

ESWATINI ENERGY REGULATORY AUTHORITY



REQUEST FOR PROPOSALS

**CONSULTANCY SERVICES FOR THE DEVELOPMENT OF ESWATINI ELECTRICITY SUPPLY INDUSTRY
ENERGY STORAGE REGULATORY FRAMEWORK**

REFERENCE NUMBER: ESERA/RFP/06/2022-2023

NOVEMBER 2022



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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/06/2022-2023
Bid Description:	Procurement of Consultancy Services: Development of the Eswatini Electricity Supply Industry Energy Storage Regulatory Framework
Objective:	To procure consultancy services of a suitably qualified and competent consultant with the relevant and required engineering, legal, financial and economic expertise in the energy sector to develop a Regulatory Framework for Energy Storage for the Eswatini Electricity Supply Industry (ESI).
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 physical or through electronic means using the following banking details: Account Name: Eswatini Energy Regulatory Authority Bank Name: Nedbank Swaziland Branch Name: Mbabane Branch Code: 360164 Account Number: 0200000596311 Swift Code: NESWSZMX
Closing Date:	12 noon (CAT) on 3 January 2023. Bidders are invited to attend a Tender Opening meeting which will occur immediately after the closing time.
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 into the ESERA tender box situated at the ESERA offices reception. The two envelopes should be in one outer envelope. It must be delivered on or before the Date of Closure as addressed to: The Entity Tender Board 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 Ms. Nonhlelo Mathunjwa via email at: mathunjwan@esera.org.sz.



TERMS OF REFERENCE

2. INTRODUCTION

Liberalization of the Eswatini Electricity Supply Industry (ESI) through legislation and policy is paving the way for an efficient and competitive electricity market which is expected to result in improved quality of supply for customers and cost reflective electricity prices. The Eswatini Energy Regulatory Authority (ESERA) is mandated by the Energy Regulatory Act, 2007 (Act No.2 of 2007) to administer the Electricity Act, 2007 (Act No.3 of 2007) with the primary and core responsibilities of exercising control over the Electricity Supply Industry (ESI) and regulation of generation, transmission, distribution, supply, import and export of electricity in Eswatini.

The Authority has developed several technical standards and codes which includes the regulatory instruments within the local ESI with the goal of creating an enabling regulatory environment that will attract and encourage private sector participation in the generation sector and reduce the country's over-reliance on electricity imports. The Eswatini ESI is guided by several national policies such as the 2018 National Energy Policy which has resulted in a high presence of local generation capacity including a growing interest at national level in energy storage systems. In emerging electricity markets like Eswatini, energy storage is a crucial tool for enabling the effective integration of renewable energy and unlocking the benefits of local generation and a clean, resilient energy supply. Pursuant to the national objective of ensuring security of supply, universal access to electricity services and products, as well as promoting integrity and sustainability of the electricity supply industry, ESERA has embarked on a journey to develop a regulatory framework for Energy Storage which will include energy storage guidelines. Section 21 of the Electricity Act, 2007 provides that the *“Authority may make guidelines relating to – (a) the relationship between licensees and consumers; (b) codes of business practice and ethics; (c) performance objectives and the setting, approving and meeting of performance targets; and (d) any other matter the Authority deems appropriate for serving the sector Act.”*

The development of Energy Storage Systems (ESS) has been highly concentrated in select markets, primarily in regions with highly developed economies. In Eswatini, the ESS is envisaged to become an integral component of the electricity supply industry, allowing for the storage of energy and extension of the generation period of the electricity grid. Most recently, the local Utility installed the first large scale battery energy storage system at the 10 MW Solar Power Plant which is grid-interconnected and operational in the southern region of Eswatini. This 1 MWh storage facility is controlled by the Utility and contributes to meeting electricity demand during peak times and therefore provides flexibility in the efficient operation of the electricity grid.

An emerging regulatory framework for Energy Storage is crucial for enabling of services provided by ESS and to ensure relevant initiatives undertaken are sustainable. As the power sector evolves, storage facilities are increasingly being recognised as a power generating unit participating in the energy market and providing ancillary services as a market-based approach to Transmission System Operators (TSO) and Distribution System Operators (DSO). Currently, there is no dedicated regulatory framework in Eswatini that addresses the legal, technical and economic aspects of energy storage systems. In this context, ESERA requires the assistance of consultancy services for the development of a regulatory framework for energy storage services and products in Eswatini. This is meant to assist the Authority in establishing a regulatory environment that promotes universal access and security of electricity supply.

Technical and economic regulation of the ESI is necessary to ensure effective administration of the Electricity Act, 2007. To further our contributions to the evolving energy market and regulatory environment, the Authority through the development of the Energy Storage Framework will continue ensuring compliance to the grid code and applicable technical standards within the Eswatini ESI. The Energy Storage framework will address the technical, legal, economic and environmental compliance aspects such as energy storage grid interconnection, operation through ancillary services, tariff principles and wheeling of electricity amongst others. It is therefore important to create regulatory certainty and establish a robust legal and regulatory system for storage facilities to strengthen the electricity supply industry, allowing for and enabling innovation through the uptake and use of ESS, and levelling the playing field for ESS to compete fairly with other sources of electricity supply.

3. PURPOSE OF THIS DOCUMENT

The aim of this document is to solicit the services of a suitably qualified and experienced consultant to develop a comprehensive, cost-effective, efficient and transparent regulatory framework for energy storage in the country. International best practice emphasizes the importance of establishing an enabling regulatory environment to facilitate the uptake of energy storage in the ESI and further promotes the importance of compliance by market participants while operating storage assets.

Through the development and implementation of an energy storage framework, the Authority intends to ensure that various energy storage technologies are regulated while contributing to the security of supply and power system reliability. Best practice also observes that efficient processes need to be in place in order to manage, in a consistent, fair and transparent manner, components such as:

- Licensing of energy storage systems
- Wheeling and System Planning
- Tariff principles and pricing
- Safety and compliance

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

This section provides an outline of the scope of work to be undertaken by the Consultant on behalf of ESERA.

4.1 Study the relevant legislation and regulatory instruments for the Eswatini Electricity Supply Industry (ESI) in order to understand the electricity market and current regulatory environment and provide recommendations on areas of improvement in matters relating to energy storage.

4.2 Assess the requirements to regulate energy storage systems in Eswatini ESI, and review and benchmark relevant energy storage best practices in electricity supply industries from other developing countries regionally and internationally.

4.3 Identify relevant and key stakeholders with clear roles and responsibilities for the successful implementation of the energy storage regulatory framework in the country. The contribution of such stakeholders is to be sought and incorporated in the development of the framework.

4.4 Develop a regulatory framework that should provide, but not limited to, the following:



- i. Definitions, classes, and a clear criterion for the categorisation of energy storage systems for the Eswatini ESI, which may be based on size, functionality and complexity.
- ii. Licensing framework for energy storage systems, which should provide recommendations on the licensing requirements and conditions for regulated energy storage systems. This must also include guidance for instances where energy storage extension/expansion is sought by an existing energy storage licensee.
- iii. Strategies to address wheeling of electricity and ancillary services provided by energy storage systems to the System Operator.
- iv. Pricing models, tariff setting design, methodology and principles for determination of tariffs for energy storage systems in consideration of the provisions in other regulatory instruments including the wheeling framework and the various possible tariff schemes for energy storage system sizes.
- v. Safety, compliance and monitoring requirements for all categories of regulated energy storage systems. This should also include environmental aspects such as considerations for environmental impacts as well as decommissioning and disposal of these systems.
- vi. Technical standards governing interconnection to the national grid, technology standards, power quality as well as service quality for energy storage.
- vii. Clear application and approval process in line with the licencing requirements and conditions with associated documents necessary in the implementation of the regulatory framework.
- viii. Other such miscellaneous considerations which include complaints procedure, dispute resolution, amendment or repeal, among others.

4.5 Provide recommendations on changes or areas of improvement in relevant policy, legislation, and the technical and economic regulation of the Eswatini electricity supply industry with regards to the development and deployment of energy storage systems.

5. OBJECTIVE AND DELIVERABLES

The overall objective of this assignment is to support ESERA in the development of a regulatory framework that will guide the overall regulation of energy storage systems in 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 assignment requires strong engagement and coordination with local stakeholders and the successful bidder will be expected to provide the following deliverables:

Deliverable 1: Inception Report

During the first 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: Eswatini energy storage regulatory requirements and industry assessment report

Based on the review of the Eswatini ESI, stakeholder consultations, and extensive case studies on deployment and regulation of energy storage systems regionally and internationally, the Consultant shall provide a comprehensive report on the best practice through benchmarking and need for the



requirements for regulation of energy storage systems locally. This should include an assessment of the local market or industry status with a strong focus on current regulatory environment and the implementation of energy storage in the country. The report should, detail the use cases through a classification scheme of energy storage systems within the Eswatini local context and highlight the various tariff schemes. This includes but not limited to the use cases of storage systems that are grid-connected, standalone, mini-grids and off-grids. Furthermore, the report shall among other things, provide an assessment of the market potential, existing barriers and opportunities (based on both technical and economic factors) as well as provide recommendations on areas of improvement in matters relating to deployment of energy storage systems in the country.

Deliverable 3: Energy Storage Regulatory Framework

Based on the recommendations of the market and industry report together with other studies and consultations, the Consultant must produce a comprehensive, cost-effective, efficient and transparent regulatory framework that will guide the regulation of the energy storage systems within the Eswatini electricity supply industry. The framework shall be clear on:

a) Legislative and Licensing Approach

- Definitions and classification of energy storage systems for the Eswatini ESI;
- Energy Storage Licence aligned with the Electricity Act. Energy storage requirements for licensing, exemptions, approval and relevant procedures;
- Identify the necessary amendments in the existing suite of licensing documentation, rules and other regulatory instruments to accommodate energy storage systems;
- Licence conditions to enable compliance monitoring and enforcement of all important technical requirements for the energy storage licensee including ensuring safe and sustainable operations and overall economic efficiency;
- Strategies to address energy storage licensees who provide ancillary services, who are aggregators and participate in the electricity market or any other mechanisms such as wheeling.

b) Technical Regulation and System Planning Rules

- Technical standards governing interconnection to the national grid, technology standards as well as power and service quality. This should also include standards for stand-alone systems;
- The role and requirements of the Utility and System Operator in grid-connected energy storage systems;
- Safety, compliance and monitoring requirements and strategies;
- Technical compliance, system planning and grid operations rules which includes the energy flows, imbalances, energy production management.

c) Tariffs and Pricing of Energy Storage

- Pricing models, tariff setting design, methodology and principles for determination of tariffs for energy storage systems. This may take into consideration provisions in the existing regulatory frameworks such as wheeling framework and the various possible tariff schemes for energy storage system sizes;
- The charges to be attracted by energy storage systems providing Ancillary Services and/or Balancing Mechanisms shall be clearly explained;
- Mechanisms to address the various uses of energy storage systems such as energy arbitrage and how this would be managed to ensure cost reflectivity and fair market practice.

d) Other regulatory guidelines and transitional provisions

- All relevant documents for the implementation, registration, application, licencing of energy storage systems including handling of complaints and disputes;
- Environmental aspects such as commissioning, decommissioning and disposal of energy storage.

The Consultant will produce the draft energy storage framework and regulatory guidelines in line with the Electricity and Regulatory Acts which will be discussed with ESERA and relevant key stakeholders as identified by the Regulator and the Consultant before a final framework that will incorporate the stakeholder's feedback.

Deliverable 4: Final Project Report

The Consultant shall then provide a report that outlines the reasoning behind the development of this energy storage regulatory framework, recommendations on its implementation (with a clear implementation plan) as well as potential risks associated with its implementation. In this report, the Consultant shall also provide recommendations on improvements to existing regulatory instruments and legislation to enable efficient and effective operationalization of this framework.

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. METHODOLOGY

The Consultant shall propose a suitable methodology for carrying out the assignment, and may have access to relevant documents at ESERA and arrange consultations with key stakeholders. In engaging key stakeholders, ESERA will make efforts to arrange for appointments with focal persons in the respective organizations. However, the consultant will, in close liaison with the relevant ESERA department, agree on a work plan and budget that should seek to address the outputs in the terms of reference.

7. COORDINATING 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 regulatory requirements and industry assessment report to all key stakeholders.
 - Workshop 3: Presentation of draft energy storage regulatory framework and guidelines to ESERA for understanding and approval.
 - Workshop 4: Presentation of draft energy storage regulatory framework and guidelines to other stakeholders as identified by ESERA and the Consultant.

- Workshop 5: Training workshop for selected ESERA staff and key stakeholders on the final energy storage regulatory framework and guidelines.
- 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.

8. QUALIFICATIONS OF THE TEAM

The desired Consultant for this assignment shall possess the following qualities:

- 8.1 Team members shall demonstrate a balanced academic background in electrical engineering, law, economics and finance or related. Qualifications in renewable energy and energy storage systems will present strong added value.
- 8.2 The team leader should be a technical specialist who possess a credible track-record of at least (10) years in the consulting and/or project development space, which includes conducting feasibility studies, preferably for renewable power plants and energy storage. Must have at least a Master's degree in economics, engineering or a relevant field. A PhD qualification will be an added advantage.
- 8.3 Have good knowledge and understanding of the African, preferably Eswatini, energy sector or electricity supply industry with related work experience.
- 8.4 Demonstrated experience working in the energy regulatory environment locally, regionally and internationally. Experience in developing technical and economic regulatory frameworks will present a strong added value.
- 8.5 Excellent problem solving, communication and research skills.
- 8.6 Strong analytical writing skills, ability to manage complex tasks and coordinate an interdisciplinary team in a multi-cultural environment
- 8.7 Fluency in the English Language as the official working language for this assignment shall be English.

9. PROPOSAL SUBMISSION REQUIREMENTS AND PROCEDURE

Applicants shall submit their written proposals in the English Language as follows:

9.1 Technical Proposal with:

- 9.1.1 Detailed CVs and qualifications of all consultants participating in this assignment clearly demonstrating sufficient experience in carrying out similar tasks before.
- 9.1.2 Proposed methodology and implementation/work plan with clear timelines.
- 9.1.3 List of at least three relevant projects undertaken/involved in with corresponding reference letters.
- 9.1.4 Certified copies of academic certificates and professional affiliations.
- 9.1.5 Signed Declaration of Eligibility as provided in Annexure 1.

9.2 Financial Proposal:

- 9.2.1 With all monetary amounts in the official Kingdom of Eswatini currency, which is Eswatini Lilangeni (SZL).



9.2.2 To be inclusive of all taxes. Non-resident Consultants must note that the 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.

9.2.3 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 including the 15% withholding tax.

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 on the outside and deposited in the ESERA tender box situated at the ESERA offices reception, found at the address provided below. The two envelopes should be in one outer envelope clearly marked with Bid number and Bid Description.

The closing date for submission of responses to the Request for Proposals is 12:00hrs (CAT) on Tuesday, 3 January 2023. Late, incomplete, telephoned or telegraphic tenders will not be considered. Bidders are invited to attend a Tender Opening meeting which will occur immediately after the closing time.

**Contract No: ESERA/RFP/06/2022-2023
CONSULTANCY SERVICES FOR THE DEVELOPMENT OF THE ESWATINI ENERGY STORAGE
REGULATORY FRAMEWORK**

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

**The Entity Tender Board
Eswatini Energy Regulatory Authority
First Floor, RHUS Office Park
Karl Grant Street
MBABANE**

10. EVALUATION METHODOLOGY

Proposal will be evaluated on a Quality basis and shall be in two-folds. First will be the technical evaluation, which will then be followed by the financial evaluation for only 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. The weights for the evaluation are as follows:



Technical Proposal – 70%

Financial Proposal – 30%

10.1 Technical Evaluation Criteria

	Description	Points
EXPERIENCE OF THE CONSULTANTS/ CONSORTIUM	Specific experience directly related to the assignment	10
	Experience of the bidding firm/consortium in the electricity supply industry	10
	Experience of the firm/consortium in developing regulatory frameworks or similar within the electricity supply industry	5
	Experience of the firm/consortium in preparation of feasibility studies in renewable energy, preferably energy storage systems	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, qualification and experience	10
	Membership of professional organisations	3
	Publications and professional attainment	3
QUALIFICATIONS, EXPERIENCE AND COMPETENCE OF SUPPORT STAFF	Education, qualification and experience	8
	Membership of professional organisations	3
	Publications and professional attainment	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	70

10.2 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:

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

10.3 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:

$$FV = Ts \times T\% + Fs \times P\%,$$

where FV is the Final Score, Ts is the bid technical score, T is the defined weight of the technical proposal, Fs 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.

11. STATUTORY DOCUMENTS TO BE SUBMITTED WITH TECHNICAL PROPOSAL

The following documents will not contribute to the evaluation score but are required. Applicants shall provide certified copies of the documents:

- Power of Attorney
- Certificate of Incorporation or equivalent
- An original and valid Tax Compliance Certificate or equivalent
- Certified Copy of Trading Licence or equivalent
- Form J and Form C
- Police Clearance or Affidavits of Directors
- Certified copy of labour compliance certificate or equivalent.
- Certified copy of Eswatini National Provident Fund (ENPF) certificate or equivalent.

Other information required:

- Last three years audited or independently reviewed financial statements
- Signed consortium agreement (if applicable)
- Company profile with core company business, list of similar projects completed and any other information

12. STRUCTURE OF THE TECHNICAL PROPOSAL

12.1 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.

12.2 Background of the Organisation

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

- A 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

12.3 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

12.4 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.

12.5 Attachments – Statutory Documents and Curriculum Vitae

The tender documents must include all the statutory and other documents as provided in Section 11 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.

13. ADDITIONAL INFORMATION

- ESERA reserves the right to modify the scope of this project subject to negotiations with the successful tenderer.
- 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.
- 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 Agency (ESPPRA). **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.
- All enquiries relating to this tender should be directed in writing to Ms. Nonhlelo Mathunjwa via email at mathunjwan@esera.org.sz before **Tuesday, 3 January 2023**.
- The Authority shall allow requests for withdrawal, modification or substitution of submitted proposals from Consultants as long as the deadline has not elapsed. Such requests shall be in writing as addressed to the tender submission address provided in the Data Sheet.

14. DATA SHEET

1	Eligibility Criteria	<p>Tender documents must be submitted with the following:</p> <ol style="list-style-type: none"> 1. Tender form 2. Declaration of eligibility 3. Signed consortium agreement (if applicable) 4. Company profile 5. Certificate of incorporation 6. Power of attorney 7. Form J and Form C or equivalent 8. An original and valid Tax Compliance Certificate or equivalent 9. Certified copy of trading licence or equivalent 10. Police clearance or affidavits of directors 11. Professional affiliation 12. Last three years audited or independently reviewed financial statements 13. Certified copy of labour compliance certificate or equivalent. 14. Certified copy of Eswatini National Provident Fund (ENPF) certificate or equivalent.
2	Qualification criteria	<ol style="list-style-type: none"> 1. Experience of Consultants/ consortium 2. Qualifications, experience and competence of team leader and support staff 3. Proposed approach or methodology 4. Local participation and knowledge transfer
3	Validity	<p>The tender must be valid for 90 days from the submission deadline. Tenders with a validity less than this will be treated as non-responsive.</p>
4	Prices	<p>Prices should be fixed and firm for the duration of the contract. The accepted currency is the Eswatini Lilangeni (SZL).</p>
5	Enquiries	<p>All enquiries relating to this tender should be directed in writing to Ms. Nonhlelo Mathunjwa via email at mathunjwan@esera.org.sz</p> <p>Deadline for request for clarifications/enquiries should be at least 7 days before submission deadline of proposals</p>
6	Tender Submission	<p>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 into the ESERA tender box situated at the ESERA offices reception. The two envelopes should be in one outer envelope. It must be delivered on or before the Date of Closure as addressed to:</p> <p>The Entity Tender Board Eswatini Energy Regulatory Authority First Floor, RHUS Office Park Karl Grant Street, MBABANE</p>

7	Evaluation of tenders	Tenders will be evaluated according to the laid-out criteria in the “Evaluation Methodology” in part 10 of this tender document.
8	Intention to award contract	Intention to award will be advertised on the Eswatini Public Procurement Regulatory Authority’s website and local print media.

15. CONTRACT TERMS AND CONDITIONS

15.1 DEFINITIONS

15.1.1. 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.

15.1.2. 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.

15.1.3. 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 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.

15.1.4. Expressions or words defined in this agreement shall bear their ordinary meaning unless otherwise defined in this contract or by law.

15.1.5. 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.

15.1.6. 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.

15.2. COMMENCEMENT, EXECUTION AND COMPLETION OF THE PROJECT

15.2.1. Contract Negotiation

The Parties shall be allowed to negotiate the terms and conditions of this contract in accordance with applicable laws and regulations.

15.2.2. Commencement

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

15.2.1.2. 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.

15.2.2. Execution

15.2.2.1. The project shall be executed during the contract period and completed by the Consultant on or before the completion date.

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

15.2.2.3 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.

15.2.3. Scope of Work

15.2.3.1. The Consultant shall perform consultancy services to provide an adequate, and satisfactory development of the Energy Storage framework including but not limited to the following:

- a. Licensing of energy storage
- b. Pricing models and tariff design
- c. Safety and compliance
- d. Wheeling and System Planning
- e. Develop a registration, application process and other relevant documents for Energy Storage
- f. and as further explained in Section 4 of this document.

15.2.3.2. With any manner, details and as may be necessary in ensuring an excellent and satisfactory Energy Storage framework on behalf of ESERA.

15.2.3.3. 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*

15.3. PAYMENT

15.3.1 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.

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

15.3.3 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.

15.3.4 The payment terms shall be as follows:

MILESTONE	PAYMENT PERCENTAGE
Contract Signature	10%
Deliverable 1	25%
Deliverable 2	30%
Deliverable 3 and 4	35%

15.3.5 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 Individual Consultant in her/his invoices.

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

15.3.7. Indirect Payment

15.3.7.1. 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.

15.4. POSTPONEMENT, VARIATION AND TERMINATION

15.4.1. Postponement and Termination.

15.4.1.1 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.

15.4.1.2 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.

15.4.1.3 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.

15.4.1.4 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.

15.4.2. Variation

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

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

15.4.3. Claims for Default

15.4.3.1 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.

15.5 FORCE MAJEURE

15.5.1 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.

15.5.2 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.

15.6. APPLICABLE LAW

15.6.1. 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.

15.7. RELAXATION

15.7.1. 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.

15.8. SKILLS, CARE AND DILIGENCE

15.8.1. 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.

15.9. COPYRIGHTS

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

15.9.2 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.

15.10. OBLIGATIONS OF ESERA

15.10.1. Furnish data and information

15.10.1.1. 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

15.10.2. Approval of amended documents

15.10.2.1. 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.

15.10.3. Assistance to the Consultant

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

15.10.3.2. 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.

15.11. BREACH

15.11.1 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.

15.12. SETTLEMENT OF DISPUTES / ARBITRATION

15.12.1 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.

15.12.2 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.

15.12.3 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.

15.13. PERSONNEL

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

15.14. DOMICILIUM

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

15.14.2 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.

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

15.14.4 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 individual consultant must provide a signed declaration on its letterhead in the following format.]

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

**To: The Entity Tender Board
Eswatini Energy Regulatory Authority
First Floor, Rhus Office Park,
Karl Grant Street
Mbabane**

Dear Sir,

Re: Tender Reference: **ESERA/RFP/06/2022-2023**

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 development of a regulatory framework for energy storage in 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	