



**INVITATION TO TENDER
FOR**

THE SUPPLY AND DELIVERY OF SKIP BINS

REFERENCE: TENDER NO. 27 OF 2021/22

20TH MAY 2021

MATSAPHA TOWN COUNCIL

TENDER NO. 27 OF 2021/22 SUPPLY AND DELIVERY OF SKIP BINS

1. INTRODUCTION

You are hereby invited to submit technical and financial proposals for the supply and delivery of three (3) Skip Bins required by Matsapha Town Council to enable the Organization to undertake its official duties. The successful proposal will form the basis for future negotiations and ultimately, a contract between you and Matsapha Town Council.

2. GENERAL CONDITIONS

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

2.1 The purpose of this Request for Tender (RFT) is to establish an agreement to cover the initial supply and delivery of the three Skip Bins. Detailed information regarding the terms of reference is available in the 'Invitation to Tender' document. MTC shall inspect the Skip Bins and, if they are not satisfactory, MTC shall have the right to terminate the delivery agreement in line with the agreed terms and conditions.

2.2 All tenders will be evaluated on a Quality and Cost basis and the resulting contract will be a Unit Price contract detailing the base price of the Skip Bins as well as all extras and costs.

2.3 The Proposal document to be submitted shall consist of both a Technical Proposal and a Financial Proposal, and shall be submitted in one sealed envelope marked "Technical and Financial Proposal - MTC T24/2020/21". The envelope must be enclosed in one sealed envelope, which shall be marked: "Request for Tender" "MTC T27/2021/22 SUPPLY AND DELIVERY OF SKIP BINS" Do Not Open before 10:00am (eSwatini time) on 15th June 2021" and addressed to "The Chairperson to the Tender Entity Tender Board, Matsapha Town Council, Corner Police and Airport Road, Matsapha, P.O. Box 1790, MATSAPHA".

2.4 All Tenders must be provided in English language

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



- 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 The validity period of the Tender shall be 90 days from the date of submission.
- 2.9 The Proposal must be deposited in the Tender Box situated at the Treasury Reception Area of the Matsapha Town Council, Corner Police and Airport Road, Matsapha at the latest by 1000 hours on the **15th June 2021**.
- 2.10 Requests for clarifications, which must be in writing, should be addressed, via email, to **procurement@matsapha.co.sz**. Council will strive to promptly respond in writing via e-mail to any requests for clarification up until Close of Business on **8th June 2021**. Written copies of Councils response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective Bidders.
- 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 The submissions must be sent to the address/addresses indicated no later than the date and time indicated in the General Conditions or any extension to this date. Any proposal received by Council after the deadline for submission shall be returned unopened.
- 2.13 Late tenders, as well as tenders received by telegram, facsimile, email or similar medium will not be considered.
- 2.14 We commit ourselves to maintain the highest standard of integrity and ethical principles during all stages of the procurement cycle.
- 2.15 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).

2.16 MTC would like to thank you for considering this invitation for submission of proposals.

3. MODIFICATION OR WITHDRAWAL OF TENDERS

- a) Tenderers may modify, or withdraw the tender prior to the deadline for 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.

4. EXPECTED OUTPUTS

Supply and delivery of three (3) Skip Bins.

5. INFORMATION REQUIRED FROM TENDERERS

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

- A Company profile
- Signed Declaration of Eligibility
- Certified copy of Valid Trading License
- Original/Valid Tax Compliance Certificate Certified
- Certified copy of current Labor Compliance Certificate
- Certified copy of Swaziland National Provident Fund Certificate
- Certified copy of Form J and Form C (Company Ownership and Shareholding)
- Certified copy of Certificate of Incorporation
- Police clearance or Affidavit of Non-Conviction for the Directors.
- Certified copy of proof of Legal Joint Venture (where necessary)
- General receipt (E400.00) for payment of the tender document.

Tenders without any this information will be disqualified.

6. Payments for the tender fee should be made to Matsapha Town Council BANK ACCOUNT listed below or at the Matsapha Town Council Treasury Department.



The REFERENCE to be used when making payment is: T27 of 2021/22.

ACCOUNT NAME: Matsapha Town Council

BANK NAME: Standard Bank (Matsapha Branch)

ACCOUNT NO: 9110003235915

BRANCH CODE: 663464

FAX NO: 2518 6646

Tenders submitted by Fax, Telex or e-mail will not be accepted

SECTION 1

INSTRUCTION TO TENDERERS



1. Introduction

- 1.1 Council will select a supplier (s) in accordance with the method of selection specified in the Data Sheet.
- 1.2 Tenderers are invited to submit a Technical Proposal and a Financial Proposal the Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the selected supplier (s).
- 1.3 Tenderers shall bear all costs associated with the preparation and submission of their proposals and contract negotiation. Council is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to contract award, without thereby incurring any liability to suppliers.

2. Conflict of interest

- 2.1 Tenderers are required to provide professional, objective, and impartial service and at all times hold the Council's interest's paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.
 - a) Tenderers (including its Personnel and Sub-Contracts) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Tenderers to be executed for the same or for another Entity. For example, a Tenderers hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Tenderers assisting the Corporation in the privatization of public assets shall not purchase, nor advice purchasers of such assets. Similarly, a Tenderers hired to prepare Terms of Reference for an assignment shall not be hired for the assignment in question.
 - b) Tenderers that have a business or family relationship with a member of Council's staff who is
 - c) directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, may not be awarded a Contract.
 - d) Tenderers have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Corporation, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Tenderers or the termination of the Contract.

- e) Tenderers shall be tested whether they are in arrears in terms of paying rates to Council. Tenderers found to be in arrears shall make an undertaking to clear such debt and if not, Council shall not award such tenderer.

3. Association

If a shortlisted Tenderer could derive a competitive advantage from having provided services related to the assignment in question, the Corporation shall make available to all shortlisted Tenderers together with this RFT all information that would in that respect give such Tenderers any competitive advantage over competing Tenderers.

4. Commissions

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

5. One proposal

Tenderers shall only submit one proposal and the required number of copies. However, this does not limit the participation of the same as Sub-Contract, including individual experts, to more than one proposal for this RFT.

6. Validity

The Data Sheet indicates how long the Proposals must remain valid after the submission date. During this period, Tenderers shall maintain the availability of Professional staff nominated in the Proposal. Council will make its best effort to complete negotiations within this period. Should the need arise, however, Council may request Tenderers to extend the validity period of their proposals.

Tenderers who agree to such extension shall confirm that they maintain the availability of the Professional staff nominated in the Proposal, or in their confirmation of extension of validity of the Proposal, Tenderers could submit.

7. Clarification and Amendment of RFT Documents

- 7.1 Tenderers may request a clarification of any of the RFT documents up to the number of days indicated in the Data Sheet before the proposal submission date. Any request for clarification must be sent in writing, or by standard electronic

means to the Council's address indicated in the Data Sheet. Council will respond in writing, or by standard electronic means and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all suppliers. Should Council deem it necessary to amend the RFT as a result of a clarification, it shall do so following the procedure detailed below.

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

8. Packing and Submission of Proposal

8.1 The original proposal (Technical Proposal and Financial Proposal) shall contain no interlineations or overwriting, except as necessary to correct errors made by the Tenderers themselves. The person who signed the proposal must initial such corrections. Submission letters for both Technical and Financial Proposals should respectively be in the format of TECH-1 and FIN-1.

8.2 An authorized representative of the Tenderers shall initial all pages of the original Technical and Financial Proposals. The authorization shall be in the form of a written power of attorney accompanying the Proposal or in any other form demonstrating that the representative has been dully authorized to sign. The signed Technical and Financial Proposals shall be marked "Original".

8.3 The Technical and Financial Proposal shall be marked "Original" or "Copy" as appropriate. All required copies of the Technical and Financial Proposal are to be made from the original. If there are discrepancies between the original and the copies of the Technical Proposal, the original governs.

9. Latest Date for Submission

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

10. Evaluation of the Technical Proposals



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

11. Evaluation of Financial Proposals

- 11.1 The Evaluation Committee will correct any computational errors. When correcting computational errors, in case of discrepancy between a partial amount and the total amount, or between word and figures the formers will prevail. Activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items. In case an activity or line item is quantified in the Financial Proposal differently from the Technical Proposal, no corrections are applied to the Financial Proposal in this respect.
- 11.2 The Evaluation Committee will convert prices in various currencies to the single currency specified in the Data Sheet. The official currency exchange rates used, provided by the source indicated in the Data Sheet, will be those in effect on the date indicated in the Data Sheet. The evaluation shall exclude those taxes, duties, fees, levies, and other charges imposed under the applicable law; and to be applied to foreign and non-permanent resident Tenderers (and to be paid under the contract, unless the Tenderers is exempted).

12. Evaluation of Quality and Cost based Proposals

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

DATA SHEET

Paragraph Reference	SUPPLY AND DELIVERY OF SKIP BINS
1.	Name of the Client: <u>Matsapha Town Council</u>

	Method of selection: <u>Quality & Cost-based Selection (QCBS)</u>
2.	Financial Proposal to be submitted together with Technical Proposal: <u>Yes</u> (but these should be in two separate envelopes, one clearly marked “ Technical Proposal ” and the other “ Financial Proposal ” Name of the assignment is: THE SUPPLY AND DELIVERY OF SKIP BINS
3.	The Client’s representative is: <u>The Entity Tender Board</u> Address: <u>P.O. Box 1790, Matsapha Eswatini</u> Telephone: <u>+268 2518 6637/8</u> Facsimile: <u>+268 2518 6646</u> E-mail: <u>procurement@matsapha.co.sz</u>
4.	Proposals must remain valid for <u>90</u> days after the submission date.
5.	Clarifications may be requested not later than <u>seven (7)</u> days before the submission date. All Clarification request shall be in writing; no telephonic request will be entertained by the client. The address for requesting clarifications is: E-mail: <u>procurement@matsapha.co.sz</u>
6.	Proposals shall be submitted in the following language: <u>English</u>
7.	The Format of the Technical Proposal to be submitted is: <u>FTP</u>
8.	Training is a specific component of this assignment: <u>No</u>
9.	Amounts payable by the Client to the Tenderer under the contract to be subject to local taxation: <u>Yes</u> (withholding tax and sales tax - consult Department of Taxes for details) 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 Eswatini Tel. +268 2406 4050 (Contact Centre)
10.	Consultant to state all costs in local currency: <u>Yes</u>

11.	Consultants must submit the original and <u>two (2)</u> copies of the Technical Proposal, and the original of the Financial Proposal, all clearly marked accordingly. (Technical Proposal-Original, Technical Proposal-Copy, Financial)	
12.	Technical Criteria - SUPPLY AND DELIVERY OF THREE (3) SKIP BINS	
13.	<ul style="list-style-type: none"> ✓ Specific experience of the tenderer Evidence of technical capacity to undertake the assignment including established workshop in Eswatini. (5) ✓ Evidence of previous similar assignments undertaken and list of 3 clients with contact details, 3 reference letters required. (5) 	10
14.	Adherence to Specification (refer to specification sheet)	20
15.	Swazi element of ownership of the company tendering - minimum of 60% Swazi ownership of the company tendering for the tender	10
16.	TOTAL	40
17.	The minimum Technical Score (St) required to pass is: 70 (seventy)	
18.	<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>	
19.	Expected date for commencement of consulting services: On a date to be agreed on by both parties.	

20.	The Contractor shall be liable for the penalty at E 1,000.00, for every calendar day that elapses between the proposed delivery date and the actual delivery date of the goods.
21.	<p>DURATION</p> <p>The duration of the agreement will not exceed 8 weeks</p>

13. SCOPE OF WORK

The Council is seeking qualified companies for **SUPPLY AND DELIVERY OF THREE SKIP BINS**

SKIP SPECIFICATIONS: FOR THE THREE SKIPS

The Council requires that the Skip Bins be built according to the specifications stated below.

CAPACITY = 5.5m³

The skips should be of the design where all the corners are folded for extra strength.

The skips should also designed to work in unison with a Rear Loader Compactor or skip loading units.

Details of skips are as follows :

BIN OVERALL (SIDES, FLOOR, BACK AND FRONT)

- The complete bin, including the floor should be manufactured from 4.5mm mild steel plate.

- All corners of the bin should be folded over to mate with the other plate.
- The folded edge should be positioned to provide the strength where required.
- The bottom of the front & back plates should be folded under the floor for extra support.
- The front and back plates are also folded to prevent the sides from opening.
 - The side plates should have a folded channel welded along the top edge with an extra fold facing down into the bin for extra strength.
- The upper edge of the back plate should be strengthened with a deep pressed channel section to cater for the stress when picking up and tipping the bins. It should also have a 20mm winch hook welded to the channel for top winch - compactor operation.
- The front panel upper edge incorporates a 50mm hinge bar extending across the full width of the bin, 1980mm long for compactor operation.
- Each of the four inner corners are fitted with gussets for additional strength and prevent cracking in this area.
- Floor :
 - The floor should be pressed with an **IBR PROFILE** over its full length and an angle pressing up on the sides whereby the side plates are held into place thus stopping the side plates from ballooning open.
 - The floor when fitted to the bin is supported by the fold on the front and back plates.
- Four (4) forged lifting lug pins should be fully welded to the sides of the bin prior to assembly and then welded to the vertical channel support members to give extra strength.
- Tipping bar :
 - A tipping bar should be manufactured from 40mm round bar, supported by an 8mm thick pressed plate fitted to the bottom edge of the front and back sloping panel.
- Weep holes be provided on all corners of the skip to prevent stagnation of water in skip
- The base be reinforced and ribbed to prevent waste sticking to the base.

COLOUR

- fire resistant, lime green

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 Tender Board Chairperson
Matsapha Town Council
Corner Airport Road and Police College Road
P.O. Box 1790
MATSAPHA**

Dear Sirs,

RE: TENDER NO: 27 of 2021/22 THE SUPPLY AND DELIVERY OF SKIP BINS

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]*

FORM FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: *[Name and address of Client]*

Dear Sirs:

We, the undersigned, offer to provide the consulting services for *[Insert title of assignment]* in accordance with your Request for Proposal dated *[Insert Date]* and our Technical Proposal. Our attached Financial Proposal is for the sum of *[Insert amount(s) in words and figures¹]*. This amount is exclusive of the local taxes, which shall be identified during negotiations and shall be added to the above amount.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Paragraph Reference 1.12 of the Data Sheet.

Commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below²:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [*In full and initials*]: _____

Name and Title of Signatory: _____

Name of Firm: _____

Address: _____

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- 1 Amounts must coincide with the ones indicated under Total Cost of Financial proposal in Form FIN-2.
 - 2 If applicable, replace this paragraph with: “No commissions or gratuities have been or are to paid by us to agents relating to

CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS

1.1 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 National Disaster Management Agency, an organization purchasing the Goods.

- f) “The Supplier” means the individual or firm supplying the Goods and Services under this Contract.

2. APPLICATION

- 2.2 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

- 3.1 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 goods, 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

- 5.1 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

- 8.1 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 FCA, 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

- 10.1 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.
- 10.2 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.
- 10.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 10.4 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.
- 10.5 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

- 11.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the Contract document.
- 11.2 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 fulfilment of other obligations stipulated in the Contract.

11.3 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 one (01) year.

13. CHANGE ORDERS

13.1 The Procuring Entity may at any time, by a written order given to the, 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

15.1 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

16.1 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 perform 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

- 19.1 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.

19.2 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 perform 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

21.1 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

23.1 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

25.1 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.

