

ESWATINI ENERGY REGULATORY AUTHORITY



REQUEST FOR PROPOSALS

FOR

**CONSULTANCY SERVICES FOR DEVELOPING A MODEL FOR THE EFFICIENT
ALLOCATION OF RETAIL SERVICE STATIONS IN THE KINGDOM OF ESWATINI**

REFERENCE NUMBER: ESERA/RFP/01/2022-2023

MAY 2022



1. LETTER OF INVITATION TO TENDER

INVITATION TO BID

The Eswatini Energy Regulatory Authority (ESERA) hereby invites competent, qualified and registered individuals and/or companies to submit their Bids for the following:

- Bid Number:** ESERA/RFP/01/2022-2023
- Bid Description:** Procurement of Consultancy Services: Development of a model for the efficient allocation of retail service areas in the Kingdom of Eswatini.
- Objective:** To procure consultancy services of a suitably qualified and competent consultant with the relevant and required experience in the petroleum sector, financial and economic expertise in the energy sector to develop a model for the efficient allocation of retail service stations in the kingdom of Eswatini.
- Access to Bid Documents:** The RFP is available on ESERA's and ESPPRA's websites.
- Tender Fee:** A tender fee of E350.00 should be paid to ESERA and the proof of payment must be submitted with the bid documents. Payments can be made physically or through electronic means using the following banking details:
Account Name: Eswatini Energy Regulatory Authority
Bank Name: Nedbank Swd
Branch Name: Mbabane
Branch Code: 360164
Account Number: 0200000596311
Account Name: Call Account
Swift Code: NESWSZMX
- Closing Date:** 12 noon (CAT) on 24 June 2022
- Details on Bid Submission:** A technical and a financial proposal shall be submitted either in hard copy or soft copy (through a flash drive) enclosed in plain, wrapped and sealed separate envelopes clearly marked with the **Bid number and description** on the outside and deposited in the ESERA tender box situated at the ESERA offices reception. They must be delivered on or before the Date and time of Closure as addressed to:

**The Chief Executive Officer
Eswatini Energy Regulatory Authority
First Floor, RHUS Office Park
Karl Grant Street, MBABANE**

All enquiries relating to this tender should be directed in writing to Mr. Sanele Thwala via email at: sanele@esera.org.sz.



TERMS OF REFERENCE

2. INTRODUCTION

The Eswatini Energy Regulatory Authority (ESERA) is a statutory energy regulatory body established through the Energy Regulatory Act, 2007 (Act No. 2 of 2007). The recently enacted Petroleum Act no:18 of 2020 assigns the regulation of downstream activities to the Eswatini Energy Regulatory Authority. This includes the issuance of Downstream Licences (Wholesale, retail, Biofuels, LPG, Natural Gas, and Petrochemical), enforcement of licence conditions, dispute resolution, consumer protection, as well as ensuring security and quality of fuel supply.

The pricing of fuel still remains a responsibility of the Ministry of Natural Resources and Energy (MNRE) and will be passed on to the Regulator with time. The Ministry regulates both retail and wholesale fuel prices for petrol, diesel and paraffin to ensure that fuel prices remain competitive, efficient and current. The fuel prices are based on a model called the Basic Fuel Price (BFP), with Industry profit margins determined using the Regulatory Accounting System (RAS) model. This model is similar to models used by all the SACU countries and tracks the activities in the international oil markets on a daily basis.

On an annual basis data is collected by MNRE from both wholesalers and retailers and used to update their profit margins RAS model. Over and above other things, this takes into account all the costs incurred by retail service station in their retail operations, volumes of fuel sold in that particular year, as well as new capital investments in the retail service stations.

Having the responsibility to regulate the downstream activities, the Authority issues, among other licences, a retail licence which is used as a regulatory instrument for the forecourt activities. To ensure that the consumer is not unnecessarily overburdened by the capital costs of filling stations where there is sufficient infrastructure to meet local volume demand, it is crucial that the license allocation for retail service stations is efficiently done and recognitive of current local area fuel volume demand as well as available fuel supply to meet that demand. While the forces of demand and supply may be major determining factors in the allocation of retail licenses, the Regulator is also aware that there are areas, particularly in the rural settings of the Country, that have a challenge accessing Petroleum products more so because the local area fuel demand does not



make a feasible business case for a service station. It is in this regard that the Authority wishes that such areas be prioritized in ensuring universal access to affordable fuel products for all citizens of the Country.

This therefore makes it necessary that a properly guided technical mechanism be developed to serve as a technical guide in the allocation and award of retail licences during the adjudication of applications. This is meant to assist the Authority in establishing an efficient regulatory environment that promotes universal access and security of petroleum products supply. It is in this regard the Authority requires the assistance of consultancy services for the development of a model for the efficient allocation of Retail Service stations in the Kingdom of Eswatini.

The Petroleum Act no 18 of 2020 also establishes the Eswatini National Petroleum Company, whose mandate, amongst others, is to ensure access to petroleum products in the rural areas, designated as Key National Development areas in the Kingdom of Eswatini. In this regard, the National Petroleum Company has undertaken a study to assess rural areas that have a potential to be designated Key National Development Sites, whose outcome has been availed for consideration in this study. As part of the study outcomes, an interactive map, showing all retail sites surveyed in this study, has also been produced .

3. PURPOSE OF THE TERMS OF REFERENCE

The aim of this document is to solicit services of a suitably qualified Consultant to develop a model for analysing petroleum retail sites (both existing and new applications) in order to produce an efficient retail service station network that will ensure that supply and demand is balanced within geographic areas to ensure sustainability of retail licensees given that margins are regulated. This network must be aligned to the Basic Fuel Price model, as well as the Regulatory Accounting System model used for the determination of petroleum industry profit margins.

This document sets out the scope of work, qualification criteria, project deliverables, evaluation criteria, and other critical objectives to be met by the consultant.



4. SCOPE OF WORK

The scope of this study is to develop a model that will analyse petroleum retail sites in order to produce an efficient retail service network to service the Kingdom of Eswatini. The model should be able to assist the Regulator determine areas where there are too few or a surplus (more than enough to service the demand) of retail service stations and ultimately guide the decision to award a new petroleum retail licence. This shall entail:

- Reviewing of the current legislation and petroleum economic regulation instruments (BFP and RAS).
- Reviewing the results of a retail network survey conducted by ENPC, and conduct any further required survey to ensure the whole country network is covered. This shall include reviewing the inter-active map developed by ENPC with a view to enhance
- Analysing the existing retail service network and its ability to meet the country's petroleum product demand per geographical area in both rural and urban areas;
- Present the current national fuel consumption levels per geographical area to indicate the current distribution of volumes in the country;
- Developing a set of Indicators necessary to determine the optimal number of service stations for each Geographical area and the optimal distance between service stations. These Indicators should be able to track economic development that may warrant an increase in the number of service stations per geographic area;
- Determining the key indicators for the viability of Retail Service Station.
- Developing an interactive map that may be accessible through the ESERA website that may be used by potential retail licence applicants to determine if the sites they have identified for business are appropriate (location, demand, etc).

The study must be cognisant of the need for:

- Efficiency, while promoting access to petroleum products particularly in rural areas
- Economic development and job creation.

This model should ultimately ensure that the consumer does not incur an unnecessary cost at the pump, through high retail margins resulting from an over-supply of Retail Sites since the RAS model is cognisant of capital and operational costs. For a market of the size of Eswatini, with the current petroleum economic regulation structure, efficiency in the allocation of retail licences is critical for the



sustainability of the retail industry. Ultimately, the licensing of a new service station should not lead to the immediate closure of an existing one.

5. OBJECTIVE AND DELIVERABLES

The overall objective of this assignment is to support ESERA in the development of a model that will guide the efficient allocation of retail service station, through licensing, in the Kingdom of Eswatini. The assignment covers the tasks as provided in the scope of work. Interested consultancy firms shall include the methodology and work plan for this assignment in their technical proposals. This task requires strong engagement and coordination with local stakeholders. The successful bidder will be expected to provide the following deliverables:

Deliverable 1: Inception Report

In not more than 7 days after an inception meeting, the Consultant shall provide an inception report on the assignment. This report will present a detailed work plan, project time schedule, information requirements, list of key stakeholders to be consulted, schedule for stakeholder engagement workshops and meetings, and a table of contents for the assignment. The inception meeting shall be arranged with ESERA and shall occur within 21 days after the contract signature date.

Deliverable 2: Existing Retail Service Station Network, current national consumption levels and demand gaps report

Based on a survey conducted and review of data of the existing retail service station network of Eswatini, the Consultant shall provide a comprehensive report on the current retail service network, current national consumption levels per geographic location identifying current demand gaps as well as areas where there is a surplus of service stations. Key in this report, the consultant must develop a set of KPIs to be inclusive of amongst other things key economic and technical factors behind the determination of the gaps particularly in the rural areas, as well the surplus of retail service stations mostly in the developed urban areas.

Also included in this report, must be a review of the study conducted by the Eswatini National Petroleum Company, current legislation and petroleum economic regulation instruments (BFP and RAS). This review must clearly indicate the impacts to the retail margin, as determined through the Regulatory Accounting System model in the Kingdom of Eswatini, by an over-supply of retail service stations. The ultimate effect to the consumer at the pump as a result of an over-supply of just one retail service station must be clearly demonstrated.



Deliverable 3: Draft Model framework

Based on the existing Retail Service network, retail margin framework and developed set key indicators the consultant is to provide a draft model framework, to be used for the efficient allocation of additional service stations in the areas where there is room for more service stations and the control of thereof of same in the areas where there is an over-supply.

The developed model should be capable of:

- projecting an ideal service station network to service each geographical area, thereby assisting in the equitable distribution of services stations, incorporating existing network.
- Indicating when there is insufficient economic activity in an area to warrant an additional retail service station.
- Analysing the business case of each new service station proposal. This model, preferably an excel model, should assist in assessing the feasibility of each proposed retail business in the case where the volumes are less than ideal yet the inputs/assumption are not those assumed for the typical site defined in the RAS. Typically, a case where a developer argues that his capital costs are much lower than those assumed in the RAS model

The draft model should be presented to ESERA and key petroleum industry stakeholders as identified by the Regulator and the Consultant before a final Model, incorporating the stakeholder's feedback, is produced.

Deliverable 4: Final Project Report

The Consultant shall then provide a final project report, inclusive of existing retail network with the current geographic local consumption levels, identified demand gaps, oversupplied areas and the finally approved model for use in the allocation of new retail sites. The retail network must be further incorporated in an interactive map, that can be accessed through an ESERA website and can be used by all potential retail licence applicants to aid in determining the appropriateness of identified retail sites. This report shall include all assumptions used in developing the model as well as guidelines/manual for the using the model. The consultant will also be expected to also provide recommendations on better ways to improve the efficiencies in allocating retail service station to the benefit of the end consumer in petroleum product retailing.



All drafts and final deliverables by the Consultant shall be submitted to ESERA and, in the form and number of copies specified, and shall be subject to ESERA's approval before they can be concluded. The Consultant shall propose a time-table for the implementation of activities and deliverables taking into consideration the review period of reports by ESERA and other stakeholders.

The activities in this assignment shall be completed within a period of **four (4) months** from the effective date of the contract.

6. COORDINATION AND REPORTING

- a. ESERA shall appoint a Project Manager to coordinate the project with the Consultant.
- b. The Consultant shall conduct five workshops during the course of this assignment:
 - Workshop 1: Inception meeting - information gathering and alignment on tasks, outcomes and expectations
 - Workshop 2: Presentation of report on existing retail service network, current geographic consumption levels and current demand gaps as well as areas with over-supply
 - Workshop 3: Presentation of draft model framework for efficient allocation of new retail service areas to ESERA for understanding and approval
 - Workshop 4: Presentation of draft model framework for efficient allocation of new retail service areas to other stakeholders as identified by ESERA and the Consultant
 - Workshop 5: Training workshop of selected ESERA staff on the use model for decision making in the adjudication of retail service station proposals
- c. All reports, minutes, presentations, and studies conducted shall be made available to ESERA in electronic media. Copyright of all reports, minutes, presentations and studies shall vest in the ESERA.

7. QUALIFICATIONS OF THE TEAM

The desired consulting firm should be of international standard and have the necessary permanent key personnel required in carrying out the services. The Consultant for this assignment shall possess the following qualities:

- 7.1 The consultant's core team of experts should comprise at least the following, each with the requisite academic qualifications of at least a post- graduate degree in the professional field, and a minimum of 10 years of professional experience in the oil industry: Team Leader, Economist, Petroleum Pricing Expert, Financial Analyst Expert.



- 7.2 The Team Leader should have a minimum of a post graduate degree in Economics or Energy Studies or equivalent, In-depth professional experience in the oil industry, 10 years' experience in the oil industry and management of similar contracts, Broad knowledge of Energy Economics, financial modelling and financial model development.
- 7.3 The consultant should demonstrate a good understanding of the Eswatini oil industry's retail operations and dynamics with experience on the application of regulatory accounting system model in determining the retail margins. Further, the Consultant must have the appropriate financial experience in the application of financial models.
- 7.4 The consultant should possess excellent problem solving, communication and research skills.
- 7.5 Consultant should have strong analytical writing skills, ability to manage complex tasks and coordinate an inter-disciplinary team in a multi-cultural environment
- 7.6 Consultant must be fluent in the English Language as the official working language for this assignment shall be English.

8. PROPOSAL SUBMISSION REQUIREMENTS AND PROCEDURE

Applicants shall submit their written proposals as follows:

8.1 Technical proposal with:

- 8.1.1 Detailed CVs and qualifications of all consultants participating in this assignment clearly demonstrating sufficient experience in carrying out similar tasks before.
- 8.1.2 Proposed methodology and implementation/work plan with clear timelines
- 8.1.3 Proposed local participation through local partners and participants
- 8.1.4 Demonstration of deliberate strategy and initiatives for knowledge transfer to ESERA staff, and local partners and participants.

8.2 Financial proposal:

- 8.2.1 With all monetary amounts in the official Kingdom of Eswatini currency, which is Eswatini Lilangeni (SZL)
- 8.2.2 To be inclusive of all taxes. Non-resident consultants must note Eswatini Income Tax Act, requires that a 15% withholding tax be deducted from each invoice. This tax can however be claimed at their country of residence if the country has an income tax agreement with Eswatini.
- 8.2.3 To be inclusive of professional fees, transportation cost, accommodation and subsistence cost and administration fees (including logistical arrangements for



meetings, workshops, venues and catering). Costs should be split according to categories.

A technical and a financial proposal shall be submitted either in hard copy or soft copy (through a flash drive, with separate and clearly labelled folders) enclosed in plain, wrapped and sealed **separate envelopes**, clearly marked on the outside and deposited in the ESERA tender box situated at the ESERA offices reception, found at the address provided below.

Contract No: ESERA/RFP/01/2022-2023

CONSULTANCY SERVICES FOR DEVELOPING A MODEL FOR THE EFFICIENT ALLOCATION OF RETAIL SERVICE STATIONS IN THE KINGDOM OF ESWATINI

They must be delivered on or before the Date and time of Closure as addressed to:

**The Chief Executive Officer
Eswatini Energy Regulatory Authority
First Floor, RHUS Office Park
Karl Grant Street
MBABANE**

The closing date for submission of proposals is 12:00hrs (CAT) on Friday, 24th June 2022. Late, incomplete, telephoned or telegraphic tenders will not be considered.

9. EVALUATION METHODOLOGY

The tender evaluation shall be in two-folds. First will be the technical evaluation, which will then be followed by the financial evaluation only for consultants that surpassed the minimum score for technical proposals. It is therefore mandatory for bidders to submit a technical proposal separate from the financial proposal, each wrapped in own sealed envelope and clearly marked "Technical Proposal" and "Financial Proposal", respectively. Electronic submissions shall be through flash drives with separate and clearly labelled folders. The weights for the evaluation are as follows:

Technical Proposal – 70%

Financial Proposal – 30%



9.1 Technical Evaluation

	Description	Points
EXPERIENCE OF THE CONSULTANTS/ CONSORTIUM	Experience of firm/consortium in the development/application of Regulatory Accounting System Model in determining retail margins.	10
	Experience/understanding of the bidding firm/consortium of the local (Eswatini) Petroleum retail industry operations and dynamics	10
	Regional experience of the firm/consortium in developing models for the Petroleum Industry	5
	General consulting experience of the firm/consortium	5
PROPOSED APPROACH/ METHODOLOGY	Understanding of scope of work	5
	Adequacy and quality of workplan	5
	Adequacy of technical approach and methodology	20
QUALIFICATIONS, EXPERIENCE AND COMPETENCE OF TEAM LEADER	Education and qualification	5
	Relevant experience of Team Leader (Oil Industry, management of similar contracts and financial modelling)	10
QUALIFICATIONS, EXPERIENCE AND COMPETENCE OF SUPPORT STAFF	Education and qualification of key staff (Economist, Financial Analyst, Petroleum pricing)	9
	Financial model development experience from key staff	3
	Relevant experience of each of the key staff (Economist, Financial Analyst, Petroleum pricing)	3
LOCAL PARTICIPATION AND KNOWLEDGE TRANSFER	Participation of local entities or Eswatini National(s) and demonstration of deliberate strategy and initiatives for knowledge transfer to ESERA staff, and local partners and participants.	10
	Total points technical points	100
	Minimum technical points	80

9.2 Financial Evaluation

Only financial proposals of bidders that surpassed the defined minimum score from the technical proposal shall be evaluated. The lowest priced bid will be given a financial score of 100. All other bids



shall be allocated a financial score that is inversely proportional to the lowest price evaluated as demonstrated by the formula below:

$$\text{Financial Score (Fs)} = \frac{\text{Lowest Bid Price}}{\text{Price of Bid Under Consideration}} \times 100$$

9.3 Final Evaluation

The weighted technical and financial scores shall be added together to give a total score for each proposal. The proposal with the highest score shall be recommended for an award of a contract. This score shall be determined as follows:

$$FV = T_s \times T\% + F_s \times P\%$$

where FV is the Final Score, T_s is the bid technical score, T is the defined weight of the technical proposal, F_s is the bid financial score and P is the weight of the financial proposal.

ESERA reserves the right to, at any time, change its evaluation criteria and is not bound to accept the lowest or any proposal.

10. STATUTORY DOCUMENTS TO BE SUBMITTED WITH TECHNICAL PROPOSAL

The following documents will not be evaluated but are required for the tender evaluation. Applicants shall provide certified copies of the following documents:

- Power of Attorney
- Certificate of Incorporation or equivalent
- Original of Tax Compliance or equivalent
- Certified Copy of Trading Licence or equivalent
- Form J (Company Directors and their addresses) and Form C (Company Share composition) or equivalent
- Police Clearance or Affidavits of Directors
- Last three years audited or independently reviewed financial statements

11. STRUCTURE OF THE TECHNICAL PROPOSAL

11.1 Tender Form and Declaration of Eligibility

The tenderer shall submit a signed Declaration of Eligibility and Tender Form in the formats provided in Annexure 1 and Annexure 2, respectively.

11.2 Background of the Organisation

The tenderer is expected to give background information of their organisation and staff, which must at minimum cover the following:



- company profile and similar projects completed by the firm (Consortiums should provide company profiles for each and every member)
- Profile of the team members (e.g qualifications, experience and professional affiliation)
- The physical address of the organisation

11.3 Approach and Methodology

Bidder's must demonstrate a comprehensive understanding of the assignment and must include but not limited to:

- Detailed and comprehensive approach and methodology to be adopted for the assignment
- A clear workplan
- Manpower plan and associated manhours to be worked by each team member
- Comments or suggestions on the Terms of Reference

11.4 Local Participation and Knowledge Transfer

The desired Consultant is expected to demonstrate a deliberate strategy and initiatives for knowledge transfer and local participation. This can be, among other things, through local partnerships and training of local participants. At the end of the study, the Consultant is expected to train ESERA staff and other relevant stakeholders on the application and use of models developed. At a minimum, a training plan must be proposed.

11.5 Attachments – Statutory Documents and Curriculum Vitae

The tender documents must include all the statutory and other documents as provided in Section 10 above with curriculum vitae of all key team members showing detailed academic credentials, work experience and professional affiliation. Any other information about the team members' credentials, which in the opinion of the Consultant can add value, can also be included in this section.

12. ADDITIONAL INFORMATION

- a. ESERA reserves the right to modify the scope of this project subject to negotiations with the successful tenderer.
- b. ESERA reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to the award of a contract, without incurring any liability to the affected tenderers or any obligation to inform the affected tenderers.
- c. The tender shall be valid for a period of **ninety (90) days**, and prior to the expiry of the validity period, ESERA will issue an intent to award the contract through the Eswatini Public Procurement Regulatory Authority (ESPPRA) and local print media. **Ten (10)** working days after that, ESERA shall invite the successful tenderer for contract negotiations provided there are no objections to the intention to award.



- d. All enquiries relating to this tender should be directed in writing to Mr. Sanele Thwala via email at: sanele@esera.org.sz. Before Monday 06th June 2022

13. CONTRACT TERMS AND CONDITIONS

13.1 DEFINITIONS

- i. The clause headings in this Contract are used for convenience and reference purposes only and shall not be used in the interpretation nor be deemed to modify or amplify the terms of this Agreement or any clause thereof.
- ii. Throughout this document:
- a) unless the context clearly indicates a contrary intention, any words importing or connoting any gender includes all genders;
 - b) the term “in writing” means communicated in written form (e.g by e-mail, fax) with proof of receipt;
 - c) if the context so requires, “singular” means “plural” and vice versa;
 - d) day” means Gregorian calendar day; and
 - e) natural persons include artificial person and vice versa and shall in the eventuality of a change in the Laws of Eswatini to provide for the same, insolvency shall include judicial management.
- iii. The following expressions shall bear the meanings assigned to them below and cognate expression shall bear corresponding meanings: -
- a) “ESERA“ means The Eswatini Energy Regulatory Authority, a Government parastatal established in terms of the Energy Regulatory Act, 2007 with its principal place of business at First Floor, RHUS Office Park, Karl Grant Street, Mbabane, Hhohho Region, for purposes of executing this agreement into binding force, herein represented by Mr. Skhumbuzo Tsabedze, in his capacity as the Chief Executive Officer, he being duly authorized to so representatively act herein and he too, hereby warranting his lawful authorization to so act herein.
 - b) The “Consultant” means the individual or firm that will be successful in the bid process.
 - c) “The Parties” shall mean ESERA and the Consultant.
 - d) “Commencement Date” means the date on which the last signature necessary to complete the formal signing of this agreement into existence is appended;
 - e) “Project Manager” means a person appointed by ESERA to act as Project Manager for the purposes of this contract;
 - f) “Contract Price” shall mean the fixed sum provided in the financial proposal of the successful bidder.
- iv. Expressions or words defined in this agreement shall bear their ordinary meaning unless otherwise defined in this contract or by law.



- v. Annexure to the Agreement shall be deemed to be incorporated into and to form part of the Agreement. Provided that in the event there is a conflict between a particular provision of the main body of this agreement and any annexure thereof, the provision in the main body of the agreement prevails and shall be deemed to state the final intention of the parties in that regard.
- vi. The terms of this agreement having been negotiated, the rule of construction that provisions are to be constructed against the Party drafting an agreement, or part of an agreement, or on whose behalf an agreement or part of an agreement has been drafted, shall not apply to this Agreement.

13.2 COMMENCEMENT, EXECUTION AND COMPLETION OF THE PROJECT

13.2.1 Commencement

13.2.2.1 The services to be carried under the Contract are to commence from the date of signature of the Contract.

13.2.2.2. In the event that any delay in the completion of the project is occasioned by any fault and/or delay by either party, the project shall be completed within such extended time frame as the parties may agree in writing; provided that both parties shall avoid any delays to the project.

13.2.2. Execution

13.2.2.1. ESERA will appoint a person to be a Project Manager to administer the Contract on her behalf.

13.2.2.2. The Project Manager shall be the liaison person for ESERA and shall be responsible for directing the performance of this contract. The Consultant shall constantly report and/or update ESERA on progress of the project at all material times where necessary or when required to do so.

13.2.3. Scope of Work

13.2.3.1. The Consultant shall perform consultancy services for the review of the Authority's Compliance Monitoring and Enforcement framework covering, but not limited to, the following:

- a) A methodology and model to determine Quality of Supply and Service annual performance targets;
- b) Audit manual for licensee performance with regards to quality of supply and service;
- c) Clear strategies to dealing with non-compliance;
- d) Clearly defined roles and responsibilities of the Regulator and licensees in the compliance monitoring and enforcement subject;
- e) Other such miscellaneous considerations which include complaints procedure and dispute resolution, among others;

13.2.3.2. With any manner, details and as may be necessary in ensuring an excellent and satisfactory Compliance Monitoring and Enforcement framework on behalf of ESERA.



13.2.3.3. Subject to the Consultant’s due diligence and efficient execution and completion of the project, and/or the outputs specified herein above, the ESERA shall pay the sum of the contract price in clause 16.1.3 (f) above and the breakdown particularized as follows;

- a. Remuneration: *As stated in the financial proposal of the successful bidder*
- b. Reimbursable expenses: *As stated in the financial proposal of the successful bidder*

13.3. PAYMENT

13.3.1 When claiming payment, the Consultant shall submit an invoice to ESERA. The invoice shall be submitted together with supporting documentations, addressed to The Eswatini Energy Regulatory Authority.

13.3.2 ESERA shall make payments to the Consultant within 30 days of receipt of a valid invoice.

13.3.3 Payment shall be made to an account specified by the Consultant free of any deductions, save for 15% withholding tax due under the tax laws of Eswatini; Provided that ESERA will provide the Consultant with all necessary documentation in order to enable the Consultant to claim any withholding tax withheld or deducted by ESERA on such invoice.

13.3.4 The payment terms shall be as follows:

MILESTONE	PAYMENT PERCENTAGE
Deliverable 1	10 %
Deliverables 2	30%
Deliverables 3 & 4	35%
Deliverables 5 & 6	25%

13.3.5 ESERA is open to negotiating payment terms linked to final project plan but **WILL NOT** make any upfront payments. All payments under the contract shall be made by bank transfer into the bank account indicated by the Consultant in her/his invoices.

13.3.6 The currency of payment of the Contract shall be in the Kingdom of Eswatini Lilangeni (SZL).

13.3.7. Indirect Payment

13.3.6.1. The remuneration of the Consultant charged to the Contract shall constitute his only remuneration in connection with the Contract and the Consultant shall not accept any trade Commission, discount, allowance or indirect payment or other consideration in connection with or in relation to the Contract or to the discharge of Consultant’s obligations.

13.4. POSTPONEMENT, VARIATION AND TERMINATION

13.4.1. Postponement and Termination.



13.4.1.1 Either party may, by written notice to the other party and at any time, give prior notice of his intention to postpone or abandon the project, in whole or in part, or terminate this contract.

13.4.1.2 The effective date of termination of the project shall not be less than fifteen (15) days after receipt of such notice, or such other longer or shorter period as may be agreed between the Parties.

13.4.1.3 Upon receipt of such notice the Consultant shall take immediate steps to bring the Services to a close and to reduce expenditure to a minimum.

13.4.1.4 Termination of the Contract, for whatever reasons, shall not prejudice or affect the accrued rights or claim and liabilities of either party to this Contract.

13.4.2. Variation

13.4.2.1 This agreement can only be varied by agreement in writing entered into by the parties.

13.4.2.2 Either one of the parties can initiate negotiations with a view to reach such said agreement.

13.4.3. Claims for Default

13.4.3.1 Any claim for damages arising out of default and termination shall be agreed between ESERA and the Consultant or, failing agreement, shall be referred to arbitration in accordance with Clause.

13.5 FORCE MAJEURE

13.5.1 Neither party shall be liable under this Contract if so far as either or both of them are prevented from carrying out the same by “force majeure”, that is to say an act of God, act of war, warlike operations, civil commotion, strikes or any industrial action whatsoever, fire, tempest or any other cause or happening beyond its control.

13.5.2 If conditions of force majeure persist in respect of a party for a period in excess of 60 (sixty) days and have material adverse effect on the other party, and the parties are within such period unable to reach written agreement on amendments to the relevant provisions of this contract to take into account such conditions, the other party may terminate this agreement with immediate effect on written notice.

13.6. APPLICABLE LAW

13.6.1. This Contract shall be deemed to be concluded in the Kingdom of Eswatini and shall accordingly be governed and construed according to the laws for the time being in force in the Kingdom of Eswatini.

13.7. RELAXATION

13.7.1. No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or



operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this contract or stop such party enforcing, strict and punctual compliance with each and every provision or terms hereof.

13.8. SKILLS, CARE AND DILIGENCE

13.8.1. The Consultant shall exercise all professional skills, care and diligence in the performance of the services under the Contract and shall carry out its responsibility at the best professional engagement.

13.9. COPYRIGHTS

13.9.1 The copyright of all documents prepared by the Consultant in connection with the Project shall be vested with ESERA.

13.9.2 The Consultant may take copies of such documents but shall not use the contents thereof for any purposes unrelated to the Contract without the prior written consent of ESERA.

13.10. OBLIGATIONS OF ESERA

13.10.1. Furnish data and information

13.10.1.1. ESERA shall:

- Furnish without charge and within a reasonable time all pertinent data and information requests by the Consultant in executing this Contract.
- Give such assistance as shall be reasonably required by the Consultant for the carrying out of its duties under the Contract.
- Give decisions on all reports, documents, recommendations and other matters properly referred to for decision by the Consultant in such reasonable time as not to delay or disrupt the performance by the Consultant of its obligations under this Contract.
- Any data they may require.
- Any assistance with regard to making appointments with Industry participants

13.10.2. Approval of amended documents

13.10.2.1. Where ESERA approved a report or document subject to modification by the Consultant, the changes requested shall be incorporated into the document within a reasonable period and in any case before the end of the Contract period.

13.10.3. Assistance to the Consultant

13.10.3.1. ESERA shall whenever possible assist the Consultant in obtaining necessary visas, permits, and customs clearance.

13.10.3.2. ESERA shall deduct the withholding tax to ensure that the Consultant complies with the tax laws of Eswatini. ESERA shall provide the Consultant with the withholding Tax Certificate.

13.11. BREACH



13.11.1 Either one of the parties shall be entitled after giving the other one of the parties 10 (ten) days' notice in writing, to terminate this agreement and to claim damages from the other one of the parties, should such other one of the parties commit any breach of the agreement and fail to remedy such breach within the said 10 (ten) days of notice.

13.12. SETTLEMENT OF DISPUTES / ARBITRATION

13.2.1 This Agreement relies for its efficacy on the exercise by the Parties of utmost good faith. Therefore, the general and specific terms and conditions of this Contract are to be construed accordingly and will be interpreted where necessary by mutual agreement.

13.2.2 If the parties are unable to resolve any dispute resulting from this Contract by means of joint co-operation or discussion between them within two weeks after a dispute arises, then it shall be resolved by way Arbitration in accordance with the Arbitration Laws of Eswatini.

13.2.3 The arbitrator shall be chosen and appointed through consensus. The Arbitrator's decision shall be final and binding on both parties. The resulting award (if any) shall be in lieu of any other remedy.

13.13. PERSONNEL

13.13.1. The personnel of the Consultant shall all be involved, each within his/her expertise and experience in the execution of the project.

13.14. DOMICILIUM

13.14.1 The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this agreement.

13.14.2 Either party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.

13.14.3 All notice, demands, communications or payments intended for either party shall be made or given at such party's *domicilium* for the time being.

13.14.4 A notice sent by one party to another party shall be deemed to be received:

Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.



ANNEXURE 1

DECLARATION OF ELIGIBILITY

[The consultant must provide a signed declaration on its letterhead in the following format.]

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

**To: Chief Executive Officer
Eswatini Energy Regulatory Authority
First Floor, Rhus Office Park,
Karl Grant Street
Mbabane**

Dear Sir,

Re: Tender Reference: **ESERA/RFP/13/2021-2022**

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.

Signed:

Authorised Representative

Date:



ANNEXURE 2
TENDER FORM

DATE	
TENDER NO	
TO	Eswatini Energy Regulatory Authority RHUS Office Park Karl Grant Street Mbabane
<p>Having examined the tendering documents the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the consultancy services for the review of Compliance Monitoring and Enforcement Framework for the Eswatini Electricity Supply Industry (ESI).</p> <p>We undertake, if our Tender is accepted, to deliver the services in accordance with the requirements of the tender document.</p> <p>We agree to abide by this Tender for a period of 90 days from the date fixed for Tender opening, and it shall remain binding upon us and may be accepted at any time before the expiration of that period. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.</p> <p>We understand that you are not bound to accept the lowest or any tender you may receive.</p>	
Signature	
Bidding Group Name	

