050 (contact centre)

Packing and Submission of the Proposal

The Consultancy firms must submit **One (1)** original and **two (2)** copies of the Technical Proposal, and **One (1)** original and **two (2)** copies of the Financial Proposal.

The proposal shall consist of a Technical Proposal and a Financial Proposal, which shall be in separate sealed envelopes marked “**Technical Proposal - Tender No. 35 of 2019/20**” and Name of tenderer and “**Financial Proposal - Tender No. 35 of 2019/20**”, and Name of tenderer respectively. The two envelopes must be enclosed in a sealed outer envelope, which shall be marked: “**REQUEST FOR PROPOSALS (RFP) FOR THE LANDFILL HEAVY PLANT EQUIPMENT HIRE - Do Not Open before 10.00am (Swaziland time) on the 18th March 2020**” and addressed to:

The Town Clerk
Matsapha Town Council
Corner Airport Road and Police College Road
MATSAPHA

Failure to mark the envelope clearly and accurately may result in rejection of the application. The Proposal should be deposited in the Tender Box situated at the **Civic Offices, Matsapha Town Council, and Treasury Department** at the latest by **10.00am (Swaziland time) on the 18th March 2020**. Late applications will not be considered.

Evaluation of the Technical Proposals

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

Technical Criteria	Technical Sub-criteria	Maximum Points
Overall Response	• Completeness of response to the basic instructions of tender document	10
	• Compliance with specification	20
Experience	• Minimum of 3 references for the last 10 years with names and contact details	15
Timelines	• Proposed timeline or maximum time required for delivery, set-up, and complete operation.	15
	• Experience of competent operator who holds an Operator Licence with minimum 3 years operating.	20

Total Maximum	80
The price/cost of each of the technically compliant proposals shall be considered only after evaluation of the above technical criteria.	
The minimum Technical Score (St) required to pass is: 70%	
Evaluation of the Financial Proposals	
Evaluation will take place in Lilangeni (SZL) only.	
Evaluation of Quality Cost Based Proposals	
<p>The lowest evaluated Financial Proposal (Fm) will be given the maximum financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as follows: $Sf = 100 \times Fm / F$, in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration.</p> <p>Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in the Data Sheet: $S = St \times T\% + Sf \times P\%$. The firm achieving the highest combined technical and financial score will be invited for negotiations.</p> <p>The weights given to the Technical and Financial Proposals are: T = 0.6 P = 0.4</p>	
Negotiations	
Expected address for contract negotiations: Matsapha Town Council, Civic Centre, Corner Police College and Airport Road, Matsapha	
Commencement of Assignment	
The assignment is expected to commence immediately after contract award (subject to confirmation by Council).	

Evaluation will take place in Lilangeni (SZL) only

11. ITEMS REQUIRED BREAKDOWN

Note - the quantities given below are for guidance only and the Council reserves the right to alter requirements.

a) SCOPE OF WORK

The Council is seeking qualified companies for the provision of

- a. A(30t)Landfill Compactor
- b. A (4X4) Tractor loader backhoe.

- c. Lessee hereby hires the aforesaid equipment at a **dry rate** each of which shall be supplied with its own **operator** who holds an **Operator Licence**.

b) HEAVY PLANT SPECIFICATIONS:

- d. A(30t)Landfill Compactor
- e. A (4X4) Tractor loader backhoe.

12. DELIVERY

Each bidder shall submit their maximum time required for delivery, set-up, and complete operation, of their proposed compactor in the Council's landfill. In the event the bidder is unable to meet this delivery date a comparable machine in good working order shall be provided at no cost to Matsapha Town Council. In the event the loaner machine offered is "down" for over four days a like machine shall be provided immediately.

13. RULES OF PREPARATION

The written proposal must follow the rules and format established within this RFP. Additional pages that might assist the Council with evaluating qualifications may be attached. Non-conformance with the rules and format established within this RFP might disqualify the Vendor; however an unsatisfactory response to any one section will not necessarily disqualify a proposal.

14. ORGANIZATION OF PROPOSAL

The proposal must be organized into the major sections. Any required attachments must be included in the proper section as indicated by the instructions.

15. GENERAL PROPOSAL REQUIREMENTS

- i. Pricing should be detailed to include all cost related to the supply of heavy plant to Council on a dry rate basis.

16. INFORMATION REQUIRED FROM TENDERERS

The Council will require the tenderers to submit the following information with respect to Vendors.

a) Relevant Experience

Vendors are to furnish the Council with examples of similar assignments undertaken. Tenderers shall also provide details of the contact name, address

and telephone numbers of at least two recent (i.e. three years and less) clients who can be contacted in order to obtain a reference.

- b) Ability to meet required specifications
- c) No Bidder may submit more than one bid. Multiple bids for different manufacturers but represented by the same firm will not be accepted. Bids offered directly from manufacturers shall indicate if a local dealer/representative will be involved.

17. TENTATIVE ACQUISITION TIMELINE

Council reserves the right to change the procurement schedule. If changes are made, bidders will be notified by the Council with notices emailed directly to all registered proposers

18. QUALIFICATIONS, EVALUATION AND SELECTION PROCESS

The RFP states the scope of Council requirements and specifies the general rules for preparing the written proposal. Responses will be objectively evaluated based on the Vendor's responses to the RFP. The written proposal should clearly demonstrate the ability of the tenderer to supply the heavy plant to best satisfy the requirement of the Council.

If required to appear for an on-site interview/demonstration, the vendor will be notified before the tender is awarded. During the interviews, vendors will be asked to demonstrate their product. Vendor interviews/demonstrations will be held solely at the option and discretion of the Council.

Proposals will be evaluated by a Tender Evaluation Committee. The Committee will review the proposals for format to ensure conformance with the requirements of the RFP and may in connection with its evaluation, and at the Council's option, invite one or more vendors to an interview/demonstration to the Tender Evaluation Committee. During these interviews/demonstrations, the vendors will be allowed to present such evidence as may be appropriate in order that the Committee can correctly analyse all materials and documentation submitted as a part of the proposal.

The Council does not guarantee that an interview will take place, thus reserving the right to select a vendor based solely on the information provided in the proposals received in response to the RFP. If an interview takes place, the key personnel responsible for fulfilling

the requirements of the project shall be required to be present for the interview/demonstration.

The Council reserves the right to reject any or all proposals; to waive any requirements, both the Council's and those proposed by the vendor; to waive any irregularities or informalities in any proposal or the RFP process when it is in the best interest of the Council to do so; to negotiate for the modification of any proposal with mutual consent of the proposer; to re-advertise for proposals, if desired; to sit and act as sole judge of the merit and qualifications of the service offered and; to evaluate in its absolute discretion, the proposal of each vendor, so as to select the vendor which best serves the requirements of the Council, thus insuring that the best interest of the Council will be served.

19. AWARD OF CONTRACT/ORDER

A Contract shall be awarded with reasonable promptness by appropriate written notice. Award shall be made to the most responsive, responsible, most qualified Bidder whose Proposal meets the requirements and criteria set forth in this RFP, price and other factors considered, and whose Bid is determined to result in the optimum economic advantage to the Council. A responsible Bidder is one who has the capability, financial capacity and integrity to perform the contract. A responsive Bidder is one who commits to all of the material terms, for example, price, quantity, quality and delivery, of this RFP. Contractor must return a signed copy of the contract provided by the Council with its award Notice to Council within ten (10) working days of receipt thereof.

DECLARATION OF ELIGIBILITY

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

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

**To: The Town Clerk
Matsapha Town Council
Corner Airport Road and Police College Road
P.O. Box 1790
MATSAPHA**

Dear Sirs,

Re: TENDER NO: 35 of 2019/20 HEAVY PLANT EQUIPMENT HIRE

We hereby declare that:-

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

SIGNED: DATE:.....

Authorized Representative



FORM BID-1: BID SUBMISSION FORM

[Note to Tenderers: This Bid Submission Form should be on the letterhead of the Company and should be signed by a person with the proper authority to sign documents that are binding on the entity. It should be included by the tenderer with the submitted tender.]

[>>>Location>>>]

[>>>Date>>>]

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

To: [>>>Name and address of Procuring Entity>>>]

Dear Sirs:

We, the undersigned, declare that:

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

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

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

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

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

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

ANNEXURE 1.

**SECTION E: SUBMISSION CHECK LIST
REQUIREMENT AT TENDER OPENING**

AVAILABLE / NOT AVAILABLE

(Please tick- or cross- as appropriate)

- a) Company Profile
- b) Certified Copy of Current Trading License
- c) An original and valid Tax Compliance Certificate
- d) A certified Copy of current Labour Compliant Certificate
- e) A Certified Copy of Form J and Form C
- f) Certified copy of police Clearance for **ALL** company Directors
- g) Financial Statements for the previous year
- h) Names and Contacts of at least (3) Reference Customers
- i) Proof of purchase of Tender E 500.00 (non-refundable)
- j) Certified copy for Product quality standards (SWASA, CIC, SABS, ISO)”
- k) Authorized favorable Health Inspection Report



CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS

In this Contract, the following terms shall be interpreted as indicated:

- a) “The Contract” means the agreement entered into between the Procuring Entity and the Supplier, as signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) “The Contract Price” means the price payable to the Suppliers under the Contract for the full and proper performance of its contractual obligations.
- c) “The Goods” means all of the equipment, machinery, and / or other materials which the Supplier is required to supply to the Procuring Entity under the Contract.
- d) “The Services” Means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- e) “The Procuring Entity” means the Matsapha Town Council, an organization purchasing the Goods.
- f) “The Supplier” means the individual or firm supplying the Goods and Services under this Contract.

2. APPLICATION

These Contract Terms and Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.

3. STANDARDS

The Goods supplied under this Contract shall be new, unused and of the latest design and must conform to the highest standards and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods’ country of origin. Such standards shall be the latest issued by the concerned institution.

4. USE OF CONTRACT DOCUMENTS AND INFORMATION

- 4.1 The Supplier shall not, without the Procuring Entity’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity in

connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so as may be necessary for purposes of such performance.

4.2 The Supplier shall not, without the Procuring Entity's prior written consent, make use of any document or information enumerated in Clause 4.1 except for purposes of performing the Contract.

4.3 Any document, other than the Contract itself, enumerated in Clause 4.1 shall remain the property of the Procuring Entity and shall be returned (in all copies) to the Procuring Entity on completion of the Supplier's performance under the Contract if so required by the Procuring Entity.

5. PATENT RIGHTS

The Supplier shall indemnify and hold harmless the Procuring Entity against all third-party claims of infringement of patent, trademark, industrial design, or intellectual property rights arising from use of the Goods or any part thereof.

6. PACKING

6.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

6.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in any subsequent instructions given by the Procuring Entity.

7. DELIVERY AND DOCUMENTS

7.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier shall be specified in the Contract.

7.2 For purposes of the Contract, the trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of Incoterms published by the International Chamber of Commerce, Paris.

8. INSURANCE

The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Contract.

9. TRANSPORTATION

9.1 Where the Supplier is required under the Contract to deliver the Goods, transport of the Goods and delivery into the custody of the carrier at the place named by the Procuring Entity or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

9.2 Where the Supplier is required under the Contract to deliver the Goods CIP, transport of the Goods to the port of destination or such other named place of destination in Swaziland, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

9.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within Swaziland, defined as the Project Site, transport to such place of destination in Swaziland, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.

10. WARRANTY

19.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and that incorporate all recent improvements in design materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity's specifications) or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in Swaziland.

19.2 This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final

destination indicated in the Contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in the Special Conditions of Contract.

19.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.

19.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity.

19.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in the Special Conditions of Contract, the Procuring Entity may proceed to take such remedial action as may be necessary at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under Contract.

11. PAYMENT

19.6 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the Contract document.

19.7 The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and upon fulfillment of other obligations stipulated in the Contract.

19.8 Payment shall be made promptly by the Procuring Entity, but in no case later than thirty (30) days after submission of an invoice or claim by the Supplier unless otherwise stated in the Contract.

12. PRICES

12.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its tender.

12.2 All such prices shall be valid and fixed for a period of TWO (2) years.

13. CHANGE ORDERS

13.1 The Procuring Entity may at any time, by a written order given to the supplier, make changes within the general scope of the Contract in any one or more of the following:

a) Drawings, designs or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity

- b) The method of shipment or packing;
- c) The place of delivery; and/or
- d) The Services to be provided by the Supplier.

13.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract. An equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Procuring Entity's change order.

14. CONTRACT AMENDMENTS

14.1 Subject to Clause 13, no variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties.

15. ASSIGNMENT

The Supplier may not assign, in whole or in part, its obligation to perform under this Contract except with the Procuring Entity's prior written consent.

16. SUBCONTRACTS

The supplier may not enter into any subcontract for performance hereunder unless the Procuring Entity shall have previously consented in writing to such consent or in the Contract, relieve the Supplier from any liability or obligation under the Contract.

17. DELAYS IN THE SUPPLIER'S PERFORMANCE

17.1 Delivery of the goods and performance of services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity.

17.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and Performance of Services, the supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of Suppliers' notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time of performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the contract.

17.3 Except as provided under Clause 24, a delay by the Supplier in the Performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to Clause 18, unless an extension of time is agreed upon pursuant to Clause 17.2 without the application of liquidated damages.

18. LIQUIDATED DAMAGES

18.1 Subject to Clause 17, if the Supplier fails to deliver any or all of the Goods or perfume the services within the period(s) specified in the contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the contract price, as liquidated damages, a sum equivalent to the 20%(percent) of the delivery price of the delayed goods or unperformed services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of 60% (percent). Once the maximum is reached, the Procuring Entity may consider termination of Contract.

19. TERMINATION FOR DEFAULT

13.1 The Procuring entity without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this contract in whole or in part:

- a) If the supplier fails to deliver any or all of the goods within the period specified in the contract, or within any extension thereof granted by the procuring entity pursuant to Clause 17; or
- b) If the supplier fails to perform any other obligation(s) under the contract.

13.2 In the event the Procuring entity terminates the contract in whole or in part, pursuant to clause 18.1, the Procuring Entity may procure, upon such terms and in manner as it deems appropriate, goods or services similar to those undelivered, and the supplier shall be liable to the procuring Entity for any excess cost for such similar goods or services. However, the supplier shall continue performance of the contract to the extent not terminated.

20. FORCE MAJEURE

20.1 Notwithstanding the provision of Clause 17, 18 and 19, the supplier shall not be liable for liquidated damages or termination for default if and to the extent that it's delay in performance or other failure to perfume its obligation under the contract is the result of Force Majeure.



20.2 For purposes of this Clause, “Force Majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include but are not restricted to, acts of Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

20.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligation under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

21. TERMINATION FOR INSOLVENCY

The procuring Entity may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity.

22. RESOLUTION OF DISPUTES

22.1 The Procuring entity and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement, disputes, or claim arising out of or in connection with the contract or the breach, termination, or validity thereof.

22.2 If, after thirty (30) days from the commencement of such informal negotiations, the Procuring Entity and the Supplier have failed to negotiate such an amicable settlement, any dispute, controversy, or claim arising out of or in connection with this contract, or the breach, termination, or validity thereof, either party may require that the dispute be referred for resolution by final and binding arbitration.

22.3 The arbitrator shall determine the matters in dispute in accordance with the laws in effect in Swaziland.

22.4 All notices to be given in connection with the arbitration shall be in writing and shall be effective upon receipt.

23. APPLICABLE LAW

The contract shall be interpreted in accordance with the laws and regulations in effect in the Kingdom of Swaziland

24. NOTICES

24.1 Any notice given by one party to the other pursuant to this contract shall be sent to the other party in writing by personal delivery, mail, or e-mail of facsimile and, if by e-mail or facsimile, confirmed in writing to the other party's address specified in the special conditions of contract. Each party may change such address by notice to the other party.

24.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

25. TAXES AND DUTIES

The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies incurred or imposed until delivery of the contracted Goods to the Procuring Entity.