



REQUEST FOR PROPOSALS

Retender No: MCMz002 OF 2024/2025

**SELECTION OF CONSULTING SERVICES FOR
CONDUCTING A RE-ALIGNMENT OF FUNCTIONAL
STRUCTURES WITH EXISTING ORGANIZATIONAL
STRUCTURE EXERCISE**

**MUNICIPAL COUNCIL OF MANZINI
ESWATINI**

ISSUED ON: 28TH JUNE 2024

Letter of Invitation

Retender No. MCMz002 OF 2024/2025

Municipal Council of Manzini

P O Box 418

Manzini

28th June 2024

Dear Mr. /Ms.

1. The Municipal Council of Manzini invites proposals from local reputable and experienced consultancy firms for conducting a re-alignment of functional structures with existing organizational structure and the new strategic direction of the municipality to improve operational efficiency and effectiveness.
2. The successful firm will be selected through the Quality-Cost Based method utilizing the evaluation criteria discussed in the RFP document.
3. The assignment duration is a period of ninety (90) working days.
4. The RFP includes the following documents:
 - Section 1 - Letter of Invitation
 - Section 2 - Instructions to Consultants and Data Sheet
 - Section 3 – Terms of Reference
 - Section 4 - Technical Proposal Standard Forms
 - Section 5 - Financial Proposal Standard Forms
 - Section 6 – Corrupt and Fraudulent Practices
 - Section 8 - Standard Forms of Contract

5. Bidders will be required to pay a non-refundable tender fee of **E500.00** at the Municipal Council of Manzini Civic Offices, Rates Hall or through EFT at:

A/C Name: Municipal Council of Manzini

Bank: Ned Bank (Manzini)

Account: 40000431593

Branch Code: 360264 (Manzini)

Type: Current Account

REF: Company name & Tender No.

6. Tenders must be delivered to and placed in a tender box in the Manzini Civic offices on or before **1200hrs local time on 26th July 2024**. Tenders must be appropriately sealed and labelled and later tenders will be rejected. Tender will be opened in the presence of the tenders' representatives who chose to attend in person at address below immediately after **1215hrs local time on 26th July 2024**. All tenders be accompanied by a tender securing declaration.

The addresses referred to above is:

Municipal Council of Manzini

CIVIC Offices, P O Box 418

Between Ngwane & Nkosuluhlaza Street, Manzini, Eswatini

Municipal Council of Manzini

Chief Executive Officer

Instructions to Consultants and Data Sheet

A. General Provisions

1. Definitions

- (a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- (b) “Applicable Regulations” means the Public Procurement Regulations, 2022 governing the selection and Contract award process as set forth in this RFP.
- (c) “Applicable Law” means the Laws of Eswatini and any other instruments having the force of law in Eswatini as they may be issued and in force from time to time.
- (d) “Consultant” means a legally established professional consulting firm or an entity that may provide or provides the Services to the Municipal Council of Manzini under the Contract.
- (e) “Contract” means a legally binding written agreement signed between the Municipal Council of Manzini and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- (f) “Data Sheet” means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- (g) “Day” means a calendar day.
- (h) “Experts” means, collectively, Key Experts, Non-Key Experts, or

any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).

- (i) “Government” means the government of the Kingdom of Eswatini, any Municipal Council of Manzini or the relevant approvals authority as defined in the Public Procurement Act of 2011.
- (j) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Municipal Council of Manzini for the performance of the Contract.
- (k) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Consultant’s proposal.
- (l) “ITC” (this Section 2 of the RFP) means the Instructions to Consultants that provides the shortlisted Consultants with all information needed to prepare their Proposals.
- (m) “LOI” (this Section 1 of the RFP) means the Letter of Invitation being sent by the Municipal Council of Manzini to the shortlisted Consultants.
- (n) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and

whose CVs are not evaluated individually.

- (o) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- (p) “RFP” means the Request for Proposals to be prepared by the Municipal Council of Manzini for the selection of consultants, based on the SRFP.
- (q) “SRFP” means the Standard Request for Proposals, which must be used by the Municipal Council of Manzini as the basis for the preparation of the RFP.
- (r) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- (s) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Municipal Council of Manzini during the performance of the Contract.
- (t) “TORs” (this Section 7 of the RFP) means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Municipal Council of Manzini and the Consultant and expected results and deliverables of the assignment.

2. Introduction

2.1 The Municipal Council of Manzini intends to engage a reputable and experienced consultancy firm for the re-alignment of functional structures with existing organizational structure through the Quality-Cost Based Method.

2.2 Interested and eligible Consultants are invited to submit a

Technical Proposal and a Financial Proposal, as specified in the **Data Sheet**, for the provision of a re-alignment of functional structures with existing organizational structure service to the municipality. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

2.3 The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is optional and is at the Consultants' expense.

2.4 The Municipal Council of Manzini will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the **Data Sheet**.

3. Conflict of Interest

3.1 The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Municipal Council of Manzini's interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.

3.2 The Consultant has an obligation to disclose to the Municipal Council of Manzini any situation of actual or potential conflict that impacts its capacity to serve the best interest of its Municipal Council of Manzini. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract and/or sanctions by ESPPRA.

3.2.1 Without limitation on the generality of the foregoing, and unless stated otherwise in the **Data Sheet**, the Consultant shall not be hired under the circumstances set forth below:

- a. Conflicting activities**

 - (i) Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Municipal Council of Manzini to provide goods, works, or non-consulting services for a project shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

- b. Conflicting assignments**

 - (ii) Conflict among consulting assignments: a Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant for the same or for another Municipal Council of Manzini.

- c. Conflicting relationships**

 - (iii) Relationship with the Municipal Council of Manzini’s staff: a Consultant that has a close business or family relationship with a professional staff of the Municipal Council of Manzini (or of the Municipal Council of Manzini, or of implementing agency, or of a recipient of a part of the Government’s financing) who are directly involved in any part of (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Government throughout the selection process and the execution of the Contract.

4. Unfair 4.1 Fairness and transparency in the selection process require that the

Competitive Advantage

Consultants or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Municipal Council of Manzini shall indicate in the **Data Sheet** and make available to all shortlisted Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

5. Corrupt and Fraudulent Practices

5.1 The Government requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section 6.

5.2 In further pursuance of this policy, Consultant shall permit and shall cause its agents, Experts, Sub-consultants, sub-contractors, services providers, or suppliers to permit the Government to inspect all accounts, records, and other documents relating to the submission of the Proposal and contract performance (in case of an award), and to have them audited by auditors appointed by the Government.

6. Eligibility

6.1 The Act permits consultants (individuals and firms, including Joint Ventures and their individual members) from all countries to offer consulting services for Government-financed projects.

6.2 Furthermore, it is the Consultant's responsibility to ensure that its Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by the Government.

6.3 As an exception to the foregoing Clauses 6.1 and 6.2 above:

a. Sanctions

6.3.1 A firm or an individual sanctioned by ESPPRA in accordance with Sections fifty-five (55), fifty-six (56) and fifty-seven (57) of the Public Procurement Act of 2020 and in accordance with regulations 16, 17 and 18 of the Public Procurement

Regulations of 2020., shall be ineligible to be awarded a Government-financed contract, or to benefit from a Government-financed contract, financially or otherwise, during such period of time as ESPPRA shall determine. The list of debarred firms and individuals is available at the electronic address specified in the **Data Sheet**.

b. Prohibitions

6.3.2 Firms and individuals of a country or goods manufactured in a country may be ineligible if so indicated in Section 5 (Eligible Countries) and:

- (a) as a matter of law or official regulations, the Government prohibits commercial relations with that country, provided that Cooperating Partners involved are satisfied that such exclusion does not preclude effective competition for the provision of Services required; or

c. Restrictions for Government-owned Enterprises

6.3.3 A statutory corporation or body or company in which Government has a majority or controlling interest shall be eligible only if they meet the provisions of Section 92 of the Public Procurement Regulations 2020.

To establish eligibility, the government-owned enterprise or institution should provide all relevant documents (including its charter) sufficient to demonstrate that it meets the provisions of Section 92 of the Public Procurement Regulations 2020

d. Restrictions for public employees

6.3.4 Public Officials of Eswatini are not eligible to be included as Experts in the Consultant's Proposal unless such engagement does not conflict with any employment or other laws, regulations, or policies of Eswatini, and they:

- (i) are on leave of absence without pay, or have resigned or retired;

(ii) are not being hired by the same agency they were working for before going on leave of absence without pay, resigning, or retiring

(in case of resignation or retirement, for a period of at least 6 (six) months, or the period established by statutory provisions applying to civil servants or government employees in Eswatini, whichever is longer. Experts who are employed by the government-owned universities, educational or research institutions are not eligible unless they have been full time employees of their institutions for a year or more prior to being included in Consultant's Proposal.; and

(iii) their hiring would not create a conflict of interest.

B. Preparation of Proposals

7. General Considerations

7.1 In preparing the Proposal, the Consultant is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

8. Cost of Preparation of Proposal

8.1 The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Municipal Council of Manzini shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Municipal Council of Manzini is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultant.

9. Language

9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Municipal Council of Manzini, shall be written in **English**.

10. Documents

10.1 The Proposal shall comprise the documents and forms listed in the

Comprising the Proposal **Data Sheet.**

10.2 If specified in the **Data Sheet**, the Consultant shall include a statement of an undertaking of the Consultant to observe, in competing for and executing a contract, the Municipal Council of Manzini country's laws against fraud and corruption (including bribery).

10.3 The Consultant shall furnish information on commissions, gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal submission form (Section 4).

11. Only One Proposal

11.1 The Consultant (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude a Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the **Data Sheet**.

12. Proposal Validity

12.1 **The Data Sheet** indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.

12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates, and the total price.

12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may

be subject to sanctions in accordance with Clause 5 of this ITC.

**a. Extension of
Validity Period**

12.4 The Municipal Council of Manzini will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Municipal Council of Manzini may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts.

12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

**b. Substitution of
Key Experts at
Validity
Extension**

12.7 If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Municipal Council of Manzini together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original Key Expert.

12.8 If the Consultant fails to provide a replacement Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Municipal Council of Manzini, such Proposal will be rejected.

**c. Sub-
Contracting**

12.9 The Consultant shall not subcontract the whole of the Services.

**13. Clarification and
Amendment of
RFP**

13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the **Data Sheet** before the Proposals'

submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Municipal Council of Manzini's address indicated in the **Data Sheet**. The Municipal Council of Manzini will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all shortlisted Consultants. Should the Municipal Council of Manzini deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:

13.1.1 At any time before the proposal submission deadline, the Municipal Council of Manzini may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all shortlisted Consultants and will be binding on them. The shortlisted Consultants shall acknowledge receipt of all amendments in writing.

13.1.2 If the amendment is substantial, the Municipal Council of Manzini may extend the proposal submission deadline to give the shortlisted Consultants reasonable time to take an amendment into account in their Proposals.

13.2 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14. Preparation of Proposals – Specific Considerations

14.1 While preparing the Proposal, the Consultant must give particular attention to the following:

14.1.1 If a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so with

either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if permitted in the **Data Sheet**. In all such cases a shortlisted Consultant must obtain the written approval of the Municipal Council of Manzini prior to the submission of the Proposal. When associating with non-shortlisted firms in the form of a joint venture or a sub-consultancy, the shortlisted Consultant shall be a lead member. If shortlisted Consultants associate with each other, any of them can be a lead member.

14.1.2 The Municipal Council of Manzini may indicate in the **Data Sheet** the estimated Key Experts' time input (expressed in person-month) or the Municipal Council of Manzini's estimated total cost of the assignment, but not both. This estimate is indicative, and the Proposal shall be based on the Consultant's own estimates for the same.

14.1.3 If stated in the **Data Sheet**, the Consultant shall include in its Proposal at least the same time input (in the same unit as indicated in the **Data Sheet**) of Key Experts, failing which the Financial Proposal will be adjusted for the purpose of comparison of proposals and decision for award in accordance with the procedure in the **Data Sheet**.

14.1.4 For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input is not disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the **Data Sheet**, and the Financial Proposal shall not exceed this budget.

15. Technical Proposal Format and Content

15.1 The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

15.1.1 Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

15.2 Depending on the nature of the assignment, the Consultant is required to submit a Full Technical Proposal (FTP), or a Simplified Technical Proposal (STP) as indicated in the **Data Sheet** and using the Standard Forms provided in Section 3 of the RFP.

16. Financial Proposal

16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the **Data Sheet**.

a. Price Adjustment

16.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates applies if so stated in the **Data Sheet**.

b. Taxes

16.3 The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the **Data Sheet**. Information on taxes in Eswatini is provided in the **Data Sheet**.

c. Currency of Proposal

16.4 The Consultant may express the price for its Services in the currency or currencies as stated in the **Data Sheet**. If indicated in the **Data Sheet**, the portion of the price representing local cost shall be stated in the national currency.

d. Currency of Payment

16.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. Submission, Opening and Evaluation

17. Submission, Sealing, and Marking of Proposals

17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with Clause 10 (Documents Comprising Proposal). The submission can be done by mail or by hand. If specified in the **Data Sheet**, the Consultant has the option of submitting its Proposals electronically.

17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and, if applicable, the Financial Proposal and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.2.1 A Proposal submitted by a Joint Venture shall be signed by all members to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.3 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.4 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the **Data Sheet**. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

17.5 The original and all the copies of the Technical Proposal shall be placed inside of a sealed envelope clearly marked "**TECHNICAL PROPOSAL**", "**RE-ALIGNMENT OF FUNCTIONAL STRUCTURES WITH EXISTING ORGANIZATIONAL STRUCTURE**", reference number, name

and address of the Consultant, and with a warning “**DO NOT OPEN UNTIL [INSERT THE DATE AND THE TIME OF THE TECHNICAL PROPOSAL SUBMISSION DEADLINE].**”

17.6 Similarly, the original Financial Proposal (if required for the applicable selection method) shall be placed inside of a sealed envelope clearly marked “**FINANCIAL PROPOSAL**” followed by the name of the assignment, reference number, name, and address of the Consultant, and with a warning “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**”

17.7 The sealed envelopes containing the Technical and Financial Proposals shall be placed into one outer envelope and sealed. This outer envelope shall bear the submission address, RFP reference number, the name of the assignment, Consultant’s name, and the address, and shall be clearly marked “**DO NOT OPEN BEFORE [insert the time and date of the submission deadline indicated in the Data Sheet]**”.

17.8 If the envelopes and packages with the Proposal are not sealed and marked as required, the Municipal Council of Manzini will assume no responsibility for the misplacement, loss, or premature opening of the Proposal.

17.9 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Municipal Council of Manzini no later than the deadline indicated in the **Data Sheet**, or any extension to this deadline. Any Proposal or its modification received by the Municipal Council of Manzini after the deadline shall be declared late and rejected, and promptly returned unopened.

18. Confidentiality

18.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Municipal Council of Manzini on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award

recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

18.2 Any attempt by shortlisted Consultants or anyone on behalf of the Consultant to influence improperly the Municipal Council of Manzini in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing sanctions procedures.

18.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a consultant wishes to contact the Municipal Council of Manzini or ESPPRA on any matter related to the selection process, it should do so only in writing.

19. Opening of Technical Proposals

19.1 The Municipal Council of Manzini's tender opening committee shall conduct the opening of the Technical Proposals in the presence of the shortlisted Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the **Data Sheet**). The opening date, time and the address are stated in the **Data Sheet**. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored with a reputable public auditor or independent authority until they are opened in accordance with Clause 23 of the ITC.

19.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed

appropriate or as indicated in the **Data Sheet**.

20. Proposals Evaluation

20.1 Subject to provision of Clause 15.1 of the ITC, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and approved.

20.2 The Consultant is not permitted to alter or modify its Proposal in any way after the proposal submission deadline except as permitted under Clause 12.7 of this ITC. While evaluating the Proposals, the Municipal Council of Manzini will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

21. Evaluation of Technical Proposals

21.1 The Municipal Council of Manzini's evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet**. Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the **Data Sheet**.

22. Financial Proposals for QBS

22.1 Following the ranking of the Technical Proposals, when the selection is based on quality only (QBS), the top-ranked Consultant is invited to negotiate the Contract.

22.2 If Financial Proposals were invited together with the Technical Proposals, only the Financial Proposal of the technically top-ranked Consultant is opened by the Municipal Council of Manzini's evaluation committee. All other Financial Proposals are returned unopened after the Contract negotiations are successfully concluded and the Contract is signed.

23. Public Opening of Financial Proposals (for QCBS, and

23.1 After the technical evaluation is completed and has been approved, the Municipal Council of Manzini shall notify those

LCS methods)

Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score (and shall provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion) that their Financial Proposals will be returned unopened after completing the selection process and Contract signing. The Municipal Council of Manzini shall simultaneously notify in writing those Consultants that have achieved the minimum overall technical score and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the **Data Sheet**) is optional and is at the Consultant's choice.

23.2 The Financial Proposals shall be opened by the Municipal Council of Manzini's financial opening committee in the presence of the representatives of those Consultants whose proposals have passed the minimum technical score. At the opening, the names of the Consultants, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

24. Correction of Errors

24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

a. Time-Based

24.1.1 If a Time-Based contract form is included in the RFP, the

Contracts Municipal Council of Manzini’s evaluation committee will (a) correct any computational or arithmetical errors, and (b) adjust the prices if they fail to reflect all inputs included for the respective activities or items in the Technical Proposal. In case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between words and figures, the former will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Municipal Council of Manzini’s evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

b. Lump-Sum Contracts 24.2 If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical corrections nor price adjustments shall be made. The total price, net of taxes understood as per Clause ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

25. Taxes 25.1 The Municipal Council of Manzini’s evaluation of the Consultant’s Financial Proposal shall exclude taxes and duties in Eswatini in accordance with the instructions in the **Data Sheet**.

26. Conversion to Single Currency 26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the **Data Sheet**.

27. Combined Quality and Cost Evaluation

a. Quality- and Cost-Based Selection (QCBS)

27.1 In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the **Data Sheet**. The Consultant achieving the highest combined technical and financial score will be invited for negotiations.

b. Fixed-Budget Selection (FBS)

27.2 In the case of FBS, those Proposals that exceed the budget indicated in Clause 14.1.4 of the **Data Sheet** shall be rejected.

27.3 The Municipal Council of Manzini will select the Consultant that submitted the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP and invite such Consultant to negotiate the Contract.

c. Least-Cost Selection

27.4 In the case of Least-Cost Selection (LCS), the Municipal Council of Manzini will select the Consultant with the lowest evaluated total price among those consultants that achieved the minimum technical score and invite such Consultant to negotiate the Contract.

D. Negotiations and Award

28. Negotiations

28.1 The negotiations will be held at the date and address indicated in the **Data Sheet** with the Consultant's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Consultant.

28.2 The Municipal Council of Manzini shall prepare minutes of negotiations that are signed by the Municipal Council of Manzini and the Consultant's authorized representative.

a. Availability of Key Experts

28.3 The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with Clause 12 of the ITC. Failure to confirm the Key Experts' availability may result in the rejection of the Consultant's Proposal and the Municipal Council of Manzini proceeding to negotiate the Contract with the next-ranked Consultant.

28.4 Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

b. Technical negotiations

28.5 The negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Municipal Council of Manzini's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

c. Financial negotiations

28.6 The negotiations include the clarification of the Consultant's tax liability in Eswatini and how it should be reflected in the Contract.

28.7 If the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

28.8 In the case of a Time-Based contract, unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Municipal Council of Manzini may ask for clarifications and, if the fees are very high, ask to change the rates after consultation with ESPPRA.

The format for (i) providing information on remuneration rates in the case of Quality Based Selection; and (ii) clarifying remuneration rates' structure under Clause 28.8 above, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates.

29. Conclusion of Negotiations

29.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Municipal Council of Manzini and the Consultant's authorized representative.

29.2 If the negotiations fail, the Municipal Council of Manzini shall inform the Consultant in writing of all pending issues and

disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Municipal Council of Manzini shall terminate the negotiations informing the Consultant of the reasons for doing so. After having obtained approval, the Municipal Council of Manzini will invite the next-ranked Consultant to negotiate a Contract. Once the Municipal Council of Manzini commences negotiations with the next-ranked Consultant, the Municipal Council of Manzini shall not reopen the earlier negotiations.

30. Award of Contract

30.1 After completing the negotiations, the Municipal Council of Manzini shall obtain approval to the negotiated draft Contract, if applicable; sign the Contract; publish the intention to award as per the instructions in the **Data Sheet**; and promptly notify the other shortlisted Consultants.

30.2 The Consultant is expected to commence the assignment on the date and at the location specified in the **Data Sheet**.

31. Standstill Period

31.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 10 working days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

31.2 Where a Standstill Period applies, it shall commence when the Municipal Council of Manzini has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

32. Debriefing by the Municipal Council of Manzini

32.1 On receipt of the Municipal Council of Manzini's Notification of Intention to Enter into a Contract referred to in ITT 30, an unsuccessful tenderer may make a written request to the Municipal Council of Manzini for a debriefing on specific issues or concerns regarding their tender. The Municipal Council of Manzini shall provide the debriefing

within five days of receipt of the request.

32.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

33. Publication of Procurement Contract

Within fourteen days after signing the contract, the Municipal Council of Manzini shall publish the awarded on the Website of the Agency. At the minimum, the notice shall contain the following information:

- a) Name and address of the Municipal Council of Manzini;
- b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) The name of the successful Tenderer, the final total contract price, the contract duration.
- d) Dates of signature, commencement and completion of contract;
- e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

34. Procurement Related Complaints and Administrative Review

34.1 The procedures for making a Procurement-related Complaint are as **specified in the TDS**.

34.2 An application for administrative review shall be made in accordance with section 48 and 49 of the Act, 2011 using the form provided on the Agency's website <https://www.esppra.co.sz>.

Instructions to Consultants

E. Data Sheet

A. General	
ITC Clause Reference	
2.1	<p>Name of the Procuring Entity: Municipal Council of Manzini</p> <p>Method of selection: Quality Cost Based Selection as per</p> <p>Applicable Regulations: Regulations 77 to 91 of the Public Procurement Regulations, 2020 available on http://www.esppra.co.sz</p>
2.2	<p>Financial Proposal and Technical Proposal should be submitted in two (2) separate envelopes:</p> <p><i>Technical Proposal: (1) Original and (1) Copy should be submitted plus a flash drive.</i></p> <p><i>Financial Proposal: (1) Original should be submitted.</i></p> <p>The name of the assignment is: <u>CONDUCTING A RE-ALIGNMENT OF FUNCTIONAL STRUCTURES WITH EXISTING ORGANIZATIONAL STRUCTURE EXERCISE</u></p>
2.3	A tender pre - briefing meeting will not be held.
2.4	The Municipal Council of Manzini will not provide inputs such as reports, project data, budget estimates etc. during the preparation of the tender proposals by the consultant.

<p>6.3.1</p>	<p>A list of debarred firms and individuals is available at: http://www.esppra.co.sz</p>																		
<p>B. Preparation of Proposals</p>																			
<p>10.1</p>	<p>The Proposal shall comprise the following:</p> <p style="text-align: center;"><u>FULL TECHNICAL PROPOSAL (FTP):</u></p> <p style="text-align: center;">1st Inner Envelope with the Technical Proposal:</p> <table style="margin-left: 40px;"> <tr> <td>(1)</td> <td>Power of Attorney to sign the Proposal.</td> </tr> <tr> <td>(2)</td> <td>TECH-1</td> </tr> <tr> <td>(3)</td> <td>TECH-2</td> </tr> <tr> <td>(4)</td> <td>TECH-3</td> </tr> <tr> <td>(5)</td> <td>TECH-4</td> </tr> <tr> <td>(6)</td> <td>TECH-5</td> </tr> <tr> <td>(7)</td> <td>TECH-6</td> </tr> </table> <p style="text-align: center;">2d Inner Envelope with the Financial Proposal:</p> <table style="margin-left: 40px;"> <tr> <td>(1)</td> <td>FIN-1</td> </tr> <tr> <td>(2)</td> <td>FIN-2</td> </tr> </table> <p><u>NB</u></p> <p>In completing the financial proposal, please ensure the following:</p> <ul style="list-style-type: none"> • Each activity in the workplan should be costed separately in the financial proposal and the following should also be included: <ul style="list-style-type: none"> ○ Clear costing of developing each job description, assuming ten (10) new job descriptions will be developed. ○ Clear costing of grading and evaluating the 10 jobs. 	(1)	Power of Attorney to sign the Proposal.	(2)	TECH-1	(3)	TECH-2	(4)	TECH-3	(5)	TECH-4	(6)	TECH-5	(7)	TECH-6	(1)	FIN-1	(2)	FIN-2
(1)	Power of Attorney to sign the Proposal.																		
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(3)	TECH-2																		
(4)	TECH-3																		
(5)	TECH-4																		
(6)	TECH-5																		
(7)	TECH-6																		
(1)	FIN-1																		
(2)	FIN-2																		
<p>10.2</p>	<p>Statement of Undertaking is required and is obtainable in paragraph(e)</p>																		

	in Form TECH-1.
11.1	Participation of Sub-consultants, Key Experts and Non-Key Experts in more than one Proposal is not permissible.
12.1	Proposals must remain valid for 90 calendar days after the proposal submission deadline.
13.1	<p>Clarifications may be requested no later than 7 days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is: Email: hos@manznicity.co.sz cc; sive.simelane@manznicity.co.sz, hro@manznicity.co.sz and ps@manznicity.co.sz</p>
14.1.1	Shortlisted Consultants may not associate with other shortlisted Consultants.
15.2	<p>The format of the Technical Proposal to be submitted is:</p> <p>Full Technical Proposal</p> <p><i>Technical Proposal: (1) Original and (1) Copy should be submitted plus a flash drive.</i></p> <p><i>Financial Proposal: (1) Original.</i></p> <ul style="list-style-type: none"> ✓ Submission of the Technical Proposal in a wrong format may lead to the Proposal being deemed non-responsive to the RFP requirements. ✓ Submission of the Financial Proposal disregarding the below information shall be deemed non – responsive to the RFP document. <p>In completing the financial proposal, please ensure the following:</p> <ul style="list-style-type: none"> • Each activity in the workplan should be costed separately in the financial proposal and the following should also be included: • Clear costing of developing each job description, assuming ten (10) new job descriptions will be developed. • Clear costing of grading and evaluating the 10 jobs.

16.2	A price adjustment provision is not applicable for the duration of this contract.
16.4	The Financial Proposal shall be stated in local costs in Eswatini Emalangeni.
C. Submission, Opening and Evaluation	
17.1	The Consultants shall not have the option of submitting their Proposals electronically.
17.4	<p>The Consultant must submit:</p> <p>(a) Technical Proposal: one (1) original and (1) copy and flash drive.</p> <p>(b) Financial Proposal: one (1) original.</p>
17.7 and 17.9	<p>The Proposals must be submitted no later than:</p> <p>Date: 26th July 2024</p> <p>Time: 1200hrs Eswatini local time.</p> <hr/> <p><i>Add translation of the warning marking [“Do not open before 1200hrs, 26th July 2024”] to the outer sealed envelope]</i></p> <p>The Proposal submission address is:</p> <p><i>Reception Area, Civic Offices</i></p> <p><i>Municipal Council of Manzini</i></p> <p><i>Nkosehlaza/Ngwane Street.</i></p>
19.1	An online option of the opening of the Technical Proposals shall not be offered.
19.2	<p>The Tenderer shall submit the following additional/ equivalent documents in its proposal and the documents shall be evaluated in the preliminary evaluation stage:</p> <ol style="list-style-type: none"> 1. Original and Valid Tax Compliance Certificate 2. Copy of Certificate of Incorporation

	<ol style="list-style-type: none"> 3. Copy of a Valid Trading License 4. Copy of Labour Compliance Certificate 5. Police Clearance for all company Directors 6. Copy of a Form J 7. Copy of Form C 8. Company Audited Annual Financial Statements for the past 2 years 9. Proof of payment and Council Receipt E500.00 10. Copy of a Valid ENPF Compliance Certificate <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Note: The Municipal Council of Manzini will use a YES/NO to evaluate this section **** The Municipal Council of Manzini may disqualify a tenderer for missing documents deemed as a material deviation.</p> </div>																		
<p>21.1 (for FTP)</p>	<p>Criteria, sub-criteria, and point system for the evaluation of the Full Technical Proposals:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: right; width: 20%;"><u>Points</u></th> </tr> </thead> <tbody> <tr> <td>(i) Specific experience of the Consultant (as a firm) relevant to the Assignment:</td> <td style="text-align: right;">[20]</td> </tr> <tr> <td colspan="2">The consultant must have:</td> </tr> <tr> <td style="padding-left: 20px;">a) More than 7 years of relevant experience; and</td> <td></td> </tr> <tr> <td style="padding-left: 20px;">b) List of three previous organizational structure review or similar assignments undertaken within the past 5 years, with contract values.</td> <td></td> </tr> <tr> <td>(ii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):</td> <td></td> </tr> <tr> <td style="padding-left: 20px;">a) Understanding and Comments on the Terms of Reference</td> <td style="text-align: right;">[05]</td> </tr> <tr> <td style="padding-left: 20px;">b) Technical approach and methodology</td> <td style="text-align: right;">[20]</td> </tr> <tr> <td style="padding-left: 20px;">c) Workplan</td> <td style="text-align: right;">[15]</td> </tr> </tbody> </table>		<u>Points</u>	(i) Specific experience of the Consultant (as a firm) relevant to the Assignment:	[20]	The consultant must have:		a) More than 7 years of relevant experience; and		b) List of three previous organizational structure review or similar assignments undertaken within the past 5 years, with contract values.		(ii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):		a) Understanding and Comments on the Terms of Reference	[05]	b) Technical approach and methodology	[20]	c) Workplan	[15]
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c) Workplan	[15]																		

(iii) **Key Experts' qualifications and competence for the Assignment:**

(Please attach CVs and Certificates)

a) Lead Consultant

- *Lead Consultant must be in possession of a Masters Degree in Human Resources or Master of Commerce in Management, Masters in Industrial /Organizational Psychology, or Masters in Business Administration (MBA) with a specialization on Human Resources, Organizational Psychology, with a bachelor's degree in Organizational Development, Human Resources, or Industrial-Organizational Psychology as a first degree. [15]*
- *Lead consultant must have minimum 7 years continuous experience in undertaking similar assignments with strong referencing from clients (contact numbers & emails). [10]*

b) Support Team

- *The support technical staff must have a B.A Degree preferably in a business discipline such as Human Resource Management, Organizational Psychology or Management Sciences or Commerce. [10]*
- *Demonstration and understanding of SHERQ (Safety Health Environment Risk Quality) standards. [5]*

Total points for the three criteria: 100

.....

The minimum technical score (St) required to pass is: 70%.

The firm that scores above 70% qualifies for the financial Evaluation.

23.1	An online option of the opening of the Financial Proposals shall not be offered.
27.1 (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:</p> <p>Sf = 100 x Fm/ F, in which “Sf” is the financial score, “Fm” is the lowest price, and “F” the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are:</p> <p>T = _____ [0.7], and P = _____ [0.3]</p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: S = St x T% + Sf x P%.</p>
D. Negotiations and Award	
28.1	<p>Expected date and address for contract negotiations:</p> <p>Date: TBA Address: TBA</p>
30.1	<p>The publication of the contract award information following the completion of the evaluation process will be done as follows:</p> <p>https://www.esppra.co.sz</p>
30.2	Expected date for the commencement of the Services: soon after

	contract signing at <i>Municipal Council of Manzini</i>
<i>NB: Numbering in the above is informed by section 2, instructions to consultant and data sheet.</i>	

Section 3. Terms of Reference

1. Background

The Municipal Council of Manzini (MCM) is a public sector entity established in terms of the Urban Government Act No. 8 of 1969. The Municipality derives its primary mandate to facilitate the provision of basic municipal services for the citizens at community level and managing development within the Manzini local space through the Urban Government Act, 1969. The organization has an unwavering commitment to serve the people of Manzini and as such has adopted a service centric approach of utilizing good governance, risk management, sound judgment, continuous improvement, and customer-centered management to deliver relevant quality services. The Council is guided by its values of being **Innovative, Accountable, Inclusive and Integrity**. Our values-based approach to business is an important element of both our continued success and our organizational culture.

Moreover, Council is guided by the following vision and mission in its quest to deliver services in the city.

VISION

“A vibrant African city that innovatively provides quality services and economic opportunities to its stakeholders.”

MISSION STATEMENT

“To provide quality municipal services that add value to all our customers through good governance and partnering with relevant stakeholders.”

To improve its operational efficiency and effectiveness, the Municipal Council of Manzini commissioned a fully-fledged organizational review and restructuring exercise between 2017 and 2019.

The main objectives of the review and restructuring were to:

- a) Return the municipality to its normal state in terms of acceptable levels of service delivery, financial health, and governance.
- b) Organizational structure review and alignment considering the legislative mandate and strategy of Council.
- c) Obtaining equity and synergy in the job family (aligning jobs that fit together) and individual job category that require similar knowledge, skills, abilities as well as competencies.
- d) Determine appropriate prerequisite skills, competencies, and job specifications.
- e) Generate, present, and consolidate skills audit report and recommendations.
- f) Identify the skills and knowledge that each department requires and currently has.
- g) Determine the future quality and quantity of the workforce.

This was achieved through the review of the organization’s service delivery models, functional structures, organizational structures and organograms, review of job descriptions, job evaluation and grading, skills audit, salary, and benefits structure review and benchmarking as well as the financial viability of the above mentioned.

2. Scope of Services, Tasks (Components) and Expected Deliverables of the Assignment of Re-Alignment of Functional Structures with Existing Organizational Structure

Six years later, after the implementation of the first recommended organizational structures, the Municipality seeks to engage a competent and experienced service providers to conduct a re-alignment of the functional structures with the existing organizational structure/ departmental organograms, in consideration of the ever-growing city mandate and emerging global trends in the local government sphere. The re-alignment of the functional structures with the existing organizational structure must also be in alignment with the new 2024-2030 Strategy/ Integrated Development Plan (IDP).

2.1 Scope of work/Expected Inputs:

The reputable service provider is required to carry out the following core activities:

- a) Negotiating and signing of service level agreement with Council.
- b) Conduct a desktop literature review.
- c) Interview Heads of Departments to identify and collect information on performance gaps at the departmental level related to the current functional structures.
- d) Benchmark the municipality's functional structures with similar organizations and prevailing best practices and global trends.
- e) Utilize other gathered literature to inform the comprehensive review and necessary structural changes.
- f) Work with departmental heads to clearly map out departmental functions or functional structures, ensuring alignment with organizational objectives, and present a revised functional structure that addresses identified gaps.
- g) Undertake a thorough job analysis to align existing or new job families and individual jobs within each department, considering skillsets, competencies, and strategic requirements.
- h) Evaluate and recommend improvements to departmental structures to enhance efficiency, collaboration, and alignment with organizational goals.
- i) Review and update job descriptions based on the findings of the job analysis, ensuring accuracy and relevance to the re-aligned functional structures.
- j) Review, evaluate, and grade all new and revised jobs within the organization using the Paterson Job Evaluation and Grading system and considering industry benchmarks and internal equity.

- k) Prepare a comprehensive report summarizing the findings, analysis, and recommendations from the organizational structure re-alignment.
- l) Present comprehensive final reports to the Executive Committee (EXCO), social partners and Council, outlining findings, recommendations, and the proposed plan for implementation.

2.2 Key Expected Outputs/Deliverables Should Include:

- a) Signed Service Level Agreement (SLA) with Council.
- b) Situational analysis and literature review report with recommendations.
- c) Revised and updated functional structure.
- d) Jobs analysis report outlining the alignment of existing or new job families and individual jobs within each department.
- e) Updated organizational organogram.
- f) Updated job descriptions manual.
- g) Job evaluation and grading report.
- h) Submission of three (3) hard copies and one (1) soft copy of final comprehensive re-alignment report consolidating findings, analysis, and recommendations to the office of the Chief Executive Officer.
- i) Presentation of detailed reports to the Executive Committee (EXCO), social partners, and Council, outlining findings, recommendations, and proposed plan for implementation of the re-alignment.

3. *Team Composition & proof of Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the Key Experts under Data Sheet 21.1 of the ITC) (Please attach CVs and Certificates)*

- a) Must have conducted similar successful assignments with reputable organizations with references (include contract values, contact numbers and emails).
- b) Lead Consultant must be in possession of an MBA degree with a concentration in HR or Organizational Psychology or Organizational Development and a first degree in Human Resources or Industrial/ Organizational Psychology or Economics or Finance or Business Management.
- c) Must have worked with public sector organizations and/ or municipalities, parastatals etc.
- d) Minimum 7 years' continuous experience in successful similar assignments.
- e) Registered or member of local or international people management, HR or Organizational Development professional body.

4. Reporting Requirements and Time Schedule for Deliverables

- a) The assignment is expected to last at maximum a period of ninety (90) business days beginning in September 2024.
- b) Assignment to commence immediately after appointment.
- c) On completion of each assignment, the Consultant firm shall distribute the reports to the Chief Executive Officer (and any manager delegated by the CEO to support business operations function).

5. Procuring Entity's Input and Counterpart Personnel

- a) The municipality shall make available to the Consultant firm the following:
 - i. Required documents as per the work plan prepared and communicated to the municipality, i.e. current organizational structures, relevant policies, previous organizational structure review reports, etc.
 - ii. Access to HODs and other senior management to collect information on the assignment.

- b) The municipality shall provide professional support and counterpart personnel through the office of the Head Strategy and Organizational Performance.

Section 4. Technical Proposal – Standard Forms

CHECKLIST OF REQUIRED FORMS

Required for FTP or STP (√)		FORM	DESCRIPTION	Page Limit
FTP	STP			
√	√	TECH-1	Technical Proposal Submission Form.	
“√” If applicable		TECH-1 Attachment	If the Proposal is submitted by a joint venture, attach a letter of intent or a copy of an existing agreement.	
“√” If applicable		Power of Attorney	No pre-set format/form. In the case of a Joint Venture, several are required: a power of attorney for the authorized representative of each JV member, and a power of attorney for the representative of the lead member to represent all JV members	
√		TECH-2	Consultant’s Organization and Experience.	
√		TECH-2A	A. Consultant’s Organization	
√		TECH-2B	B. Consultant’s Experience	
√		TECH-3	Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Municipal Council of Manzini.	
√		TECH-3A	A. On the Terms of Reference	
√		TECH-3B	B. On the Counterpart Staff and Facilities	
√	√	TECH-4	Description of the Approach, Methodology, and Work Plan for Performing the Assignment	

√	√	TECH-5	Work Schedule and Planning for Deliverables	
√	√	TECH-6	Team Composition, Key Experts Inputs, and attached Curriculum Vitae (CV)	

All pages of the original Technical and Financial Proposal shall be initialled by the same authorized representative of the Consultant who signs the Proposal.

FORM TECH-1

TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: Municipal Council of Manzini
P O Box 419
Manzini

Dear Sirs:

We, the undersigned, offer to provide the consulting services for *[Insert title of assignment]* in accordance with your Request for Proposals dated *[Insert Date]* and our Proposal. *[Select appropriate wording depending on the selection method stated in the RFP: “We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope” or, if only a Technical Proposal is invited “We hereby are submitting our Proposal, which includes this Technical Proposal only in a sealed envelope.”]*

{If the Consultant is a joint venture, insert the following: We are submitting our Proposal a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: “of our letter of intent to form a joint venture” or, if a JV is already formed, “of the JV agreement”} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

{OR

If the Consultant's Proposal includes Sub-consultants, insert the following: We are submitting our Proposal with the following firms as Sub-consultants: {Insert a list with full name and address of each Sub-consultant.}

We hereby declare that:

- (a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Municipal Council of Manzini and/or may be sanctioned by ESPPRA.
- (b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- (c) We have no conflict of interest in accordance with ITC 3.
- (d) We meet the eligibility requirements as stated in ITC 6, and we confirm our understanding of our obligation to abide by the Public Procurement Act in regard to corrupt and fraudulent practices as per ITC 5.
- e) I/We, [Bidder Name], hereby declare and undertake that:
 - I/We have carefully read and understood all the terms, conditions, and specifications of the tender document.
 - I/We agree to abide by all the terms and conditions set forth in the tender document and any additional conditions that may be communicated to us during the tender process.
 - I/We certify that all information provided in our bid is true, accurate, and complete to the best of our knowledge.
 - I/We have the necessary expertise, resources, and financial capacity to fulfill the requirements of the tender if awarded the contract.

- I/We will comply with all applicable laws, regulations, and standards in the performance of the contract.
- I/We understand that any false statements or misrepresentations made in our bid may result in disqualification or termination of the contract.
- I/We commit to providing the goods/services in accordance with the specifications and within the specified timeframe.
- I/We understand that the award of the contract is at the discretion of the tendering authority and that no reasons need to be given for the rejection of our bid.

(f) Except as stated in the Data Sheet, Clause 12.1, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 28.4 may lead to the termination of Contract negotiations.

(g) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 30.2 of the Data Sheet.

We understand that the Municipal Council of Manzini is not bound to accept any Proposal that the Municipal Council of Manzini receives.

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: _____

Name and Title of Signatory: _____

Name of Consultant (company's name or JV's name):

In the capacity of: _____

Address: _____

Contact information (phone and e-mail): _____

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}.

FORM TECH-2 (FOR FULL TECHNICAL PROPOSAL ONLY)

CONSULTANT’S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Consultant’s organization and an outline of the recent experience of the Consultant that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Consultant’s Key Experts and Sub-consultants who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Consultant), and the Consultant’s role/involvement.

A - Consultant’s Organization

1. Provide here a brief description of the background and organization of your company, and – in case of a joint venture – of each member for this assignment.

B - Consultant’s Experience

1. List only previous similar assignments successfully completed in the last 5 years.
2. List only those assignments for which the Consultant was legally contracted by the Municipal Council of Manzini as a company or was one of the joint venture partners. Assignments completed by the Consultant’s individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant’s partners or sub-consultants, but can be claimed by the Experts themselves in their CVs. The Consultant should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references if so requested by the Municipal Council of Manzini.

Duration	Assignment name/& brief description of main deliverables/outputs	Name of Municipal Council of Manzini & Country of Assignment	Approx. Contract value (in SZL/ Amount paid to your firm)	Role on the Assignment
{e.g., Jan.2009–Apr.2010}	{e.g., “Improvement quality of.....”: designed master plan for rationalization of; }	{e.g., Ministry of, country }	{e.g., SZL1 mil/SZL0.5 mil }	{e.g., Lead partner in a JV A&B&C }
{e.g., Jan-May 2011}	{e.g., “Support to sub-national government.....” : drafted secondary level regulations on..... }	{e.g., municipality of....., country }	{e.g., SZL0.2 mil/SZL0.2 mil }	{e.g., sole Consultant }

FORM TECH-3 (FOR FULL TECHNICAL PROPOSAL)

COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE, COUNTERPART STAFF, AND FACILITIES TO BE PROVIDED BY THE MUNICIPAL COUNCIL OF MANZINI

Form TECH-3: comments and suggestions on the Terms of Reference that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Municipal Council of Manzini, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

{improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

{comments on counterpart staff and facilities to be provided by the Municipal Council of Manzini. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}

FORM TECH-4 (FOR FULL TECHNICAL PROPOSAL ONLY)

DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN IN RESPONDING TO THE TERMS OF REFERENCE

Form TECH-4: a description of the approach, methodology and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{Suggested structure of your Technical Proposal (in FTP format):

- a) Technical Approach and Methodology
- b) Work Plan
- c) Organization and Staffing }

- a) **Technical Approach and Methodology.** {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs in here.}

- b) **Work Plan.** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Municipal Council of Manzini), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form. }

- c) ***Organization and Staffing.*** {Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff.}

FORM TECH-5

WORK SCHEDULE AND PLANNING FOR DELIVERABLES

N°	Deliverables ¹ (D-..)	Months												
		1	2	3	4	5	6	7	8	9	n	TOTAL	
D-1	{e.g., Deliverable #1: Report A													
	1) data collection													
	2) drafting													
	3) inception report													
	4) incorporating comments													
	5)													
	6) delivery of final report to Municipal Council of Manzini}													
D-2	{e.g., Deliverable #2:.....}													

Section 3. Technical Proposal – Standard Forms

n														

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Municipal Council of Manzini’s approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
3. Include a legend, if necessary, to help read the chart.

FORM TECH-6

TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

N°	Name	Expert's input (in person/month) per each Deliverable (listed in TECH-5)										Total time-input (in Months)			
		Position		D-1		D-2		D-3	D-...			Home	Field	Total
KEY EXPERTS															
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home]	[2 month]	[1.0]	[1.0]									
			[Field]	[0.5 m]	[2.5]	[0]									
K-2															
K-3															
n															
											Subtotal				
NON-KEY EXPERTS															
N-1			[Home]												
			[Field]												
N-2															

FORM TECH-6
(CONTINUED)

CURRICULUM VITAE (CV)

Position Title and No.	{e.g., K-1, TEAM LEADER}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship/Residence	

Education: {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}

Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous Municipal Council of Manzini’s and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact information for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2005-present]	[e.g., Ministry of, advisor/consultant to... For references: Tel...../e-		

	mail.....; Mr. Hbbbbbb, deputy minister]		

Membership in Professional Associations and Publications:

Language Skills (indicate only languages in which you can work):

Adequacy for the Assignment:

Detailed Tasks Assigned on Consultant's Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved)	

Experts contact information: (e-mail, phone.....)

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the

assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Municipal Council of Manzini, and/or sanctions by ESPPRA.

{ day/month/year }

Name of Expert

Signature

Date

{ day/month/year }

Name of authorized

Signature

Date

Representative of the Consultant

(the same who signs the Proposal)

Section 5. Financial Proposal - Standard Forms

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FORM FIN-1
FINANCIAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: **Municipal Council of Manzini**
P O Box 419
Manzini

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of {Indicate the corresponding to the amount(s) currency(ies)} {Insert amount(s) in words and figures}, [Insert “including” or “excluding”] of all indirect local taxes in accordance with Clause 25.1 in the Data Sheet. The estimated amount of local indirect taxes is {Insert currency} {Insert amount in words and figures} which shall be confirmed or adjusted, if needed, during negotiations. {Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Clause 12.1 of the Data Sheet.

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

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

{If no payments are made or promised, add the following statement: “No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution.”}

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

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: _____

Name and Title of Signatory: _____

In the capacity of: _____

Address: _____

E-mail: _____

{For a joint venture, either all members shall sign or only the lead member/consultant, in which case the power of attorney to sign on behalf of all members shall be attached}

FORM FIN-2 SUMMARY OF COSTS

Item	Cost			
	{Consultant must state the proposed Costs in accordance with Clause 16.4 of the Data Sheet ; delete columns which are not used}			
	<i>{Insert Foreign Currency # 1}</i>	<i>{Insert Foreign Currency # 2, if used}</i>	<i>{Insert Foreign Currency # 3, if used}</i>	<i>{Insert Local Currency, if used}</i>
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
<u>Total Cost of the Financial Proposal:</u> {Should match the amount in Form FIN-1}				
Indirect Local Tax Estimates – to be discussed and finalized at the negotiations if the Contract is awarded				
(i) {insert type of tax: e.g., VAT or sales tax}				
(ii) {e.g., income tax on non-resident experts}				
(iii) {insert type of tax}				
<u>Total Estimate for Indirect Local Tax:</u>				

Footnote: Payments will be made in the currency(ies) expressed above (Reference to ITC 16.4).

Section 6. Corrupt and Fraudulent Practice

“Fraud and Corruption

1.23 Section 60, 61 and 62 of the Public Procurement Act, 2011, require that Procuring Entities (including beneficiaries of Government funds), consultants, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers, and any personnel thereof, observe the highest standard of ethics during the selection and execution of Government-financed contracts [footnote: In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage is improper.]. In pursuance of this policy, the Act:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party¹;
- (ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation²;
- (iii) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party³;

¹ For the purpose of this sub-paragraph, “another party” refers to a public officer acting in relation to the selection process or contract execution. In this context “public officer” means any officer employed in the public service including in procuring entities, requesting entities, the Agency and the Tender Boards.

² For the purpose of this sub-paragraph, “party” refers to a public officer; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

³ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officers) attempting either themselves, or through another person or entity not participating in

- (iv) “coercive practices” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁴;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights;
- (b) will reject a proposal for award if it determines that the consultant recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the funds allocated to a contract if it determines at any time that representatives of the Municipal Council of Manzini or of a recipient of any part of the proceeds were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the selection process or the implementation of the contract in question, without the Municipal Council of Manzini having taken timely and appropriate action satisfactory to the Government to address such practices when they

the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

⁴ For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

occur, including by failing to inform the Government in a timely manner they knew of the practices;

(d) will sanction a firm or an individual at any time, in accordance with prevailing sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Government-financed contract, and (ii) to be a nominated⁵ sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Government-financed contract.

⁵ A nominated sub-consultant, supplier, or service provider is one which has been either (i) included by the consultant in its proposal because it brings specific and critical experience and know-how that are accounted for in the technical evaluation of the consultant's proposal for the particular services; or (ii) appointed by the Borrower.

PART II

Section 8. Conditions of Contract and Contract

Preface

1. The standard Contract form consists of four parts: the Form of Contract to be signed by the Municipal Council of Manzini and the Consultant, the General Conditions of Contract (GCC), including Attachment 1 (Corrupt and Fraudulent Practices); the Special Conditions of Contract (SCC); and the Appendices.
2. The General Conditions of Contract, including Attachment 1, shall not be modified. The Special Conditions of Contract that contain clauses specific to each Contract intend to supplement, but not over-write or otherwise contradict, the General Conditions.

I. General Conditions of Contract

A. GENERAL PROVISIONS

1. Definitions

1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Regulations” means Public Procurement Regulations, 2022.
- (b) “Applicable Law” means the Laws of Eswatini and any other instruments having the force of law in Eswatini, as they may be issued and in force from time to time.
- (c) “Municipal Council of Manzini” means the Municipal Council of Manzini or implementing agency that signs the Contract for the Services with the Selected Consultant.
- (d) “Consultant” means a legally-established professional consulting firm or entity selected by the Municipal Council of Manzini to provide the Services under the signed Contract.
- (e) “Contract” means the legally binding written agreement signed between the Municipal Council of Manzini and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- (f) “Day” means a working day unless indicated otherwise.
- (g) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- (h) “Experts” means, collectively, Key Experts, Non-Key Experts,

or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.

- (i) “Foreign Currency” means any currency other than the currency of Eswatini.
- (j) “GCC” means these General Conditions of Contract.
- (k) “Government” means the government of Eswatini.
- (l) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Municipal Council of Manzini for the performance of the Contract.
- (m) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant’s proposal.
- (n) “Local Currency” means the currency of Eswatini.
- (o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (p) “Party” means the Municipal Council of Manzini or the Consultant, as the case may be, and “Parties” means both of them.

- (q) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (r) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (s) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (t) “Third Party” means any person or entity other than the Government, the Municipal Council of Manzini, the Consultant or a Sub-consultant.

2. Relationship between the Parties

2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Municipal Council of Manzini and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

4. Language

4.1. This Contract has been executed in **English**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

5. Headings

5.1. The headings shall not limit, alter or affect the meaning of this Contract.

6. Communications

6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be

deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**.

6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.

7. Location

7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Municipal Council of Manzini may approve.

**8. Authority of
Member in
Charge**

8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Municipal Council of Manzini under this Contract, including without limitation the receiving of instructions and payments from the Municipal Council of Manzini.

**9. Authorized
Representatives**

9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Municipal Council of Manzini or the Consultant may be taken or executed by the officials specified in the **SCC**.

**10. Corrupt and
Fraudulent
Practices**

10.1. The Government requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in **Attachment 1** to the GCC.

**a. Commissions
and Fees**

10.2. The Municipal Council of Manzini requires the Consultant to disclose any commissions, gratuities or fees that may have been paid

or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Municipal Council of Manzini and/or sanctions by ESPPRA.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 11. Effectiveness of Contract** 11.1. This Contract shall come into force and effect on the date (the “Effective Date”) of the Municipal Council of Manzini’s notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the **SCC** have been met.
- 12. Termination of Contract for Failure to Become Effective** 12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**, either Party may, by not less than twenty eight (28) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 13. Commencement of Services** 13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the **SCC**.
- 14. Expiration of Contract** 14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.

15. Entire Agreement 15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

16. Modifications or Variations 16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

16.2. In cases of substantial (20% and above) modifications or variations, the prior written consent of ESPPRA is required.

17. Force Majeure

a. Definition 17.1. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. No Breach of Contract 17.4. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be Taken 17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon

instructions by the Municipal Council of Manzini, shall either:

- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Municipal Council of Manzini, in reactivating the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

18. Suspension

18.1. The Municipal Council of Manzini may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19. Termination

19.1. This Contract may be terminated by either Party as per provisions set up below:

a. By the Municipal Council of Manzini

19.1.1. The Municipal Council of Manzini may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Municipal Council of Manzini shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through

(d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- (e) If the Municipal Council of Manzini, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.

19.1.2. Furthermore, if the Municipal Council of Manzini determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Municipal

Council of Manzini may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

**b. By the
Consultant**

19.1.3. The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Municipal Council of Manzini, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the Municipal Council of Manzini fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 45.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- (c) If the Municipal Council of Manzini fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 45.1.
- (d) If the Municipal Council of Manzini is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Municipal Council of Manzini of the Consultant's notice specifying such breach.

**c. Cessation of
Rights and**

19.1.4. Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract

Obligations

pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

19.1.5. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Municipal Council of Manzini, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

e. Payment upon Termination

19.1.6. Upon termination of this Contract, the Municipal Council of Manzini shall make the following payments to the Consultant:

- (a) payment for Services satisfactorily performed prior to the effective date of termination; and
- (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. OBLIGATIONS OF THE CONSULTANT

20. General

- a. Standard of Performance** 20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Municipal Council of Manzini, and shall at all times support and safeguard the Municipal Council of Manzini's legitimate interests in any dealings with the third parties.
- 20.2. The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.
- 20.3. The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Municipal Council of Manzini. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.
- b. Law Applicable to Services** 20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.
- 20.5. Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in Eswatini when

- (a) as a matter of law or official regulations, the Government prohibits commercial relations with that country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6. The Municipal Council of Manzini shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

**21. Conflict of
Interests**

21.1. The Consultant shall hold the Municipal Council of Manzini's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

**a. Consultant
Not to Benefit
from
Commissions,
Discounts, etc.**

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Municipal Council of Manzini on the procurement of goods, works or services, the Consultant shall comply with the Applicable Regulations, and

shall at all times exercise such responsibility in the best interest of the Municipal Council of Manzini. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Municipal Council of Manzini.

b. Consultant and Affiliates Not to Engage in Certain Activities

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the **SCC**.

c. Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

d. Strict Duty to Disclose Conflicting Activities

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Municipal Council of Manzini, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

22. Confidentiality

22.1 Except with the prior written consent of the Municipal Council of Manzini, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential

information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.

23. Liability of the Consultant

23.1 Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be provided by the Applicable Law.

24. Insurance to be Taken out by the Consultant

24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Municipal Council of Manzini, insurance against the risks, and for the coverage specified in the **SCC**, and (ii) at the Municipal Council of Manzini's request, shall provide evidence to the Municipal Council of Manzini showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.

25. Accounting, Inspection and Auditing

25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the Government and/or persons appointed by the Government to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Government if requested by the Government. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to

materially impede the exercise of the Government's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under ESPPRA's prevailing sanctions procedures.)

**26. Reporting
Obligations**

26.1 The Consultant shall submit to the Municipal Council of Manzini the reports and documents specified in **Appendix A**, in the form, in the numbers and within the time periods set forth in the said Appendix.

**27. Proprietary Rights
of the Municipal
Council of Manzini
in Reports and
Records**

27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Municipal Council of Manzini in the course of the Services shall be confidential and become and remain the absolute property of the Municipal Council of Manzini. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Municipal Council of Manzini, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Municipal Council of Manzini.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Municipal Council of Manzini's prior written approval to such agreements, and the Municipal Council of Manzini shall be entitled at its discretion to require recovering the expenses related to the development of the

program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

**28. Equipment,
Vehicles and
Materials**

28.1 Equipment, vehicles and materials made available to the Consultant by the Municipal Council of Manzini, or purchased by the Consultant wholly or partly with funds provided by the Municipal Council of Manzini, shall be the property of the Municipal Council of Manzini and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Municipal Council of Manzini an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Municipal Council of Manzini's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Municipal Council of Manzini in writing, shall insure them at the expense of the Municipal Council of Manzini in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into Eswatini for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

**29. Description of Key
Experts**

29.1 The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Consultant's Key Experts are described in **Appendix B**.

**30. Replacement of Key
Experts**

30.1 Except as the Municipal Council of Manzini may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts

during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

**31. Removal of Experts
or Sub-consultants**

31.1 If the Municipal Council of Manzini finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Municipal Council of Manzini determine that Consultant's Expert of Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice while performing the Services, the Consultant shall, at the Municipal Council of Manzini's written request, provide a replacement.

31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Municipal Council of Manzini to be incompetent or incapable in discharging assigned duties, the Municipal Council of Manzini, specifying the grounds therefore, may request the Consultant to provide a replacement.

31.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Municipal Council of Manzini.

31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

E. OBLIGATIONS OF THE MUNICIPAL COUNCIL OF MANZINI

**32. Assistance and
Exemptions**

32.1 Unless otherwise specified in the SCC, the Municipal Council of Manzini shall use its best efforts to:

- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Municipal Council of Manzini's country while carrying out the Services under the Contract.
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- (c) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (d) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Eswatini according to the applicable law in Eswatini.
- (e) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Eswatini, of bringing into Eswatini reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the

execution of the Services.

- (f) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

33. Access to Project Site

33.1 The Municipal Council of Manzini warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Municipal Council of Manzini will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

34. Change in the Applicable Law Related to Taxes and Duties

34.1 If, after the date of this Contract, there is any change in the applicable law in Eswatini with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 38.1

35. Services, Facilities and Property of the Municipal Council of Manzini

35.1 The Municipal Council of Manzini shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in said **Appendix A**.

36. Counterpart Personnel

36.1 The Municipal Council of Manzini shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Municipal Council of

Manzini with the Consultant's advice, if specified in **Appendix A**.

36.2 Professional and support counterpart personnel, excluding Municipal Council of Manzini's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Municipal Council of Manzini shall not unreasonably refuse to act upon such request.

**37. Payment
Obligation**

37.1 In consideration of the Services performed by the Consultant under this Contract, the Municipal Council of Manzini shall make such payments to the Consultant for the deliverables specified in **Appendix A** and in such manner as is provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

38. Contract Price

38.1 The Contract price is fixed and is set forth in the **SCC**. The Contract price breakdown is provided in **Appendix C**.

38.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in **Appendix A**.

39. Taxes and Duties

39.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.

39.2 As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the

Municipal Council of Manzini on behalf of the Consultant.

**40. Currency of
Payment**

40.1 Any payment under this Contract shall be made in the currency(ies) of the Contract.

**41. Mode of Billing and
Payment**

41.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.

41.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in **Appendix A**. The payments will be made according to the payment schedule stated in the **SCC**.

41.2.1 *Advance payment:* Unless otherwise indicated in the **SCC**, an advance payment shall be made against an advance payment bank guarantee acceptable to the Municipal Council of Manzini in an amount (or amounts) and in a currency (or currencies) specified in the **SCC**. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix D**, or in such other form as the Municipal Council of Manzini shall have approved in writing. The advance payments will be set off by the Municipal Council of Manzini in equal portions against the lump-sum installments specified in the **SCC** until said advance payments have been fully set off.

41.2.2 *The Lump-Sum Installment Payments.* The Municipal Council of Manzini shall pay the Consultant within sixty (60) days after the receipt by the Municipal Council of Manzini of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Municipal Council of Manzini does not approve the submitted deliverable(s) as satisfactory in which case the Municipal

Council of Manzini shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.

41.2.3 *The Final Payment* .The final payment under this Clause shall be made only after the final report I have been submitted by the Consultant and approved as satisfactory by the Municipal Council of Manzini. The Services shall then be deemed completed and finally accepted by the Municipal Council of Manzini. The last lump-sum installment shall be deemed approved for payment by the Municipal Council of Manzini within ninety (90) calendar days after receipt of the final report by the Municipal Council of Manzini unless the Municipal Council of Manzini, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. 41.2.4 All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.

41.2.4 With the exception of the final payment under 41.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations hereunder.

42. Interest on Delayed Payments

42.1 If the Municipal Council of Manzini had delayed payments beyond fifteen (15) days after the due date stated in Clause GCC 41.2.2 , interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the **SCC**.

G. FAIRNESS AND GOOD FAITH

43. Good Faith

43.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. SETTLEMENT OF DISPUTES

44. Amicable Settlement

44.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.

44.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 49.1 shall apply.

45. Dispute Resolution

45.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

II. General Conditions

Attachment 1: Corrupt and Fraudulent Practices

(the text in this Attachment 1 shall not be modified)

“Fraud and Corruption

1.23 Section 60, 61 and 62 of the Public Procurement Act, 2011, to require that Procuring Entities (including beneficiaries of Government funds), consultants, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers, and any personnel thereof, observe the highest standard of ethics during the selection and execution of Government-financed contracts [footnote: In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage is improper.]. In pursuance of this policy, the Government:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party⁶;
- (ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation⁷;

⁶ For the purpose of this sub-paragraph, “another party” refers to a public officer acting in relation to the selection process or contract execution. In this context “public officer” means any officer employed in the public service including in procuring entities, requesting entities, the Agency and the Tender Boards.

⁷ For the purpose of this sub-paragraph, “party” refers to a public officer; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

- (iii) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party⁸;
- (iv) “coercive practices” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁹;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights;
- (b) will reject a proposal for award if it determines that the consultant recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the funds allocated to a contract if it determines at any time that representatives of the Municipal Council of Manzini or of a recipient of any part of the proceeds were engaged in corrupt, fraudulent, collusive,

⁸ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officers) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

⁹ For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

coercive, or obstructive practices during the selection process or the implementation of the contract in question, without the Municipal Council of Manzini having taken timely and appropriate action satisfactory to the Government to address such practices when they occur, including by failing to inform the Government in a timely manner they knew of the practices;

- (d) will sanction a firm or an individual at any time, in accordance with prevailing sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Government-financed contract, and (ii) to be a nominated¹⁰ sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Government-financed contract.

¹⁰ A nominated sub-consultant, supplier, or service provider is one which has been either (i) included by the consultant in its proposal because it brings specific and critical experience and know-how that are accounted for in the technical evaluation of the consultant's proposal for the particular services; or (ii) appointed by the Borrower.

II. Appendices

APPENDIX A – TERMS OF REFERENCE

[This Appendix shall include the final Terms of Reference (TORs) worked out by the Municipal Council of Manzini and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made; Municipal Council of Manzini’s input, including counterpart personnel assigned by the Municipal Council of Manzini to work on the Consultant’s team; specific tasks or actions that require prior approval by the Municipal Council of Manzini.]

Insert the text based on the Section 3 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 of the Consultant’s Proposal. Highlight the changes to Section 3 of the RFP]

.....

APPENDIX B - KEY EXPERTS

[Insert a table based on Form TECH-6 of the Consultant’s Technical Proposal and finalized at the Contract’s negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

.....

APPENDIX C – BREAKDOWN OF CONTRACT PRICE

[Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on [Form FIN-3 and FIN-4] of the Consultant’s Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-3 and FIN-4] at the negotiations or state that none has been made.]

When the Consultant has been selected under Quality-Based Selection method, also add the following:

“The agreed remuneration rates shall be stated in the attached Model Form I. This form shall be prepared on the basis of Appendix A to Form FIN-3 of the RFP “Consultants’ Representations regarding Costs and Charges” submitted by the Consultant to the Municipal Council of Manzini prior to the Contract’s negotiations.

Should these representations be found by the Municipal Council of Manzini (either through inspections or audits pursuant to Clause GCC 25.2 or through other means) to be materially incomplete or inaccurate, the Municipal Council of Manzini shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially incomplete or inaccurate representations. Any such modification shall have retroactive effect and, in case remuneration has already been paid by the Municipal Council of Manzini before any such modification, (i) the Municipal Council of Manzini shall be entitled to offset any excess payment against the next monthly payment to the Consultants, or (ii) if there are no further payments to be made by the Municipal Council of Manzini to the Consultants, the Consultants shall reimburse to the Municipal Council of Manzini any excess payment within thirty (30) days of receipt of a written claim of the Municipal Council of Manzini. Any such claim by the Municipal Council of Manzini for reimbursement must be made within twelve (12) calendar months after receipt by the Municipal Council of Manzini of a final report and a final statement approved by the Municipal Council of Manzini in accordance with Clause GCC 45.1(d) of this Contract.”]