

**Eswatini Energy Regulatory Authority (ESERA)**



**SUPPLY OF MOTOR VEHICLES FOR ESERA**

**SUPPLY CONTRACT**

**CONTRACT No. ESERA/RFQ/01/2022-2023**

**NAME OF TENDERER:** .....

**TOTAL PRICE (INCL. VAT):** .....

**EMPLOYER:**

ESERA  
P.O. Box 7137  
MBABANE  
H100  
Tel No: 2404 2103  
Fax No: 2404 8475



**ESWATINI ENERGY REGULATORY AUTHORITY**  
**SUPPLY OF MOTOR VEHICLES FOR ESERA**  
**CONTRACT NO.: ESERA/RFQ/01/2022-2023**

**INVITATION TO TENDER**

Tenders are hereby invited from suitably qualified Suppliers for Motor Vehicles wishing to tender for the Supply of Motor Vehicles for the ESERA.

Preference will be given to local suppliers. Tender documents may be obtained after payment of a non-refundable tender fee of E350.00 to the Eswatini Energy Regulatory Authority (ESERA). Documents will be on sale from the **21<sup>st</sup> March 2022** starting at **08:30am to 11.00 am** at the ESERA Offices, to **14<sup>th</sup> April 2022 ending at 14: 00 pm.**

Tenderer's attention is drawn to the table below which indicates the Contract No, Contract Title, and the closing date for submission of tenders. Late, incomplete, telephoned or telegraphic tenders will **not** be considered.

<b>Contract No.</b>	<b>Contract Title</b>	<b>Category</b>	<b>Closing of Tender</b>
ESERA/0000	Supply of Motor Vehicles for ESERA	Manufactures and Suppliers	27 <sup>th</sup> April 2022 at 11:00hrs

Completed tenders should be delivered in a sealed envelope to the ESERA Offices and the envelope should only show the Project Name, Project Number and addressed to:

**Chairman of the Tender Board**  
**Eswatini Energy Regulatory Authority (ESERA)**  
**1<sup>st</sup> Floor, RHUS Office Park, Karl Grant Street**  
**Mbabane**  
**Eswatini**

Any actions or tendencies that will be interpreted as an attempt to interfere with or influence the tendering process will result in immediate disqualification of the Tenderer. Enquiries, administrative and technical, relating to the Tender listed in the table above may be addressed E-mail: [info@esera.org.sz](mailto:info@esera.org.sz) Tel No.2404-2103, Fax No: 2404-8475.

*ESERA does not bind herself to accept the lowest or any tender.*

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## **SECTION 1: INSTRUCTION TO TENDERERS**

### **ESWATINI ENERGY REGULATORY AUTHORITY**

### **SUPPLY OF MOTOR VEHICLES FOR ESERA**

### **CONTRACT NO.: ESERA/RFQ/01/2022-2023**

### **INSTRUCTIONS TO TENDERERS**

#### **1.1 Tender Document**

The tender documents issued by the employer comprise:

1. Invitation to Tender
2. Tender Data
3. Returnable Documents
4. Special Conditions of Contract
5. Project Specifications and Particular Specifications
6. Bills of Quantities
7. Standard conditions of tender

#### **1.2 Examination of Documents**

The Tenderer is to examine the Tender Documents and ascertain the matters on which he will be deemed to have satisfied himself and all the risks and obligations which the Contract will impose on the Tenderer and subsequently the Contractor.

#### **1.3 Clarifications**

A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the bidding data. The Employer will respond to any request for clarification, provided that such request is received seven days prior to the deadline for submission of bid.

#### **1.4 Supplies to be provided**

The subject of the contract is the supply, register and delivery of motor vehicle by the Supplier. The supplier must comply fully with the technical specifications set out in the tender dossier and conform in all respects with quantities, models, samples, measurements and other instructions.

#### **1.5 Delivery of Supplies**

The Supplies are to be delivered at:

ESERA, 1<sup>ST</sup> Floor RHUS Office Park, Karl Grant Street, Mbabane

**ESERA/RFQ/01/2022-2023**



## 1.6 Type of Contract

Unit Price Contract

## 1.7 Period for Implementation of Tasks

2 Month, from Contract Signature.

## 1.8 Persons Excluded from this Tender

Public officers and politicians shall not participate in all ESERA tenders.

## 1.9 Enquiries Regarding Tender Documents

All enquiries in connection with this Tender are to be directed to the Employer's Agent Representative, Eswatini Energy Regulatory Authority, Mbabane Office.

The Employer's Representative is:

Name: Zanele Nhlabatsi

Tel. 24042103

Fax 24048475

Email: [info@esera.org.sz](mailto:info@esera.org.sz)

## 1.10 Sealing, Marking and Submission of Tenders

Completed Tender Documents are to be delivered by hand and placed in the Tender Box provided at Eswatini Energy Regulatory Authority, Mbabane, 1<sup>st</sup> Floor RHUS Office Park, Karl Grant Street by the set date for closure of Tenders:

The Tender Documents are to be enclosed in a plain wrapper, sealed and clearly endorsed:

**THE CHAIRMAN OF THE TENDER BOARD  
SUPPLY OF MOTOR VEHICLES FOR ESERA  
C/O ESWATINI ENERGY REGULATORY AUTHORITY (ESERA)  
TENDER NO: ESERA/RFQ/01/2022-2023**

The sealed wrapper in which the Tender Documents are submitted shall not bear the Tenderer's name or address and shall not contain any documents or drawings not applicable to the Tender.

Posted, telegraphic, telexed, faxed, emailed or documents delivered in any other form will be rejected.

Tender documents will be opened in public immediately after the stated time of closure of the tender and the tender sum read out. Any interested party may attend the opening.

The complete tender must be submitted in one original, clearly marked '**original**' and **two (2) copies, and also clearly marked "copy"**. In the event of any discrepancy between them, the original will prevail.

**Any infringement of these rules (e.g., unsealed envelopes) constitutes an irregularity which will lead to rejection of the tender.**

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### **1.11 Date of Closure of Tenders**

The Date and Time for closure of the Tenders is as specified in the invitation to tender timetable (1.48). Late tenders will not be accepted.

A Postponement of the closure of Tenders may be made by the Employer by issuing a Notice to Tenderer and sent by email or fax to the address given by the Tenderer.

### **1.12 Late Tenders**

The Date and Time for closure of the Tenders is as specified in the invitation to tender. Late tenders will not be accepted.

1.12.1 All tenders received after the deadline for submission specified in the tender notice or these instructions will be kept by the Contracting Authority. The guarantees will be returned to the tenderers.

1.12.2 No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

### **1.13 Extension of the deadline for submitting of tenders**

The Contracting Authority may, on its own discretion, extend the deadline for submitting tenders by issuing an amendment or notice to tenderers. In such cases, all rights and obligations of the Contracting Authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

### **1.14 Only One Tender per Tenderer**

A company may not tender for a given contract both individually and as a member of a joint venture/consortium. Participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved. The same company may only participate as subcontractor in different tenders if that is justified by the specific nature of the market and cleared by the Contracting Authority.

### **1.15 Cost of preparation of Tender**

Neither the Employer, the Government of Eswatini, nor any of their agents will be responsible for, or pay for, any expense or loss which may be incurred by the Tenderer in the preparation of this Tender.

The tenderer will bear all costs associated with preparing and submitting the tender. The Contracting Authority will not be responsible or liable for such costs, whatever the conduct or outcome of the procedure.

### **1.16 Notices to Tenderers**

If, during the period of tendering, the Employer issues any Notices to Tenderers setting forth the interpretation to be placed on any part of the Tender Documents, or to make any change in them, such Notices to Tenderers will form part of the Contract and it will be assumed that the Tenderer has taken account of them in preparing his Tender. The Tenderer shall promptly acknowledge receipt of any Notices to Tenderers which he may receive.

No Notice to Tenderers will be issued within **seven (7) days** of the date of closure of the tender unless it contains a postponement of that date.

Neither the Employer, Government of Eswatini, nor any agent or servant of either of them, shall be bound by any statement made or delivered to any Tenderer unless such a statement shall have been confirmed by a Notice to Tenderers issued by the Authorised Representative acting on behalf of the Employer.

Any notice to tenderers will be sent by email or fax to the address given by the Tenderer when collecting the Tender Documents. Tenderers are to take special care to ensure that all contact details given are correct and accessible.

### **1.17 Errors and Discrepancies**

On receipt of the tender documents, the Tenderer is to check to ensure that all pages of the document and all drawings are included and to report to the Authorised Representative any missing pages or drawings, any pages or drawings which are illegible or indistinct, any errors or ambiguities in the Specifications, Bill of Quantities or Drawings or any contradictions between the Specification, Bill of Quantities and Drawings, and to obtain rulings on any such errors, ambiguities or discrepancies. No claim for additional payment based on any such errors, ambiguities or discrepancies will be considered.

Attention is drawn from tenderers to pay attention to this particular clause.

### **1.18 Validity of Tender**

The Tender shall be held valid for a period of Ninety (90) CONSECUTIVE CALENDAR DAYS from the closing date of the tender.

In exceptional cases and prior to the expiry of the original tender validity period, the Contracting Authority may ask tenderers in writing to extend this period. Such requests and the responses to them must be made in writing. Tenderers that agree to do so will not be permitted to modify their tenders and they are bound to extend the validity of their tender guarantees for the revised period of validity of the tender. If they refuse, without forfeiture of their tender guarantees, their participation in the tender procedure will be terminated.

### **1.19 Employer's Right to Adjust Errors**

All items in the Bill of Quantities are to be priced. In the event of the Tenderer failing to price any item it will be held that the Tenderer has made adequate allowance under other items for all labour, plant, material and costs required for the execution not only of the quantum of work covered by the unpriced item but also for any increase in the said quantum which may have to be undertaken during the course of the Contract.

If the Tenderer indicates that an item is included in the rate for another item, the Employer will have the right to distribute the total rate amongst the included items at his own discretion.

Where any discrepancy exists between the rate and the extended total against an item, the rate shown shall be accepted as correct and the discrepancy will be adjusted by altering the total amount filled in against such item and consequently the total tendered sum. Any mathematical errors will be corrected for the purpose of adjudicating tenders. The adjusted tender amount obtained after any such corrections will be deemed to be the Tendered Amount submitted by the Tenderer.

All monetary figures are to be rounded to and entered to two decimal places of Emalangenzi.



If a zero amount is to be entered, the word '*NIL*' is to be written in the Rate and Amount columns.

If a blank space is left by the Tenderer in Rate and Amount columns against any item, it will be assumed that the Tenderer intended the value to be zero and the word '*NIL*' will be entered by the Employer.

Tenderers are urged to take special care to ensure the mathematical correctness of their tender submissions.

### **1.20 Unbalanced Rates or Prices**

In the event of there being tendered rates or prices which are declared by the Employer to be unacceptable to him, because they are either excessively low or high or not in proper balance with other rates, the Tenderer may be required to produce evidence and advance arguments in support of the tendered rates or prices objected to. If after submission of such evidence and any further evidence requested, the Employer is still not satisfied with the tendered rates or prices objected to, he may request the Tenderer to amend these rates and prices along the lines indicated by the Employer.

The Tenderer may or may not thereupon alter and amend the rates and prices objected to and such other related prices as are agreed to by the Employer, but any such alteration shall be done without altering the final Tender Sum.

Should the Tenderer fail to amend his tender in a manner acceptable to the Employer, or at all, it may prejudice his tender.

### **1.21 Alternatives**

In relation to the main Tender, the Tenderer shall not make any departures from or modifications to the Conditions of Contract, Specifications, Bill of Quantities, Data supplied by the Employer or drawings nor qualify his tender in any way.

Tenders may submit alternative designs but shall also complete the main tender.

Alternative offers are to be submitted in the form of a separate document included with or attached to the main tender.

No alternative will be considered unless the Tender Documents supplied are correctly and fully completed and returned.

The Bill of Quantities forming part of this document shall be completed in full notwithstanding any alternatives that the Tenderer may offer.

Tenderers are to ensure that all documents supplied by him are securely bound together and contain full details of the Tenderers Name and address and the number of the Main Tender to which they apply.

The Employer will not be responsible for loose documents that become separated from the Tenderer's Main or Alternative submission.

### **1.22 Power of Attorney**

The Tender is to be signed by a person or persons authorised to do so. Signatories of Companies are to establish their authority by attaching a copy of the relevant Resolution of the Board of Directors, duly signed and dated, an example of which is contained in Schedule 2A.

Only the person duly authorized to do so may sign these Tender Documents.

The Tenderer is to sign each page or form where provision is so made.

The tenderer is to initial each page on which any entry has been made by him.

The tenderer is to initial any correction made by him.

### **1.23 Information to be submitted with Tender**

The Tender is to be made out on the forms provided in the Tender Documents, all the blanks in the relevant forms being duly completed in indelible ink. The Tender Documents are to be kept intact.

Tenders are to submit the Tender Documents, Forms and Schedules completed in all respects. All submitted certified copies must be a true copy of the original certificate and copies of certified copies will not be accepted. The Tender is to be accompanied by, inter alia, the following:

- a) Original receipt of Tender purchase
- b) Proof of Authority of Signatory
- c) Original and Valid Tax Compliance Certificate
- d) Certified copy of original Valid Trading License
- e) Certified Copy of Labour Compliance
- f) Certified copy of Certificate of Incorporation
- g) Police Clearance for all Company Directors
- h) Submission of a Company current Form J, endorsed by the Registrar of Companies
- i) Submission of a Company current Form C, endorsed by the Registrar of Companies
- j) Submission of certified copies of national identity documents for the people listed in form C

Tenderers additional Tender compliance check list should include the following items that are not part of Stage 1 of the evaluation of Tenders;

- k) The Bill of Quantities. This is to be fully priced, totalled and checked arithmetically and the final total is to agree with the price entered on the Form of Agreement for Tender. (Failure to comply with this requirement will disqualify the tender)
- l) Tenderers are to complete all forms and schedules included in this Tender document.
- m) The Tenderer's Delivery Programme to contain sufficient detail to indicate the Tenderer's ability to complete the Works within the period for completion and with due regard to the Tenderer's resources to be allocated to the contract.
- n) Specification of Vehicles being supplied.

### **1.24 Alteration of Text**

Any addition to or erasure of the text of any of the Tender Documents may result in the rejection of the Tender. Correction of entry errors may be made by clearly scribing through (crossing out) the erroneous words and or figures and writing the correct words and or figures near to the crossed-out entries. Correction fluid shall not be used, and its use may result in the rejection of the Tender. Each correction shall be initialled by the authorized signatory.

### **1.25 Acceptance of Tender**

The Employer reserves the right not to accept the lowest or any tender nor to assign any reason for the rejection of any tender.

The Employer will inform the accepted tenderer (if any) in writing and furnish the accepted tenderer with a Letter of award of contract.



### **1.26 Intention to Award a Contract**

In accordance with section 45 (4), 46, and 47 of the Public Procurement Act, an award decision reached by the Employer will require a ten (10) working days no objection from the first publication of the notice. The intention to award a contract will be published in the SPPRA website as per the requirements of the act within the tender validity period or applicable extension of the tender validity.

### **1.27 Notification to Successful Tenderer**

The Employer will notify the successful Tenderer (if any) of the acceptance of his Tender within the period of Tender validity or any extended period of validity of Tender, if applicable. The Employer will ONLY notify the successful Tenderer after the expiry of the 10 working days no objection as per Section 45 of the Public Procurement Act.

### **1.28 Currency of Tender**

The Tender Amounts shall be expressed in Eswatini Emalangeneni and the Currency of Payment shall be the Eswatini Emalangeneni.

### **1.29 Contract Price Adjustment**

NO Contract Price Adjustment will apply to this Contract.

The Rates and Prices inserted in the Tender Document by the Tenderer shall remain fixed for the durations of the Tender Validity Period, the Contract Period, including any extension of time to the contract whether approved by the Employer or not and the Period for Notification of Defects.

The Tenderer is to allow in his rates for any increase in the price of any item or commodity taking place during the Period as stated above.

### **1.30 Irregular Tenders**

Any tender that does not comply with the foregoing conditions of tender, will be deemed to be incomplete and will be liable to rejection without further consideration.

### **1.31 Tender Opening**

- 1.31.1 The purpose of opening and examining tenders is to check whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents are included and whether the tenders are generally in order.
- 1.31.2 Tenders will be opened in public session on the date and venue specified in the publication notice by the committee appointed for that purpose. The committee will draw up minutes of the meeting, which must be available to tenderers on request.
- 1.31.3 At the tender opening session, the tenderers' names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee (if required) and such other information the Contracting Authority may consider appropriate may be announced.
- 1.31.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation or comparison of tenders or recommendations concerning the award of contract can be disclosed until after the contract has been awarded.
- 1.31.5 Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure



is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of its tender.

### **1.32 Evaluation of Tenders**

The Contracting Authority reserves the right to ask a tenderer to clarify any part of its tender that the evaluation committee considers necessary to evaluate it. Such requests and the responses to them must be made in writing. They may in no circumstances alter or try to change the price or content of the tender, except to correct arithmetical errors discovered by the evaluation committee when analysing tenders.

#### **1.40.1. Examination of the administrative compliance of tenders**

The aim at this stage is to check that tenders comply with the requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions with them.

Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Decisions to the effect that a tender is not administratively compliant must be duly justified in the evaluation minutes.

The evaluation committee will check that each tender:

- has been properly signed;
- meets the administration requirements as set out in the evaluation Criteria;
- has complete documentation and information;
- Substantially complies with the requirements of these tender documents.

If a tender does not meet the requirements set out in the tender evaluation criteria, it may be rejected by the evaluation committee when checking admissibility.

#### **1.40.2. Technical evaluation**

The evaluation committee will evaluate only those tenders considered substantially compliant in accordance with evaluation criteria.

At this step of the evaluation procedure, the Committee will analyse the tenders' technical conformity in relation to the technical specifications, classifying them technically compliant or non-compliant as per the requirements of the tender.

Subsequently, the Committee will evaluate the technically compliant offers in accordance with the technical evaluation grid.

#### **1.40.3. Financial evaluation**

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no arithmetical errors. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.



When analysing the tender, the evaluation committee will calculate the final tender price after adjusting it for arithmetic errors. The Financial evaluation will be performed according to the evaluation criteria as set out in this document.

#### 1.40.4. Post-Qualification

Where appropriate, a post-qualification may be undertaken by the employer in accordance with the criteria stated in the tender document, to determine whether the best evaluated tenderer has the capability and resources to effectively carry out the contract. Where the tenderer is determined not to be qualified, the tender shall be rejected and a post-qualification conducted to the next lowest evaluated responsive tender.

### 1.33 Tender Evaluation Criteria

The Tender evaluation will be done by the Employer.

There are three stages of evaluation of this tender. The procedure for the evaluation of responsive tenders is detailed below:

#### 1.41.1. Stage 1: Compliance with tender requirements:

Check compliance of the bidders in completing the tender document. Qualification will be based on submission of certified copies of the following documents or returnable schedules regarding the legal status of the contractor. Failure to submit these documents will result to disqualification of tender. All submitted certified copies must be a true copy of the original certificate and copies of certified copies will not be accepted.

- I. Declaration of eligibility of Contractor
- II. Proof of Authority to sign,
- III. Original Valid Tax Clearance Certificate,
- IV. Certified copy of Certificate of Incorporation
- V. Certified Copy of Valid Trading License,
- VI. Certified Copy of Labour Compliance Certificate
- VII. Submission of a Company current Form J, stamped by the Registrar of Companies
- VIII. Submission of a Company current Form C, stamped by the Registrar of Companies
- IX. Submission of certified copies of National Identity documents of people listed on Form C
- X. Police Clearance for all Company Directors.

#### 1.41.2 Stage 2: Technical Capacity: (Technical Evaluation)

The evaluation will take into account the following factors:

#### I. TECHNICAL SPECIFICATION

The Vehicles to be supplied should meet all the Specifications listed in the table below:

CRITERIA	Double Cab	Sedan	Double-Cab
		4 X 4	



<b>Displacement (cc)</b>	2.4 - 2.5	1.8	2.4 - 2.5
<b>Maximum Power (kw@r/min)</b>	100-120 @ 3400-3800	72-5200	100-120 @ 3400-3800
<b>Maximum Torque (Nm@r/min)</b>	320-400 @ 200-2500	142-3600	320-400 @ 200-2500
<b>Transmission</b>	Manual-6-Speed	Manual-6-Speed	Automatic
<b>Stabilizer</b>	Front	Front	Front
<b>Fuel System</b>	Diesel	Petrol	Diesel
<b>Air conditioner</b>	Std	Std	Std
<b>Audio System, Bluetooth &amp; USB Port</b>	Std	Std	Std
<b>Fuel Tank Size (L)</b>	75-80	75-80	75-80
<b>Service Intervals (km)</b>	Std	Std	Std
<b>Warranty</b>	Std	Std	Std
<b>Colour</b>	White	White	White
<b>Tow bar</b>	Std	Std	Std

- II. A Delivery Programme indicating the delivery timelines of the Supplies as per the Timelines stipulated in the tender document.

Failure to meet all the Technical Specifications will result in disqualification of that tender, and will not move on to Stage 3 of the Evaluation.

#### **1.41.3 Stage 3: Bid Price:**

The qualifying bidders will be ranked according to price. The lowest priced bid will be the preferred bidder and ranked number 1 on the list followed by the next highest bid.

#### **1.42. Withdrawal of Tenders**

1.42.1. Tenderers may alter or withdraw their tenders by written notification prior to the deadline indicated in the Invitation to tender. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.

1.42.2. Withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

#### **1.43. Tender Timetable**

Tender Timetable:

	<b>Date</b>	<b>Time</b>
<b>Selling of tender start date</b>	21 <sup>st</sup> March 2022	08:30 Hrs – 16:00hrs

<b>Deadline for request for any additional information from the Contracting Authority</b>	14 <sup>th</sup> April 2022	16:30 Hrs
<b>Deadline for submission of tenders</b>	27 <sup>th</sup> April 2022	11:00 Hrs
<b>Tender opening session</b>	27 <sup>th</sup> April 2022	11:00 Hrs
<b>Notification of award to the successful tenderer (Provisional)</b>	30 May 2022	-

#### 1.44. Cancellation of Tender Procedure

In the event of cancellation of the tender procedure, the Contracting Authority will notify tenderers of the cancellation. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes will be returned to the tenderers.

Cancellation may occur, if:

- the tender procedure has been unsuccessful, namely where no suitable, qualitatively or financially acceptable tender has been received or there has been no valid response at all;
- the economic or technical parameters of the project have changed fundamentally;
- exceptional circumstances or *force majeure* render normal implementation of the project impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been breach of obligations, irregularities or frauds in the procedure, in particular where these have prevented fair competition;

the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market.

In no event shall the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure, even if the Contracting Authority has been advised of the possibility of damages. The publication of a contract notice does not commit the Contracting Authority to implement the programme or project announced.

#### 1.45. Sufficiency of Tender Prices

The Contractor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bills of quantities or price schedule which shall, except in so far as it is otherwise provided in the contract, cover all its obligations under the contract.

Since the Contractor is deemed to have determined its prices on the basis of its own calculations, operations and estimates, it shall carry out without additional charge any work which is the subject of any item whatsoever in its tender for which it neither indicates a unit price nor a lump sum.

#### **1.46. Appeals**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Public Procurement Act, 2011 for guidelines.

#### **1.47. Ethics Clauses and Code of Conduct**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Public Procurement Act for guidelines.

##### **1.47.1. Absence of conflict of interest**

The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project. Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties according to the Financial Regulation in force.

##### **1.47.2. Breach of obligations, irregularities or fraud**

The contracting authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to breach of obligations, irregularities or fraud. If breach of obligations, irregularities or fraud are discovered after the award of the contract, the contracting authority may refrain from concluding the contract.



**SECTION 2: TECHNICAL SPECIFICATION**

CRITERIA	SPECIFICATION		
	Single-Cab	Sedan	Double-Cab
	4 X 4		4 X 4
Displacement (cc)	2.4 - 2.5	1.8	2.4 - 2.5
Maximum Power (kw@r/min)	100-120 @ 3400-3800	72-5200	100-120 @ 3400-3800
Maximum Torque (Nm@r/min)	320-400 @ 200-2500	142-3600	320-400 @ 200-2500
Transmission	Automatic-6-Speed	Manual-6-Speed	Manual-6-Speed
Stabilizer	Front	Front	Front
Fuel System	Diesel	Petrol	Diesel
Air conditioner	Std	Std	Std
Audio System, Bluetooth & USB Port	Std	Std	Std
Fuel Tank Size (L)	75-80	75-80	75-80
Service Intervals (km)	Std	Std	Std
Warranty	Std	Std	Std
Colour	White	White	White
Tow bar	Std	Std	Std

*NB: Please clearly indicate cost per item and also attach brochure page for the specification of the quoted vehicle.*



**SECTION 3: BILLS OF QUANTITIES**

<b>SUMMARY - BILL OF QUANTITIES</b>		
<b>SECTION</b>	<b>DESCRIPTION</b>	<b>AMOUNT (EMALANGENI)</b>
1	<b>PRELIMINARY AND GENERAL</b>	
2	<b>SUPPLY OF VEHICLES</b>	
	SUB-TOTAL	
	<b>Add:</b> 15% VAT	
	<b>TOTAL CONTRACT SUM</b>	

<b>SUPPLY OF MOTOR VEHICLES FOR ESERA</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>RATE</b>	<b>AMOUNT</b>
<b>1</b>	<b>SECTION 1</b>				
	<b>PRELIMINARY AND GENERALS</b>				
1.1	<b>Fixed Charges</b>				
1.1.1	Licence and Registration fees	Sum	1		
1.1.2	Delivery charges	Sum	1		
<b>TOTAL CARRIED TO SUMMARY</b>					



SUPPLY OF MOTOR VEHICLES FOR ESERA					
ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
<b>2</b>	<b>SECTION 2</b>				
	<b>Supply, register and delivery of vehicles complete with tubeless tyres and spare, jack, warning triangle and basic toolkit. All vehicles to include Warranty and Service Intervals.</b>				
2.1	<b>Double-Cab 4X4</b> 2.4 -2.5 L engine, 100-120 @ 3400-3800 (kW@r/min), 320-400 @ 2000-2500 (Nm@r/min), Automatic 6 speed, Diesel, fuel tank capacity 75L minimum	No.	1		
2.2	<b>Sedan</b> 1.8L engine, 72 5200 maximum power, maximum torque 142-3600 Manual 6 speed, Petrol	No.	1		
2.3	<b>Double-Cab 4 X 4</b> 2.4 – 2.5 L engine,100-120 @ 3400-3800 320-400 @ 200-2500 Manual-6-Speed Diesel, fuel tank capacity 75L minimum	No.	1		
<b>TOTAL CARRIED TO SUMMARY</b>					





## SECTION 4: GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.
- (c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) “Day” means calendar day.
- (e) “Delivery” means the transfer of ownership of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “Eligible Countries” means the countries and territories eligible as listed in Section V.
- (h) “GCC” means the General Conditions of Contract.
- (i) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (j) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (k) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.
- (l) “SCC” means the Special Conditions of Contract.
- (m) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the



Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

- (n) “Supplier” means the natural person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.
- (o) “The Site,” where applicable, means the place named in the SCC.

**2. Contract Documents**

2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

**3. Corrupt Practices**

3.1 The Government of Eswatini (GoS) requires that all Procurement Entities as well as Tenderers, Suppliers, Contractors and Consultants participating in contracts financed from the public funds of the Government of Eswatini, adhere to the highest ethical standards, both during the tendering process and throughout the execution of such contracts. The list of definitions set forth below involves the most common types of corrupt practices, but is not exhaustive. For this reason, the Public Procurement Board will also consider claims of similar nature involving alleged acts of corruption, in accordance with the established procedure.

- (a). “Bribery” means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts.
- (b). “Extortion” or “Coercion” means the act attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.
- (c). “Fraud” means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the Procurement Entity/Purchaser or other participants.
- (d) “Collusion” is an agreement between tenderers designed to result in tenders at artificial prices that are not competitive.

3.2 If, in accordance with the administrative procedures of the Public Procurement Board, it is demonstrated that a government/public official, or anyone acting on his or her behalf, and/or a Tenderer in a procurement process or supplier/contractor during the execution of the contract carried out in connection with a project financed from the public funds of the Government of Eswatini has committed corrupt practices, the Public Procurement Board or the appropriate Tender review Board will:

- (a) reject a proposal to award a contract in connection with the respective procurement process; and/or



(b) declare a firm and/or its personnel directly involved in corrupt practices, temporarily or permanently ineligible to be awarded future contracts financed from the public funds of the Government of Eswatini .

3.3 The Tenderer shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the tendering process or execution of the contract. The information disclosed must include at the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee. The information must be included in the Tender Submission Sheet. Furthermore, Tenderers shall be aware of the provision stated in Sub-Clause 3.2 and Sub-Clause 35.1 (c) of the General Conditions of Contract.

3.4 Any communications between the Tenderer and the Purchaser related to matters of alleged fraud or corruption must be made in writing

#### 4. Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

(a) Unless otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

(b) The terms EXW, FOB, FCA, CIF, CIP, and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Tenders or as specified in the SCC.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.5 Nonwaiver

(a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.



- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### 4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### 5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

### 6. Joint Venture, Consortium or Association

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

### 7. Eligibility

7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

7.2 All Goods and Related Services to be supplied under the Contract and financed from the public funds of the Government of Eswatini shall have their origin in Eligible Countries.

7.3 For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components

- 8. Notices**
- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.
- 8.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
- 9. Governing Law**
- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of Eswatini, unless otherwise specified in the SCC.
- 10. Settlement of Disputes**
- 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC. These mechanisms may include, but are not restricted to, conciliation mediated by a third party, adjudication in an agreed national or international forum, and/or international arbitration.
- 11. Scope of Supply**
- 11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.
- 11.2 Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.
- 12. Delivery and Documents**
- 12.1 Subject to GCC Sub-Clause 32.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 13. Supplier’s Responsibilities**
- 13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
- 14. Contract Price**
- 14.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 14.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the SCC.
- 15. Terms of Payment**
- 15.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.



- 15.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all the obligations stipulated in the Contract.
- 15.3 Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.
- 15.4 The currency in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.
- 15.5 In the event that the Purchaser fails to pay the Supplier any payment by its respective due date or within the period set forth in the SCC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgement or arbitration award.

## **16. Taxes and Duties**

- 16.1 For goods supplied from outside Eswatini, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside Eswatini.
- 16.2 For goods supplied from within Eswatini, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 16.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Eswatini, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

## **17. Performance Security**

- 17.1 The Supplier shall, within fourteen days (14) of the notification of contract award, provide a performance security for the due performance of the Contract in the amount specified in the SCC.
- 17.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 17.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable located in Eswatini or abroad, acceptable to the Purchaser, in using the form included in Section IX Contract Forms; or
  - (b) a cashier's certified check.
- 17.4 The performance security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days



following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

## 18. Copyright

18.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party

## 19. Confidential Information

19.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 19.

19.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

19.3 The obligation of a party under GCC Sub-Clauses 19.1 and 19.2 above, however, shall not apply to information that:

- (a) the Purchaser or Supplier need to share with the Public Procurement Board of the Government of Eswatini or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

19.4 The above provisions of GCC Clause 19 shall not in any way modify any undertaking of confidentiality given by either of the parties

hereto prior to the date of the Contract in respect of the Supply or any part thereof.

19.5 The provisions of GCC Clause 19 shall survive completion or termination, for whatever reason, of the Contract.

## **20. Subcontracting**

20.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

20.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## **21. Specifications and Standards**

21.1 Technical Specifications and Drawings

(a) The Supplier shall ensure that the Goods and Related Services comply with technical specifications and other provisions of the Contract.

(b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

(c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.

(d) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 32.

## **22. Packing and Documents**

22.1 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. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, 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.

22.2 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 the SCC, and in any other instructions ordered by the Purchaser.

- 23. Insurance**            23.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.
- 24. Transportation**        24.1 Unless otherwise specified in the SCC, responsibility for arranging transportation of the Goods shall be in accordance with the Incoterms specified in the Schedule of Requirements.
- 25. Inspections and Tests**    25.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Schedule of Requirements.
- 25.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Eswatini as specified in the SCC. Subject to GCC Sub-Clause 25.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 25.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 25.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 25.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 25.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.



- 25.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 25.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 25.4.
- 25.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 25.6, shall release the Supplier from any warranties or other obligations under the Contract.

## **26. Liquidated Damages**

- 26.1 Except as provided under GCC Clause 31, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 34.

## **27. Warranty**

- 27.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 27.2 Subject to GCC Sub-Clause 21.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 27.3 Unless otherwise specified in the SCC, the 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 SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.
- 27.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.



- 27.5 Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 27.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

## 28. Patent Indemnity

- 28.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 28.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
  - (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 28.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 28.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 28.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 28.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 28.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses,





damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

**29. Limitation of Liability**

29.1 Except in cases of criminal negligence or willful misconduct,

(a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and

(b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement

**30. Change in Laws and Regulations**

30.1 Unless otherwise specified in the Contract, if after the date of the Invitation to Tender, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated, or changed in the particular area of Eswatini where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 14.

**31. Force Majeure**

31.1 The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

31.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

- 31.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations 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.
- 32. Change Orders and Contract Amendments**
- 32.1 The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to 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 Purchaser;
  - (b) the method of shipment or packing;
  - (c) the place of delivery; and
  - (d) the Related Services to be provided by the Supplier.
- 32.2 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 in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.
- 32.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 33. Extensions of Time**
- 33.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 33.2 Except in case of Force Majeure, as provided under GCC Clause 31, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 33.1.



**34. Termination****34.1 Termination for Default**

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by notice of default sent to the Supplier, may terminate the Contract in whole or in part:
- (i) 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 Purchaser pursuant to GCC Clause 33; or
  - (ii) if the Supplier fails to perform any other obligation under the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 34.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- (c) if the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

**34.2 Termination for Insolvency.**

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser

**34.3 Termination for Convenience.**

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract



terms and prices. For the remaining Goods, the Purchaser may elect:

- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

**35. Assignment**

35.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## SECTION 5: SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC 1.1(j)</b>	The Purchaser is: <b>Eswatini Energy Regulatory Authority (ESERA)</b>
<b>GCC 1.1 (o)</b>	The Delivery Site is: <b>ESERA Offices, Mbabane</b>
<b>GCC 5.1</b>	The language shall be: <b>English</b>
<b>GCC 8.1</b>	For <b>notices</b> , the Purchaser's address shall be: Attention: The HR & Administration Manager <b>P.O. Box 7137</b> <b>Mbabane</b> <b>Eswatini</b> Telephone: <b>24042103</b> Facsimile number: <b>24048475</b> <b>Email: <a href="mailto:info@esera.org.sz">info@esera.org.sz</a></b>  For notices, the Supplier's address shall be :  <i>(To be filled at the time of award)</i>
<b>GCC 9.1</b>	The governing law shall be the laws of Eswatini
<b>GCC 10.2</b>	The formal mechanism for the resolution of disputes shall be as follows:  <i>(b) For contracts entered into with suppliers from Eswatini</i>  In the case of a dispute between the Purchaser and a Supplier from Eswatini, the dispute shall be referred to adjudication or arbitration in accordance with the laws of Eswatini.
<b>GCC 11.1</b>	The scope of supply for the Goods and Related Services to be supplied shall be as specified in: <b>Section 2: The Technical Specification</b>

<b>GCC 12.1</b>	<p><b>Delivery and Documents</b></p> <p><b>For Goods from within the Purchaser's country:</b></p> <p>Upon delivery of the Goods to the transporter, the Supplier shall notify the Purchaser and mail the following documents to the Purchaser:</p> <ul style="list-style-type: none"> <li>(i) copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;</li> <li>(ii) delivery note, railway receipt, or truck receipt;</li> <li>(iii) Manufacturer's or Supplier's warranty certificate;</li> <li>(iv) inspection certificate issued by the nominated inspection agency, and the Supplier's factory inspection report; and</li> <li>(v) certificate of origin.</li> </ul> <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses</p>
<b>GCC 14.2</b>	The prices charged for the Goods delivered and the related Services performed <b>Shall Not</b> be adjustable.
<b>GCC 15.1</b>	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>Payment of 100% of the contract sum shall be made <b>within</b> 35 days after delivery and acceptance of the vehicles</p>
<b>GCC 27.3</b>	<p>The period of validity of the Warranty shall be: As provided by the Supplier.</p> <p>For purposes of the Warranty, the place of final destination shall be:</p> <p><b>ESERA Offices in Mbabane,</b></p>
<b>GCC 27.5</b>	The period for repair or replacement shall be: <b>Two weeks</b>

**ESWATINI ENERGY REGULATORY AUTHORITY  
SUPPLY OF MOTOR VEHICLES FOR ESERA  
CONTRACT NO.: ESERA/RFQ/01/2022-2023**

**C1.1: FORM OF OFFER AND ACCEPTANCE**

**1. OFFER**

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

.....  
.....

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the tender schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer 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 Contract identified in the Contract Data.

**The offered total of the prices inclusive of Value Added Tax (VAT) is.....**  
.....

..... Emalangeni (in words);

E..... (in figures)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the contractor in terms of the conditions of contract identified in the contract data.

Signature(s) .....

Name(s) .....

Capacity .....

for the **Tenderer** .....  
(Name and address of organization)

Name and signature  
of witness .....

Date .....



**2. ACCEPTANCE**

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderer’s offer. In consideration thereof, the employer shall pay the contractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer’s offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract are contained in

Part C1: Agreements and contract data (which includes this agreement)

Part C2: Pricing data

Deviations from and amendments to the documents listed in the tender data and any addenda thereto, as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall, within two weeks after receiving a completed copy of this agreement including the schedule of deviation (if any), contact the employer’s agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of the obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor), within five (5) working days of the date of such receipt, notifies the employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

Signature(s) .....  
 Name(s) .....  
 Capacity .....  
 for the **Employer** .....  
 (Name and address of organization)  
 Name and signature of witness ..... Date .....





**3. SCHEDULE OF DEVIATIONS**

**Notes:**

- 1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
- 2. A tenderer’s covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, be the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
- 3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents, and which it is agreed by the Parties becomes an obligation of the contract, shall also be recorded here.
- 4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the contract.

- 1. Subject .....
- Details .....
- 2. Subject .....
- Details .....
- 3. Subject .....
- Details .....
- 4. Subject .....
- Details .....
- 5. Subject .....
- Details .....

By the duly authorized representatives signing this schedule of deviations, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.



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<b>C1.2: CONTRACT DATA</b>
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**DATA PROVIDED BY THE CONTRACTOR**

	<b>Information</b>
<b>1</b>	The name of the Contractor is .....
<b>2</b>	The address of the Contractor is:  Postal <span style="float: right;">Tel: .....</span> ..... <span style="float: right;">Fax:.....</span> ..... <span style="float: right;">Email:.....</span> ..... Physical <span style="float: right;">.....</span>