



Kenya Maritime Authority

TENDER NO.KMA/ONT/017/SRB/2015-16

**PROCUREMENT OF HYDROGRAPHIC SERVICES FOR SHIMONI
PORT AND APPROCAHES**

Project: Kenya Transport Sector Support

Purchaser: Kenya Maritime Authority

Country: Kenya

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Procurement of hydrographic services leading to development of navigation chart for Port of Shimoni and its approaches

Summary

PART 1 – BIDDING PROCEDURES

Section I: Instructions to Bidders (ITB)

This Section provides relevant information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts.

Section II. Bidding Data Sheet (BDS)

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders.

Section III: Bidding Forms

This Section contains the forms which are to be completed by the Bidder and submitted as part of his Bid.

Section IV. Eligible Countries

This Section contains information regarding eligible countries.

PART 2 – ACTIVITY SCHEDULE

Section V. Activity Schedule

This Section contains the activity schedule.

PART 3 – *CONDITIONS OF CONTRACT AND CONTRACT FORMS*

Section VI. General Conditions of Contract (GCC)

This Section contains the general clauses to be applied in all contracts. **The text of the clauses in this Section shall not be modified.**

Section VII. Special Conditions of Contract (PCC)

The contents of this Section supplement the General Conditions of Contract and shall be prepared by the Employer.

Section VIII. Performance Specifications and Drawings

This section contains Specifications that are intended to be used in the performance of the contract which are in line with the standards required under the International Hydrographic Office (IHO).

Section IX: Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for **Performance Security** and **Advance Payment Security**, when required, shall only be completed by the successful Bidder after contract award.

Part I – Bidding Procedures

Section I. Instructions to Bidders

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Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 The Employer, as defined in the **Bidding Data Sheet (BDS)**, invites bids for the Services, as described in the Appendix A to the Contract. The name and identification number of the Contract is **provided in the BDS**.
 - 1.2 The successful Bidder will be expected to complete the performance of the Services by the Intended Completion Date **provided in the BDS**.
- 2. Source of Funds**
 - 2.1 The Borrower, as **defined in the BDS**, intends to apply part of the funds of a loan from the World Bank, **as defined in the BDS**, towards the cost of the Project, **as defined in the BDS**, to cover eligible payments under the Contract for the Services. Payments by the World Bank will be made only at the request of the Borrower and upon approval by the World Bank in accordance with the Loan Agreement, and will be subject in all respects to the terms and conditions of that Agreement. Except as the World Bank may specifically otherwise agree, no party other than the Borrower shall derive any rights from the Loan Agreement or have any rights to the loan proceeds.
- 3. Corrupt or Fraudulent Practices**
 - 3.1 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, and contractors and their subcontractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.¹ In pursuance of this policy, the Bank:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice"² is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice"³ is any act or omission, including a misrepresentation, that knowingly or

¹ In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

² For the purpose of these SBDs, "another party" refers to a public official acting in relation to the procurement process or contract execution]. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

- (iii) “collusive practice”⁴ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”⁵ 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 party;
- (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 Bank 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 Bank’s inspection and audit rights provided for under para. 1.14 (e) of the Bank’s Procurement Guidelines.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, coercive or obstructive practices

³ For the purpose of these SBDs, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ For the purpose of these SBDs, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁵ For the purpose of these SBDs, “party” refers to a participant in the procurement process or contract execution.

during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;

- (d) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Bank-financed contract; and
- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank Loan, requiring bidders, suppliers, contractors and consultants to permit the Bank to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the Bank.

3.2 Furthermore, Bidders shall be aware of the provision stated in Sub-Clauses 1.7 and 2.6.1 of the General Conditions of Contract.

4. Eligible Bidders

4.1 This Invitation for Bids is open to all bidders from eligible countries as defined in the Procurement Guidelines. Any materials, equipment, and Services to be used in the performance of the Contract shall have their origin in eligible source countries.

4.2 All bidders shall provide in Section III, Bidding Forms, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Borrower to provide Consultant Services for the preparation or supervision of the Services, and any of its affiliates, shall not be eligible to bid.

4.3 Government-owned enterprises in the Employer's country may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Employer.

4.4 The loan agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or

for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council, taken under Chapter VII of the Charter of the United Nations.

4.5 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Bank in accordance with ITB Sub-Clause 3.1.

5. Qualification of the Bidder

5.1 All bidders shall provide in Section III, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that prequalification of potential bidders has been undertaken **as stated in the BDS**, only bids from prequalified bidders shall be considered for award of Contract, in which case the provisions of sub-clauses 5.3 to 5.6 hereafter shall not apply. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.

5.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise **stated in the BDS**:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
- (b) total monetary value of Services performed for each of the last five years;
- (c) experience in Services of a similar nature and size for each of the last five years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
- (d) list of major items of equipment proposed to carry out the Contract;
- (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (f) reports on the financial standing of the Bidder, such as

profit and loss statements and auditor's reports for the past five years;

- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to the Employer to seek references from the Bidder's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- (j) proposals for subcontracting components of the Services amounting to more than 10 percent of the Contract Price.

5.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **BDS**:

- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
- (b) the Bid shall be signed so as to be legally binding on all partners;
- (c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement;
- (d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

5.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) annual volume of Services of at least the amount **specified**

in the BDS;

- (b) experience as prime contractor in the provision of at least two service contracts of a nature and complexity equivalent to the Services over the last 5 years (to comply with this requirement, Services contracts cited should be at least 70 percent complete) **as specified in the BDS;**
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS;**
- (d) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the **BDS.**

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

- 5.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clause 4.4(a), (b) and (e); however, for a joint venture to qualify the partner in charge must meet at least 40 percent of those minimum criteria for an individual Bidder and other partners at least 25% of the criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise **stated in the BDS.**

- | | |
|------------------------------|---|
| 6. One Bid per Bidder | 6.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified. |
| 7. Cost of Bidding | 7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs. |
| 8. Site Visit | 8.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of required Services |

and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services. The costs of visiting the Site shall be at the Bidder's own expense.

B. Bidding Documents

- 9. Content of Bidding Documents**
- 9.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 11:
- | | |
|--------------|---|
| Section I | Instructions to Bidders |
| Section II | Bidding Data Sheet |
| Section III | Bidding Forms |
| Section IV | Eligible Countries |
| Section V | Activity Schedule |
| Section VI | General Conditions of Contract |
| Section VII | Special Conditions of Contract |
| Section VIII | Performance Specifications and Drawings |
| Section IX | Contract Forms |
- 9.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections III, V, and IX should be completed and returned with the Bid in the number of copies specified in the **BDS**.
- 10. Clarification of Bidding Documents**
- 10.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable ("cable" includes telex and facsimile) at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.
- 11. Amendment of Bidding Documents**
- 11.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 11.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to

all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to the Employer.

- 11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

C. Preparation of Bids

12. Language of Bid

- 12.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer shall be written in the language **specified in the BDS**. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the Bidding Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.

13. Documents Comprising the Bid

- 13.1 The Bid submitted by the Bidder shall comprise the following:

- (a) The Form of Bid (in the format indicated in Section III);
- (b) Bid Security;
- (c) Priced Activity Schedule;
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;

and any other materials required to be completed and submitted by bidders, as **specified in the BDS**.

- 13.2 Bidders bidding for this contract together with other contracts stated in the IFB to form a package will so indicate in the bid together with any discounts offered for the award of more than one contract

14. Bid Prices

- 14.1 The Contract shall be for the Services, as described in Appendix A to the contract and in the Specifications, Section VIII, based on the priced Activity Schedule, Section V, submitted by the Bidder.
- 14.2 The Bidder shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), Section VIII and listed in the Activity Schedule,

Section V. Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

14.3 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the total Bid price submitted by the Bidder.

14.4 If **provided for in the BDS**, the rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

14.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder in the form of Appendices D and E to the Contract

15. Currencies of Bid and Payment

15.1 The lump sum price shall be quoted by the Bidder separately in the following currencies:

(a) for those inputs to the Services which the Bidder expects to provide from within the Employer's country, the prices shall be quoted in the currency of the Employer's country, unless otherwise **specified in the BDS**; and

(b) for those inputs to the Services which the Bidder expects to provide from outside the Employer's country, the prices shall be quoted in up to any three currencies of any member country of the Bank.

15.2 Bidders shall indicate details of their expected foreign currency requirements in the Bid.

15.3 Bidders may be required by the Employer to justify their foreign currency requirements and to substantiate that the amounts included in the Lump Sum are reasonable and responsive to ITB Sub-Clause 15.1.

16. Bid Validity

16.1 Bids shall remain valid for the period **specified in the BDS**.

16.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in

writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with ITB Clause 17 in all respects.

- 16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended by more than 60 days, the amounts payable in local and foreign currency to the Bidder selected for award, shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

17. Bid Security

- 17.1 The Bidder shall furnish, as part of the Bid, a Bid Security or a Bid-Securing Declaration, if required, as **specified in the BDS**.
- 17.2 The Bid Security shall be in the amount **specified in the BDS** and denominated in the currency of the Employer's Country or a freely convertible currency, and shall:
- (a) at the bidder's option, be in the form of either a letter of credit, or a bank guarantee from a banking institution, or a bond issued by a surety;
 - (b) be issued by a reputable institution selected by the bidder and located in any eligible country. If the institution issuing the bond is located outside the Employer's Country, it shall have a correspondent financial institution located in the Employer's Country to make it enforceable.
 - (c) be substantially in accordance with one of the forms of Bid Security included in Section IX, Contract Forms, or other form approved by the Employer prior to bid submission;
 - (d) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Sub-Clause 17.5 are invoked;
 - (e) be submitted in its original form; copies will not be accepted;
 - (f) remain valid for a period of 28 days beyond the validity period of the bids, as extended, if applicable, in

accordance with ITB Sub-Clause 16.2;

- 17.3 If a Bid Security or a Bid- Securing Declaration is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive Bid Security or Bid Securing Declaration in accordance with ITB Sub-Clause 17.1, shall be rejected by the Employer as non-responsive.
- 17.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 35.
- 17.5 The Bid Security may be forfeited or the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 16.2; or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 34;
 - (ii) furnish a Performance Security in accordance with ITB Clause 35.
- 17.6 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent to constitute the JV.

18. Alternative Proposals by Bidders

- 18.1 **Unless otherwise indicated in the BDS**, alternative bids shall not be considered.
- 18.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of evaluating different times for completion.
- 18.3 Except as provided under ITB Sub-Clause 18.4 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first submit a Bid that complies with the requirements of the bidding documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the Employer, including calculations, technical specifications, breakdown of prices, proposed work methods

and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. Alternatives to the specified performance levels shall not be accepted.

18.4 When bidders are **permitted in the BDS** to submit alternative technical solutions for specified parts of the Services, such parts shall be described in the Specifications (or Terms of Reference) and Drawings, Section VIII. In such case, the method for evaluating such alternatives will be as **indicated in the BDS**.

19. Format and Signing of Bid

19.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 11 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 5.3(a) or 5.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

19.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

D. Submission of Bids

20. Sealing and Marking of Bids

20.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES".

20.2 The inner and outer envelopes shall

- (a) be addressed to the Employer at the address **provided in the BDS**;
- (b) bear the name and identification number of the Contract as **defined in the BDS** and Special Conditions of Contract; and

- (c) provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS**.
- 20.3 In addition to the identification required in ITB Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.
- 20.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.
- 21. Deadline for Submission of Bids**
- 21.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date **specified in the BDS**.
- 21.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.
- 22. Late Bids**
- 22.1 Any Bid received by the Employer after the deadline prescribed in ITB Clause 21 will be returned unopened to the Bidder.
- 23. Modification and Withdrawal of Bids**
- 23.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Clause 21.
- 23.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.
- 23.3 No Bid may be modified after the deadline for submission of Bids.
- 23.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to ITB Sub-Clause 16.2 may result in the forfeiture of the Bid Security pursuant to ITB Clause 17.
- 23.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

E. Bid Opening and Evaluation

- 24. Bid Opening**
- 24.1 The Employer will open the bids, including modifications made pursuant to ITB Clause 23, in the presence of the bidders' representatives who choose to attend at the time and in the place **specified in the BDS.**
- 24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.
- 24.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to ITB Clause 22; Bids, and modifications, sent pursuant to ITB Clause 23 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.
- 24.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 24.3.
- 25. Process to Be Confidential**
- 25.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder is notified of the award. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.
- 25.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer, who will provide written explanation. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.
- 26. Clarification of Bids**
- 26.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered,

or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 28.

26.2 Subject to ITB Sub-Clause 26.1, no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.

26.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.

27. Examination of Bids and Determination of Responsiveness

27.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.

27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

27.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

28. Correction of Errors

28.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected; if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.

28.2 The amount stated in the Bid will be adjusted by the Employer

in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with ITB Sub-Clause 17.5(b).

29. Currency for Bid Evaluation

29.1 The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB Clause 28, is payable (excluding Provisional Sums but including Daywork where priced competitively) to either:

(a) the currency of the Employer's country at the selling rates established for similar transactions by the authority **specified in the BDS** on the date **stipulated in the BDS**;

or

(b) a currency widely used in international trade, such as the U.S. dollar, **stipulated in the BDS**, at the selling rate of exchange published in the international press as **stipulated in the BDS** on the date **stipulated in the BDS**, for the amounts payable in foreign currency; and, at the selling exchange rate established for similar transactions by the same authority specified in ITB Sub-Clause 29.1 (a) above on the date **specified in the BDS** for the amount payable in the currency of the Employer's country.

30. Evaluation and Comparison of Bids

30.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.

30.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

(a) making any correction for errors pursuant to ITB Clause 28;

(b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, Section V, but including Day work, when requested in the Specifications (or Terms of Reference) Section VIII;

(c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18; and

(d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB

Sub-Clause 23.5.

- 30.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.
- 30.4 The estimated effect of any price adjustment conditions under Sub-Clause 7.6 of the General Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.
- 31. Preference for Domestic Bidders** 31.1 Domestic bidders shall not be eligible for any margin of preference in Bid evaluation.

F. Award of Contract

- 32. Award Criteria** 32.1 Subject to ITB Clause 33, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.
- 32.2 If, pursuant to ITB Sub-Clause 13.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Taking into account any discounts offered by the bidders for the award of more than one contract.
- 33. Employer’s Right to Accept any Bid and to Reject any or all Bids** 33.1 Notwithstanding ITB Clause 32, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer’s action.
- 34. Notification of Award and Signing of Agreement** 34.1 The Bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex, or facsimile confirmed by registered letter from the Employer. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) will state the sum that the Employer will pay the Service provider in consideration of the

execution, completion, and maintenance of the Services by the Service provider as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”).

- 34.2 The notification of award will constitute the formation of the Contract.
- 34.3 The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder along with the Letter of Acceptance. Within 21 days of receipt of the Contract, the successful bidder shall sign the Contract and return it to the Employer, together with the required performance security pursuant to Clause 35.
- 34.4 Upon fulfillment of ITB Sub-Clause 34.3, the Employer will promptly notify the unsuccessful Bidders the name of the winning Bidder and that their bid security will be returned as promptly as possible.
- 34.5 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer. The Employer will promptly respond in writing to the unsuccessful Bidder.

35. Performance Security

- 35.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount and in the form (Bank Guarantee and/or Performance Bond) **stipulated in the BDS**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the General Conditions of Contract.
- 35.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder’s option, by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the agreement of the Employer directly by a foreign bank acceptable to the Employer.
- 35.3 If the Performance Security is to be provided by the successful Bidder in the form of a Bond, it shall be issued by a surety which the Bidder has determined to be acceptable to the Employer.
- 35.4 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clause 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid

Security.

**36. Advance
Payment and
Security**

36.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the amount **stated in the BDS**.

37. Adjudicator

37.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

Section II. Bidding Data Sheet

Instructions to Bidders Clause Reference

A. General	
1.1	The Employer is Kenya Maritime Authority The name and identification number of the Contract is KMA/ONT/017/SRB/017/2015-16
1.2	The Intended Completion Date is December 2017
2.1	The Borrower is Government of Kenya The Project is Kenya Transport Sector Support (KTSSP) The loan/credit number is
5.2	Prequalification HAS NOT been undertaken.
5.3	The Qualification Information and Bidding forms to be submitted by the bidding firms.
5.4	The information needed for Bids submitted by joint ventures to be forwarded by the bidding firms.
5.5(a)	The minimum required annual volume of Services for the successful Bidder in any of the last ten years shall be at least 3 consultancies
5.5(b)	The experience required to be demonstrated by the Bidder should include as a minimum that he has executed during the last 5 years the following: Having conducted a survey which led to development of a given charted area and details of the chart provided in the bid.
5.5(c)	The essential equipment to be made available for the Contract by the successful Bidder shall be Equipments for conducting the hydrographic survey.
5.5(e)	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be <i>as may be provided in the tender document.</i>
5.5	Subcontractors' experience ___ Will NOT be ___ be taken into account.
B. Bidding Data	
9.2 and 19.1	The number of copies of the Bid to be completed and returned shall be _2_

C. Preparation of Bids	
12.1	Language of the bid: English Language
13.1	The additional materials required to be completed and submitted are: Letters of reference
14.4	The Contract Will NOT be subject to price adjustment in accordance with Clause 6.6 of the Conditions of Contract.
15.1	Local inputs shall be quoted in Kenya Shillings .
16.1	The period of Bid validity shall be 120 days after the deadline for Bid submission specified in the BDS.
17.1	The Bidder shall provide bid bond as provided in clause 17.2 .
17.2	The amount of Bid Security shall be 2% or an equivalent amount in a freely-convertible currency.
18.1	Alternative bids WILL NOT permitted.
18.2	Alternative times for completion __WILL NOT BE__ permitted.
18.4	
D. Submission of Bids	
20.2	<p>The Employer's address for the purpose of Bid submission is Attention:</p> <p>Procurement Manager,</p> <p>Kenya Maritime Authority</p> <p>Address: P.O Box 95076, White House building, Moi Avenue, Mombasa</p> <p>Floor/ Room number No 1</p> <p>City: Mombasa</p> <p>Country: : Kenya</p> <p>Telephone: 254-41-2318398</p> <p>Facsimile number 254-41-2318397</p> <p>Electronic mail address: info@kma.go.ke</p> <p>For identification of the bid the envelopes should indicate:</p>

	<p>Contract: <i>KMA/ONT/017/SRB/2015-16</i></p> <p>Bid / Contract Number: <i>KMA/ONT/017/SRB/2015-16</i></p>
21.1	The deadline for submission of bids shall be 30TH _June 2017
E. Bid Opening and Evaluation	
24.1	<p>Bids will be opened at 11.00 am 30th June 2017 of the day Friday at the following address</p> <p>White House building,</p> <p>Moi Avenue, Mombasa</p> <p>Floor/ Room number - Board room</p> <p>City: Mombasa</p> <p>Country: : Kenya</p>
29.1	<p>Currency chosen for the purpose of converting to a common currency.</p> <p>American Dollar</p> <p>Source of exchange rate: Central Bank of Kenya</p> <p>Exchange rate date. 30th May 2017</p>
F. Award of Contract	
35.0	The Performance Security acceptable to the Employer shall be the in the Standard Form as prescribed.
36.1	The Advance Payment shall be of _10%_ percent of the Contract Price.

Section III. Bidding Forms

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Service Provider's Bid

[date]

To: *[name and address of Employer]*

Having examined the bidding documents including addenda No, we offer to execute the *[name and identification number of Contract]* in accordance with the Conditions of Contract, specifications, drawings and activity schedule accompanying this Bid for the Contract Price of *[amount in numbers]*, *[amount in words]* *[names of currencies]*.

The Contract shall be paid in the following currencies:

Currency	Amount payable in currency	Inputs for which foreign currency is required
(a)		
(b)		

We accept the appointment of *[name proposed in the Bidding Data Sheet]* as the Adjudicator.

[or]

We do not accept the appointment of *[name proposed in the Bidding Data Sheet]* as the Adjudicator, and propose instead that *[name]* be appointed as Adjudicator, whose daily fees and biographical data are attached.

This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the bidding documents and specified in the Bidding Data Sheet.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
(if none, state "none")		

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

Qualification Information

- 1. Individual Bidders or Individual Members of Joint Ventures**
- 1.1 Constitution or legal status of Bidder: *[attach copy]*
 Place of registration: *[insert]*
 Principal place of business: *[insert]*
 Power of attorney of signatory of Bid: *[attach]*
- 1.2 Total annual volume of Services performed in five years, in the internationally traded currency specified in the BDS: *[insert]*
- 1.3 Services performed as prime Service Provider on the provision of Services of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of employer and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

- 1.4 Major items of Service Provider's Equipment proposed for carrying out the Services. List all information requested below. Refer also to ITB Sub-Clause 5.4(c).

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to ITB Sub-Clause 5.4(e) and GCC Clause 9.1.

Position	Name	Years of experience (general)	Years of experience in proposed

position
(a)
(b)

- 1.6 Proposed subcontracts and firms involved. Refer to GCC Clause 7.

Sections of the Services	Value of subcontract	Subcontractor (name and address)	Experience in providing similar Services
(a)			
(b)			

- 1.7 Financial reports for the last five years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.
- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. We certify/confirm that we comply with eligibility requirements as per ITB Clause 4.
- 1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.
- 1.10 Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved.

Other party(ies)	Cause of dispute	Details of litigation award	Amount involved
(a)			
(b)			

- 1.11 Statement of compliance with the requirements of ITB Sub-Clause 4.2.
- 1.12 Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with

the requirements of the bidding documents.

- 2. Joint Ventures**
- 2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.
 - 2.2 The information in 1.12 above shall be provided for the joint venture.
 - 2.3 Attach the power of attorney of the signatory (ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.
 - 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
 - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 3. Additional Requirements**
- 3.1 Bidders should provide any additional information required in the BDS and to fulfill the requirements of ITB Sub-Clause 5.1, if applicable.

Letter of Acceptance

[Letterhead paper of the Employer]

[date]

To: *[name and address of the Service provider]*

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[amount in numbers and words]* *[name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

Note: Insert one of the 3 options for the second paragraph. The first option should be used if the Bidder has not objected the name proposed for Adjudicator. The second option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was accepted by the Employer. And the third option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was not accepted by the Employer.

We confirm that *[insert name proposed by Employer in the Bidding Data]*,

or

We accept that *[name proposed by bidder]* be appointed as the Adjudicator

or

We do not accept that *[name proposed by bidder]* be appointed as Adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 37.1 of the Instructions to Bidders

You are hereby instructed to proceed with the execution of the said contract for the provision of Services in accordance with the Contract documents.

Please return the attached Contract dully signed

Authorized Signature: _____
 Name and Title of Signatory: _____
 Name of Agency: _____

Attachment: Contract

Form of Contract

[Letterhead paper of the Employer]

LUMP-SUM REMUNERATION

This CONTRACT (hereinafter called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Employer]* (hereinafter called the “Employer”) and, on the other hand, *[name of Service Provider]* (hereinafter called the “Service Provider”).

[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Employer”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Employer for all the Service Provider’s obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the “Service Provider”).]

WHEREAS

- (a) the Employer has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Service Provider, having represented to the Employer that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;
- (c) the Employer has received *[or has applied for]* a loan from the International Bank for Reconstruction and Development (hereinafter called the “Bank”) *[or a credit from the International Development Association (hereinafter called the “Association”)]* towards the cost of the Services and intends to apply a portion of the proceeds of this loan *[or credit]* to eligible payments under this Contract, it being understood (i) that payments by the Bank *[or Association]* will be made only at the request of the Employer and upon approval by the Bank *[or Association]*, (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the loan *[or credit]*, and (iii) that no party other than the Employer shall derive any rights from the agreement providing for the loan *[or credit]* or have any claim to the loan *[or credit]* proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:

- (a) the Letter of Acceptance;
- (b) the Service Provider’s Bid

- (c) the Special Conditions of Contract;
- (d) the General Conditions of Contract;
- (e) the Specifications;
- (f) the Priced Activity Schedule; and
- (g) The following Appendices: [*Note: If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.*]

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Key Personnel and Subcontractors

Appendix D: Breakdown of Contract Price in Foreign Currency

Appendix E: Breakdown of Contract Price in Local Currency

Appendix F: Services and Facilities Provided by the Employer

Appendix G: Performance Incentive Compensation

2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:
 - (a) the Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of [*name of Employer*]

[*Authorized Representative*]

For and on behalf of [*name of Service Provider*]

[*Authorized Representative*]

[*Note: If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:*]

For and on behalf of each of the Members of the Service Provider

[*name of member*]

[Authorized Representative]

[name of member]

[Authorized Representative]

Bid Security (Bank Guarantee)

[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]

Beneficiary: _____

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted to you its bid dated (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the performance security, if required, in accordance with the Instructions to Bidders.

This guarantee will expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful bidder; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

Bid Security (Bid Bond)

[The Surety shall fill in this Bid Bond Form in accordance with the instructions indicated.]

BOND NO. _____

BY THIS BOND _____ as Principal (hereinafter called “the Principal”), and _____, **authorized to transact business in** _____, as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____ as Obligee (hereinafter called “the Purchaser”) in the sum of _____⁶ _____, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Purchaser dated the ____ day of _____, 20__, for the construction of _____(hereinafter called the “Bid”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) withdraws its Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of Bid validity; (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the Performance Security, if required, in accordance with the Instructions to Bidders.

then the Surety undertakes to immediately pay to the Purchaser up to the above amount upon receipt of the Purchaser’s first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Purchaser at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this ____ day of _____ 20__.

Principal: _____ Surety: _____
 Corporate Seal (where appropriate)

(Signature)
(Printed name and title)

(Signature)
(Printed name and title)

⁶ The amount of the Bond shall be denominated in the currency of the Purchaser’s country or the equivalent amount in a freely convertible currency.

Bid-Securing Declaration

[The Bidder shall fill in this Form in accordance with the instructions indicated.]

Date: _____
 Bid No.: _____
 Alternative No.: _____

To: _____

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of _____ starting on _____, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITB.

We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: _____

In the capacity of: _____

Name: _____

Duly authorized to sign the bid for and on behalf of: _____

Dated on _____ day of _____, _____
 Corporate Seal (where appropriate)

Section IV. Eligible Countries

Eligibility for the Provision of Goods, Works and Services in Bank-Financed Procurement

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): as a matter of law or official regulation, the Borrower's Country prohibits commercial relations with that Country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or

Para 1.8 (a) (ii): 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 Borrower's Country prohibits any import of goods from that Country or any payments to persons or entities in that Country.

Part II – Activity Schedule

Section V. Activity Schedule

5.1 Background

Kenya Maritime is a state corporation established by an Act of parliament KMA Act 2006 with a mandate for ensuring maritime safety at sea and inland waters. The Authority has received funding to conduct a hydrographic survey of the approaches to Wasini Island and the Port of Shimoni to update the relevant hydrographic information.

5.2 Rationale of the Hydrographic survey

The port of Shimoni and the approaches (Plans in Tanganyika and Kenya Chart 866 with date of survey 17th Sept 1937) will need to be updated as the Kenyan government plans for the development of the port in Shimoni in the near future.

5.3 The hydrographic status

The approaches to Shimoni was last surveyed in 1937.

5.5 Scope of the hydrographic survey

The scope will include a detailed identification of the precise areas (safe channels) to be surveyed having factored the drying heights, as well the areas under mangrove and other marine vegetation. The contractor will draft a work plan for the conduct of the hydrographic survey and present the plan for adoption by the Kenya Maritime Authority in conjunction with the Kenya National Hydrographic Committee.

5.5.1 Data Collection

The Contractor will collect data using agreed methods necessary for chart compilation in preparation for development of navigational charts. As under-keel clearance is critical, a full sea floor search is required. The following to be noted and adhered to:

Equipment:

Single or multi-beam echo sounder system with frequency suitable for the identification of a rocky or sandy seabed (dual frequency systems: high and medium to low frequencies)
DGPS/WADGPS/RTK positioning system.

Track lines:

In the case that a single-beam echo sounder is used, the track lines perpendicular to the coastline are to have a maximum spacing of 50 m. Two shore-parallel track lines, or cross lines, are to be surveyed in order to check the surveyed data.

In the case that a multi-beam echo sounder is used, the survey coverage shall have an overlap of at least 50% in order to check the surveyed data, and track lines parallel to the coast/contours are recommended, again including at least two cross lines perpendicular to the coast/contours.

Along the shoreline the survey is to be undertaken as close inshore as possible, but at least up to the -2 m MSL contour.

Conditions:

The survey shall be undertaken during calm conditions, using high tides when necessary to access the shallower area.

Output:

In the case that a single beam echo sounder is used, x, y, z information is to be recorded at a minimum of 1-second intervals or better.

In the case that a multi-beam echo sounder is used, x, y, z information is to be recorded at a minimum density of 10 points/m².

The date, time, x, y, z and tide level data shall be all stored in ASCII format.

Accuracy of measurements:

The accuracy of each surveyed point is to be within 0.25 m in the vertical (Z coordinate) and within 1 m in the horizontal (X and Y coordinates). (Refer to IHO Special Publication 44 for accuracy requirements as well as calculations for the Total Horizontal Uncertainty and Total Vertical Uncertainty requirements for a Special Order Survey)

Heave and navigation timing error (latency) corrections shall be applied to soundings to correct the effect of vessel motion caused by waves and swells and the time delay from the moment the position is measured until the data is received by the data collection system (navigation timing error). It is recommended that heave be observed in increments of 0.05 m, however coarser increments can be observed if the surveyor can demonstrate that the depth accuracy specified above is not exceeded. Error corrections shall be recorded in the data files and applied to all soundings and cross-track distances as applicable. Height of tide, actual or predicted shall be applied to soundings, in accordance with the vertical control regime. The position fixing system and survey equipment shall be calibrated prior to and after the acquisition of data for each survey. Details with regard to the calibration of equipment shall be submitted with the survey reports.

The following system calibrations are required prior to the commencement of the survey:

- Single beam echo sounders shall be calibrated using a bar check
- Multi beam echo sounders shall be calibrated using a bar check as well as a patch test.
- A continuous evaluation of the sound velocity regime, spatially as well as temporal, is also required to ensure accurate depth determination as well as refraction corrections (multi beam echo sounder)

A differential GPS system capable of a horizontal positioning accuracy of better than 1 m at the 95% confidence level must be used for all positioning. The DGPS receiver(s) aboard the vessel must be configured such that satellites below 8 degrees above the horizon are not used in position computations. Satellite geometry alone is not a sufficient statistic for determining horizontal positioning accuracy. Other variables, including satellite pseudo-range residuals, are to be used in conjunction with HDOP to estimate DGPS horizontal accuracy. A minimum of four satellites must be used to compute all positions. Horizontal and vertical offsets between the GPS antenna and transducer(s) shall be observed and applied with a precision better than 0.05 m. All positioning systems are also to be calibrated against a trigonometric beacon or accepted survey mark, the results of which are to be included in the report of survey.

The following are minimum requirements:

DGPS/RTK System

Vessel motion sensor

Navigational computer for on-line navigational control during the survey

Digital acquisition (data logging) of all the above sensor outputs

Post-processing for motion correction of the vessel movements and heading. Conversion of all bathymetry data into absolute (x,y,z) files for digital maps.

Tidal data for the applicable area and date/time

Sound velocity measuring equipment (SVP/CTD/XBT)

6.0 Qualification of Key personnel

6.1 Lead Hydrographer

The team leader shall have at least a postgraduate degree in surveying (MSc in Hydrography, FIG/IHO CAT A or a related field) with at least 10 years' experience in carrying out hydrographic surveys in lakes and oceans. The leader should have survey experience in project and operational management; survey co-ordination; hydrographic surveying including single-beam, multi-beam, interferometry, side-scan sonar and magnetometer surveying.

6.2 Qualifications of other Key Team Members

The other team members shall possess qualifications and experience as indicated below:

6.2.1 Hydrographic Surveyors

The surveyors must have a Bachelor of Science in Hydrographic surveying and a Higher National Diploma in Sea/Large Lake Surveying or equivalent. The surveyors must have at least 10 years' experience in various aspects of hydrographic surveying, including harbour and port, cable and pipeline routes, oil rig sites and dredging hydrographic surveys. He/she should have undertaken tide data measurement and predictions.

7.0 Reports and schedule of deliverables

The following reports will be submitted by the Contractor:-

- (a) An inception report within 14 days after signing the contract containing a clearly articulated work plan and elucidating the methodology to be employed. The report will be presented to the Kenya Hydrographic committee for discussions, comments and approval;
- (b) Monthly/ weekly Progress Reports will be submitted to the KMA;
- (c) Final Report which should include among other the following details
 - (i) Start and finish dates with remarks on any general service activities which may have interrupted the conduct of the survey.
 - (ii) Geodetic control to Include a statement on how much existing geodetic control was used and give an explanation if any new control was established giving a general statement on degree of accuracy and outline any difficulties which might have been encountered.
 - (iii) Digital survey system used including the software
 - (iv) Navigational aids- stating the type of operating mode of system used and how the system was calibrated.
 - (v) Bathymetry- Stating the type of echo sounder used and its transmission frequencies and the accuracy achieved.
 - (vi) Sonar-Stating the type of sonar used and its transmission frequency. This should also include the surveyor opinion on the quality and reliability of sonar equipment, as well as calibration methods and results
 - (vii) Seabed sampling- State the sampling interval and comment on any particular samples obtained on interesting features. If side scan sonar or multi beam backscatter data was used in determining the seafloor type, ground truth is required, and the software used for interpretation of sonar data specified and commented on.
 - (viii) Tides and Sounding datum- State how sounding datum was established
 - (ix) Tidal Stream- How the tidal stream observations were made.
 - (x) Wrecks and obstructions-State the methods used to investigate wrecks and obstructions including techniques used. Least depth over wrecks and

obstructions are to be determined, and the use of divers or wire sweeps is recommended.

(xi) Light and buoys-State the methodology used to check existing lights and buoys and any suggestions for additional buoys.

(xii) Sailing direction and Nomenclature_ a summary of the information to be forwarded to be included in the sailing direction.

(xiii) The following deliverables are required:

- Drawings are required in both .pdf and .drawing formats. Drawings include:
- Track lines
- Contour drawings (0.5 m contour intervals)
- In the case that a multi-beam echo sounder is used, shoal-biased (or median biased) high resolution multi-beam colour bathymetric image map of the area, contoured at 0.5 m intervals.

Data:

- ASCII data files of hydrographic and topographic survey recordings;

7.1 Expected Duration of the Assignment

The assignment is expected to take up to three months man hours from the start date

I. The following records should be submitted to KMA and the Department of Survey of Kenya

- (a) Calibration data
- (b) Processed sounding data
- (c) Geodetic data
- (d) Wreck records
- (e) Amendments to sailing directions.
- (f) Photographic and satellite imagery
- (g) Sound velocity records
- (h) Backscatter data
- (i) Miscellaneous records

II. **Digital Formats:** All the records, surveys, and maps will be submitted in appropriate digital formats as agreed with the KMA. All geo-spatial data will be geo-referenced with appropriate attributes using a common GIS system (e.g. ArcGIS) and in a coordinate system approved by the director of survey. All digital formatted data to be submitted giving full details of information gathered.

All reports and communication materials developed by the contractor during this assignment shall revert to KMA. In addition, soft copies (PDF, MS Word and Ms

Excel, etc.) of the reports will be submitted on 8 CDs/DVDs when submitting the draft and final reports of this assignment. Eight hardcopies of all reports will also be submitted. All the reports shall be in English language, neatly bound, with an attractive outlay and shall contain the main text and annexure, with figures/frameworks, illustrations and/or logical flow diagrams. Ten sets of all the /bathymetric (showing appropriate contours)/route maps colour hardcopies (A0 size or as agreed with the client) will be provided along with digital PDF versions.

III. Responsibilities of the Client

- (a) Provide available relevant reference documents;(Chartlet with the demarcated priority survey area)
- (b) Organize national workshops to validate the contractors report/s;

IV. Supervision Arrangements

Supervision of the consultancy will be carried out by Hydrographer from the Ministry of Land and KMA Project Leader.

Part II

Evaluation and qualification criteria

1. Margin of Preference (ITB 33)

There will be no margin of preference

2.3. Alternative Bids (ITB 13.1)

There will be no alternative bids

3. Qualification (ITB 36)

3.1 Mandatory requirements

Ser. No	Criteria	Yes/No	Remarks
1	Tax compliance		
2	Registered and appropriate licenses		
3	Audited and certified accounts for 2013, 2014, 2015		
4	Minimum set of equipments		
5	Bid security bond of appropriate amount		
6	Key personnel for the contract		
7	Minimum number of assignments carried		

3.2 Technical qualification

Ser. No	Criteria	Max marks	Remarks
1	Technical capability (experience in similar works in the last 5 years which led to production of Navigation charts) accompanied by evidence of charts produced.	Max 30 marks (10 marks per contract up to 3)	
2	Methodology of conduct of hydrographic survey including the technology proposed.	Max 30	
3	Competence of the technical personnel proposed for the project	Max 20 marks	
4	The proposed time period for conducting of the survey and production of the Navigational charts	Max10	
5	Financial capacity of the bidder to perform the tendered services	Max 10	
	Total	100	

Pass mark to proceed to the financials will be 70%

3.3 Financial quotes.

Bidders are to quote the cost of the entire survey per square mile to enable the final determination of the final actual square miles to be surveyed based on the available funding for the work. However for planning purposes bidders should plan with the actual area covered by Chart No. 866. Plans in Tanganyika and Kenya. Wasini Channel with a limit of Latitude 04 deg. 37 Min. to 04 deg. 42 Min. South Longitude 39 deg. 28 Min to 39 deg, 20 Min. as a minimum

3.5 Post qualification Requirements (ITB 36.1)

After determining the lowest-evaluated bid in accordance with ITB 35.1, the Purchaser shall carry out the post qualification of the Bidder.

Part III – Conditions of Contract and Contract Forms

Section VI. General Conditions of Contract

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Section V. General Conditions of Contract

A. General Provisions

1.1 Definitions

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

- (a) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- (b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (c) “Bank” means the International Bank for Reconstruction and Development, Washington, D.C., U.S.A.;

or

- (c) “Association” means the International Development Association, Washington, D.C., U.S.A.;
- (d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Employer
- (e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (g) “Dayworks” means varied work inputs subject to payment on a time basis for the Service Provider’s employees and equipment, in addition to payments for associated materials and administration.
- (h) “Employer” means the party who employs the Service Provider
- (i) “Foreign Currency” means any currency other than the currency of the country of the Employer;
- (j) “GCC” means these General Conditions of Contract;
- (k) “Government” means the Government of the Employer’s country;
- (l) “Local Currency” means the currency of the country of the

Employer;

- (m) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider’ rights and obligations towards the Employer under this Contract;
- (n) “Party” means the Employer or the Service Provider, as the case may be, and “Parties” means both of them;
- (o) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- (p) “Service Provider” is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;
- (q) “Service Provider’s Bid” means the completed bidding document submitted by the Service Provider to the Employer
- (r) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- (s) “Specifications” means the specifications of the service included in the bidding document submitted by the Service Provider to the Employer
- (t) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid.
- (u) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4.

1.2 Applicable Law The Contract shall be interpreted in accordance with the laws of the Employer’s country, unless otherwise **specified in the Special Conditions of Contract (SCC).**

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

1.4 Notices Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex,

telegram, or facsimile to such Party at the address **specified in the SCC.**

- 1.5 Location** The Services shall be performed at such locations as are specified in Appendix A, in the specifications 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 Employer may approve.
- 1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials **specified in the SCC.**
- 1.7 Inspection and Audit by the Bank** The Service Provider shall permit the Bank to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Bank, if so required by the Bank.
- 1.8 Taxes and Duties** The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2. Commencement, Completion, Modification, and Termination of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC.**
- 2.2 Commencement of Services**
- 2.2.1 Program** Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.
- 2.2.2 Starting Date** The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC.**
- 2.3 Intended Completion Date** Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC.** If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case,

the Completion Date will be the date of completion of all activities.

2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties and shall not be effective until the consent of the Bank or of the Association, as the case may be, has been obtained.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract 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 (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

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.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Employer

The Employer may terminate this Contract, by not less than thirty (30) days’ written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in

writing;

- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purposes of this Sub-Clause:

- (i) “corrupt practice”⁷ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”⁸ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”⁹ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”¹⁰ 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 party;
- (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 Bank investigation into allegations of a corrupt,

⁷ For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁸ For the purpose of this Contract, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁹ For the purpose of this Contract, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

¹⁰ For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution.

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 Bank's inspection and audit rights provided for under para. 1.14 (e) of the Bank's Procurement Guidelines.

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Suspension of Loan or Credit

In the event that the World Bank suspends the loan or Credit to the Employer, from which part of the payments to the Service Provider are being made:

- (a) The Employer is obligated to notify the Service Provider of such suspension within 7 days of having received the World Bank's suspension notice.
- (b) If the Service Provider has not received sums due to by the due date stated in the SCC in accordance with Sub-Clause 6.5 the Service Provider may immediately issue a 14 day termination notice.

2.6.4 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the

Contract, including the cost of the return travel of the Personnel.

3. Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Government's country which would conflict

with the activities assigned to them under this Contract;

- (b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- (c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.

3.4 Insurance to be Taken Out by the Service Provider

The Service Provider (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Employer's request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring Employer's Prior Approval

The Service Provider shall obtain the Employer's prior approval in writing before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- (c) changing the Program of activities; and
- (d) any other action that may be **specified in the SCC**.

3.6 Reporting Obligations

The Service Provider shall submit to the Employer the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the Employer

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Employer, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a

detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages The Service Provider shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

3.9 Performance Security The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 days from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

4. Service Provider's Personnel

4.1 Description of Personnel The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as

by name in Appendix C are hereby approved by the Employer.

4.2 Removal and/or Replacement of Personnel

- (a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Employer finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.
- (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the Employer

5.1 Assistance and Exemptions

The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC.**

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6. Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the

amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

- 6.2 Contract Price**
- (a) The price payable in local currency is **set forth in the SCC**.
- (b) The price payable in foreign currency is **set forth in the SCC**.
- 6.3 Payment for Additional Services, and Performance Incentive Compensation**
- 6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
- 6.3.2 **If the SCC so specify**, the service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.
- 6.4 Terms and Conditions of Payment**
- Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.
- 6.5 Interest on Delayed Payments**
- If the Employer has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the SCC.
- 6.6 Price Adjustment**
- 6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:
- $$P_c = A_c + B_c \frac{L_{mc}/L_{oc}}{L_{mc}/L_{oc}} + C_c \frac{I_{mc}/I_{oc}}{I_{mc}/I_{oc}}$$
- Where:
- P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.
- A_c , B_c and C_c are coefficients specified in the SCC, representing: A_c the nonadjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

Lmc is the index prevailing at the first day of the month of the corresponding invoice date and Loc is the index prevailing 28 days before Bid opening for labor; both in the specific currency “c”.

Imc is the index prevailing at the first day of the month of the corresponding invoice date and Ioc is the index prevailing 28 days before Bid opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of pn for the formula of the relevant currency. Z_o is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

6.7 Dayworks

6.7.1 If applicable, the Daywork rates in the Service Provider’s Bid shall be used for small additional amounts of Services only when the Employer has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Employer. Each completed form shall be verified and signed by the Employer representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

7. Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Employer shall be as **indicated in the SCC**. The Employer shall check the Service Provider’s performance and notify him of any Defects that are found. Such checking shall not affect the Service

Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 Correction of Defects, and Lack of Performance Penalty

- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- (b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
- (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8. Settlement of Disputes

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2 Dispute Settlement

8.2.1 If any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 14 days of the notification of disagreement of one party to the other.

8.2.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

8.2.3 The Adjudicator shall be paid by the hour at the rate **specified in the BDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in

the place **shown in the SCC**.

8.2.5 Should the Adjudicator resign or die, or should the Employer and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Service Provider. In case of disagreement between the Employer and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

Section VII. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	The words “in the Government’s country” are amended to read “in <i>Kenya</i> .”
1.1(a)	The Adjudicator is _____
1.1(e)	The contract name is <i>HYDROGRAPHIC SURVEY OF SHIMONI PORT AND ITS APPROACHES</i>
1.1(h)	The Employer is <i>KENYA MARITIME AUTHORITY</i>
1.1(m)	The Member in Charge is <i>DIRECTOR GENERAL</i>
1.1(p)	The Service Provider is _____
1.2	The Applicable Law is: <i>KENYA LAW</i>
1.3	The language is <i>ENGLISH</i>
1.4	<p>The addresses are:</p> <p>Employer: DIRECTOR GENERAL</p> <p>Attention: PROCUREMENT MANAGER</p> <p>Facsimile: 254-2318397</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Employer: CAPT. DAVE N MULI</p> <p>For the Service Provider: _____</p>
2.1	The date on which this Contract shall come into effect is <i>_UPON SIGNING BY ALL PARTIES.</i>
2.2.2	The Starting Date for the commencement of Services is <i>__TO BE AGREED BY THE PARTIES_____.</i>
2.3	The Intended Completion Date is <i>__SIX MONTHS AFTER AWARD</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<i>COMMENCEMENT</i> _____.
3.2.3	Activities prohibited after termination of this Contract are: _USE OF DATA COLLECTED AFTER SURVEY WITHOUT EXPRESS PERMISSION OF THE EMPLOYER
3.4	<p>The risks and coverage by insurance shall be:</p> <ul style="list-style-type: none"> (i) Third Party liability _____ (ii) Employer's liability and workers' compensation _____ (iii) Professional liability _____ (iv) Loss or damage to equipment and property _____
3.8.1	<p>The liquidated damages rate is _____ <i>0.05%</i> _____ per day</p> <p>The maximum amount of liquidated damages for the whole contract is _____ <i>10%</i> _____ percent of the final Contract Price.</p>
3.8.3	The percentage _____ to be used for the calculation of Lack of performance Penalty(ies) is _____.
5.1	<p>The assistance and exemptions provided to the Service Provider are:</p> <p>Liaison with other government agencies relating to the performance of the hydrographic survey.</p>
6.2(a)	The amount in local currency is _____.
6.2(b)	The amount in foreign currency or currencies is _____.
6.4	<p>Payments shall be made according to the following schedule:</p> <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: _10% _____ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same. • Progress payments in accordance with the milestones established as follows, subject to certification by the Employer, that the Services have been rendered satisfactorily, pursuant to the performance indicators: <ul style="list-style-type: none"> ➤ _30% on validated data of 50% survey area ➤ 30% on validated data for entire survey area ➤ 30% on production and acceptance of the Navigational chart by the country primary charting Authority

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>Should the certification not be provided, or refused in writing by the employer within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.</p> <ul style="list-style-type: none"> • The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%. • The bank guarantee for the advance payment shall be released when the advance payment has been fully amortized.
6.5	<p>Payment shall be made within <u>45</u> days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within <u>60</u> days in the case of the final payment.</p> <p>The interest rate is <u>prevailing Central Bank rate</u>.</p>
7.1	<p>The principle and modalities of inspection of the Services by the Employer are as follows: <i>Strict compliance with the IHO standards in conducting the hydrographic survey</i></p>
8.2.3	<p>The Adjudicator is _____. Who will be paid a rate of _____ per hour of work. The following reimbursable expenses are recognized: _____</p>
8.2.4	<p>The arbitration procedures of _____ will be used</p>
8.2.5	<p>The designated Appointing Authority for a new Adjudicator is _____</p>

Section VIII. Performance Specifications and Drawings

	Subject	Notes
1.1.	Swathe Bathymetry	
1.1.1	Primary Depth Sensor	Depth will be measured throughout the survey area using a swathe bathymetry system capable of meeting all of the requirements stated below. The Contractor shall provide empirical evidence of each system's ability to meet the stated requirement to KMA as a tender deliverable.
1.1.2	Uncertainty	Sounding uncertainty (in three dimensions) shall be in accordance with IHO Order 1A.
1.1.3	Uncertainty Mode	The Contractor shall provide a fully developed uncertainty Model to the KMA prior to survey operations commencing. The Model shall state all component uncertainties, as well as the combined total uncertainty. .
1.1.4	Object Detection	For all parts of the survey area, the minimum size of object detected shall be: <ul style="list-style-type: none"> (i) Cube with sides of 2m in depths < 40m (ii) Cube with sides of 10% of depth in depths >40m Contractors proposing phase measuring bathymetric sonars must submit a proposal when tendering stating how individual samples will be aggregated into a sounding for a given part of the acoustic footprint. Single interferometry samples will not be considered as a sounding unless they can be proven to meet the uncertainty requirements without any form of aggregation. For example, samples could be aggregated into a fixed across track bin size or binned by number of samples.
1.1.5	Sounding Density	Each object (see above) is to be detected by at least 3 valid data points in the along - track direction and 3 valid data points in the across - track direction, forming a minimum 3x3 grid of 9 data points. To monitor compliance with the Target Detection requirements for a given area, a minimum sounding density of 9 accepted soundings will be achieved in the following bin sizes: <ul style="list-style-type: none"> (i) Bin with sides of 2m in depths < 40m (ii) Bin with sides of 10% of depth in depths >40m

	Subject	Notes
1.1.6.	Acoustic Coverage	<p>Full seafloor coverage shall be achieved to the defined depth contour.</p> <p>Where a survey block lies adjacent to the coastline, data coverage (meeting the above requirements) shall extend into the 2m depth contour unless specified.</p>
1.1.7	Survey Line Spacing	Line spacing shall be such that all requirements in section 1.1.4, and 1.1.5 are met in full.
1.1.8	Crosslines	<p>A minimum of 4 bathymetric crosslines shall be run for each Survey Block of the Hydrographic Instruction. Crosslines shall be at approximately equal spacing, and be approximately perpendicular to the typical mainline orientation in that block.</p> <p>Crosslines shall be rendered in folders separate from the mainline data structure, and the data should be cleaned as per 1.1.12 to allow for a statistical analysis.</p>
1.1.9	Wreck Investigations	<p>All suspected (or obvious) wrecks located during the course of the survey shall be reported (with respect to position, orientation, extent and least depth).</p> <p>All wrecks are to be investigated by running one survey line, centred over the centre of the wreck and orientated along the major axis, followed by two further parallel lines offset either side from the major axis. Sufficient lines run at right angles to the first so as to cover the entire length shall also be run. All investigation lines are to be run at as slow a speed as is possible, to maximise the sounding density.</p> <p>The contractor shall clearly indicate within the RoS whether the least depth for each wreck has been determined by the real time bottom detect, by analysis of swathe bathymetry water column data, or by other means if previously agreed by KMA</p>
1.1.10	Swathe Bathymetry Water Column Data (WCD)	<p>Swathe bathymetry water column shall be logged for further analysis during all wreck investigation lines. This data shall be analysed in an appropriate software package to compare the data digitised in real time by the swathe bathymetry with other features present in the water column.</p> <p>The surveyor shall have the ability to re-pick fully geo-referenced depths from the water column data for inclusion in the final sounding data if a shoaler depth over a given feature has been found within the water column data.</p> <p>These depths will be imported into the final CARIS HIPS data structure, and be fully corrected for sound speed and tide.</p> <p>The Contractor will supply images or animations with the RoS showing the water column replay for each wreck to support the designation of least depth.</p> <p>All WCD files are also to be rendered. The Contractor shall supply details of the procedure, software and file formats to be utilised for swathe bathymetry water column data interpretation prior to survey operations commencing.</p> <p>Any Contractor proposing phase measuring bathymetric sonars must clearly indicate how they intend to meet this water column requirement as a tender deliverable.</p>

	Subject	Notes
1.1.11	Presentation of Depth Data	Depth data recorded shall be logged to at least two decimal places of a metre.
1.1.12	Data Cleaning	All accepted soundings within the final bathymetric dataset shall fall within the IHO Order 1A uncertainty allowance. All systematic errors and obvious outliers shall be rejected from the bathymetric data. Data points falling within the Order 1A depth requirements but still numerically distant from the main dataset will still be regarded as outliers.
1.1.13	Swathe Bathymetry Data Deliverables	<p>Processed and cleaned swathe bathymetry data shall be rendered as a part of a final CARIS HIPS project for each HI. The CARIS HIPS software version shall be up – to - date at the time of rendering.</p> <p>Multiple vessels (if utilised) shall be isolated from one another using conventional CARIS vessel hierarchy. Calibration data and cross lines shall be isolated from the main survey lines.</p>
1.2.	Positioning, Survey Control and Calibration	
1.2.1	Positioning	<p>Soundings are to be positioned by using dual frequency carrier phase GNSS combined with the Ordnance Survey Active Networks (i.e. Post Processed Kinematic GNSS). In some offshore locations the Contractor may need to switch to a Precise Point Positioning techniques. This will be permitted for an HI only by prior approval from the KMA. Post processed positions should ideally be integrated with the vessel attitude data to avoid bias associated with vessel motion.</p> <p>The Contractor shall demonstrate that the method chosen for sounding positioning results in the overall horizontal uncertainty requirements being met.</p> <p>Conventional Differential GNSS is acceptable for real time positioning (as these positions will later be discarded) although more precise positioning may also be used if required by the Contractor.</p> <p>The contractor will state methodologies for post - processed and real time positioning as a tender deliverable.</p>
1.2.2.	Extension of Existing Control	Any extension of existing geodetic control and the establishment of new stations shall be fully documented. The derivation of the co-ordinates of existing stations shall be stated. Adjustment of all observations shall be by the method of Least Squares.
1.2.3.	Establishment of Survey Control	<p>Three dimensional position of any existing or newly established survey control shall be determined by dual frequency carrier phase GNSS techniques, tied in to the Ordnance Survey Active Network. A minimum of six hours observations are required per station.</p> <p>This six hour observation period should be divided into two three hour sessions. At the end of the first session the antenna should be physically moved away from the mark and then re-established over the mark before</p>

	Subject	Notes
		<p>commencing the 2nd observation session.</p> <p>The height of the static GNSS antenna should be measured before each session and clearly recorded and reported.</p> <p>If the height measured is a slope distance from the edge of the antenna, this shall be appropriately corrected to obtain the true vertical offset.</p> <p>The static GNSS antenna shall be positioned directly over the control point using an optical plummet.</p> <p>The absolute uncertainty with respect to ETRS89 for any existing or newly established survey control shall not exceed 1cm in horizontal and 2 cm in vertical (at 2 sigma).</p> <p>The appropriate OD height and appropriate UTM coordinate for each station shall be computed. Where necessary, co-ordinate conversion shall be conducted using approved conversion programs and an estimated final uncertainty stated.</p>
1.2.4	Optical Levelling	<p>To perform a redundant check on any control established and/or utilised, all control points shall be optically levelled from two pre-existing control points referred to the appropriate Ordnance Datum.</p> <p>Levelling is to be conducted between the 2 control points established, the tide pole and any existing BM's in the vicinity provided in the HI. Levelling is to comprise a looped traverse – no intersights shall be taken.</p> <p>Level s should be read and recorded to a precision of 0.001m. Levelling shall be recorded using the H532 Levelling Reduction Form. Any levelling field records should also be supplied.</p> <p>In some cases, this levelling requirement may be replaced by an entirely GNSS based redundant technique upon agreement with the KMA , should pre-existing control prove unsuitable or non-existent.</p>
1.2.5.	Station Marking and Documentation	<p>All geodetic stations established during survey operations shall be described, photographed and permanently marked to assist their future recovery.</p> <p>They shall be marked with a stainless steel, brass or bronze bolt drilled into concrete, in an area where they are unlikely to be disturbed. The bolt shall be punched to mark the precise horizontal measurement point. Stations shall not be established in tarmac.</p> <p>Stations deviating from the above requirements due to site conditions will only be permitted at the prior discretion KMA.</p> <p>A full station description shall be recorded using the H159 Description of Geodetic Control Station Form, including photographs and diagrams to aid recovery.</p>

	Subject	Notes
1.2.6	Order of Survey Horizontal Accuracy	Order of Survey Horizontal Accuracy shall be in accordance with IHO S44 Order 1A.
1.2.7	Vessel Dimensional Control	<p>An appropriate dimensional control survey of each vessel utilised shall have been conducted prior to commencement. Permanent and recoverable control points are to be established on each vessel utilised, coordinated to the vessel reference frame to within a tolerance $\pm 0.01\text{m}$ relative (at the 95% confidence level) in X, Y and Z.</p> <p>All sensors shall be established within the vessel reference frame within a tolerance of $\pm 0.02\text{m}$ relative (at the 95% confidence level) in X, Y and Z.</p> <p>Where appropriate, the rotations of each sensor around the X, Y and Z axis shall be initially determined by the dimensional control survey to within ± 0.2 degrees (at the 95% confidence level). These values may be later adjusted during the sonar patch test if required.</p> <p>The centre of gravity (rotation) should also be estimated and it's location within the vessel reference frame and method of establishment clearly stated in the RoS.</p> <p>A copy of the dimensional control report for each vessel shall be supplied with the RoS for each HI.</p>
1.2.8.	Swathe Bathymetry Calibration	<p>A calibration of the swathe bathymetry system and associated sensors (i.e, "patch test") shall be performed at the start of each survey season or after changing out or significantly reconfiguring any survey sensor (methodology shall be detailed in tender).</p> <p>Final post calibration repeatability shall be proven by means of the repeatability test detailed below.</p>
1.2.9.	Static Positioning Check	<p>A static positioning check shall be performed at the start of each survey season or after changing out or significantly reconfiguring any survey sensor (methodology shall be detailed in tender).</p> <p>The check shall monitor the three dimensional position of either the primary GNSS antenna or another appropriate point within the vessel reference frame, for a period of no less than 30 minutes at a 1 minute resolution.</p> <p>The subsequent report should separately state the computed statistical reliability of both the horizontal position and the height measured.</p> <p>The positioning data to be compared will have been derived using the same procedures used to obtain all positions associated with the bathymetric data (i.e. post processed kinematic).</p> <p>Any local survey control utilised in this procedure shall be compliant with the requirements stated in section Establishment of Survey Control.</p>
1.2.10.	Swathe Bathymetry Repeatability Test	A swathe bathymetry repeatability test shall be performed following calibration at the start of each survey season or after changing out or significantly reconfiguring any survey sensor (methodology shall be detailed in tender). This test should be conducted after the static position check stated above.

	Subject	Notes
		<p>The test shall monitor the three dimensional position of a clearly defined small but easily detectable feature on the sea bed. The feature should be first surveyed near nadir from multiple directions – as a minimum from north, south, east and west.</p> <p>Secondly the feature should be boxed in, so that it appears in the outer beams on port for 2 lines, and the outer beams on starboard for 2 lines.</p> <p>The subsequent report should separately state the computed statistical reliability of both the horizontal position and the depth measured for the feature.</p>
1.2.11.	Quality	The Contractor shall provide an indication of the continuous quality of the post - processed 3D position.
1.3.	Deliverables	
1.3.1.	Data Delivery Notification	The Contractor will provide KMA 60 working days advance notice of delivery of each HI. If this date is met (within a tolerance of ± 5 working days), KMA intend to fully validate the deliverables within 25 working days. This assumes the deliverables are fully compliant with this specification. If the stated target delivery date is not met by the Contractor, KMA will assign the next available slot in the programme, and the validation timescales will increase to 60 working days from data delivery.
1.3.2	Data Delivery Deadline	All data and associated documents are to be rendered to KMA within 70 working days of the completion of fieldwork milestone declared by the Contractor.
1.3.3.	Labelling of Records & Deliverables	<p>Project Name:</p> <p>DEVELOPMENT OF NAVIGATION CHARTS FOR APPROACHES TO SHIMONI</p> <p>Hydrographic Instruction Number:</p> <p>As detailed in each Hydrographic Instruction</p> <p>Hydrographic Instruction Name:</p> <p>As detailed in each Hydrographic Instruction</p> <p>Each rendered item of digital data shall bear a depiction of KMA logo, together with the project name, HI number and HI name</p>
1.3.4	Required Deliverables	<p>KMA deliverables:</p> <p>a. Processed (cleaned) sounding data (CARIS HIPS Project), structured by</p>

	Subject	Notes
		<p>vessel and including crosslines in separate folders</p> <p>b. Raw sounding data (proprietary format) containing full backscatter record</p> <p>c. Raw and processed Water Column Data from wreck investigations</p> <p>d. Backscatter mosaic in high resolution GeoTIFF format</p> <p>e. Seabed classification of backscatter data (digital seabed texture information) in ESRI shapefile format)</p> <p>f. Sound - speed records in H 635 digital format.</p> <p>g. Magnetometer data as an electronic file containing lat, long and magnetometer signal strength in a documented file format.</p> <p>h. ADCP data where requested.</p> <p>i. Digital Report of Survey (UKHO format including appropriate H forms):</p> <p>(i) Dimensional control / Calibration/validation data</p> <p>(ii) Survey Control Geodetic data (including reference station RINEX)</p> <p>(iii) Wreck records (including Images or animations showing the water column replay for each wreck investigated)</p> <p>(iv) Tidal records</p> <p>(v) Amendments to any Admiralty Publications</p> <p>(vi) Photographic views with supporting data</p>

	Subject	Notes
		<p>(vii) Seabed sampling records</p> <p>(viii) Miscellaneous observations records</p>
1.3.5.	Backscatter Mosaic	<p>The backscatter mosaic should be a representation of the backscatter intensity across the respective HIs. Artefacts (nadir stripping, poor data, etc) and backscatter changes within homogenous areas shall be corrected for.</p> <p>If a survey area is too large to create one contiguous mosaic, then an individual mosaic for each block should be created.</p> <p>The resolution of the backscatter mosaic shall be the best achievable.</p>
1.3.6.	Seabed Classification	<p>A classification of seabed texture information shall be rendered as an ESRI shapefile. The Contractor shall interpret seabed textural changes across their respective HIs using a combination of the bathymetry, backscatter interpretation and Ground -truthing from grab sampling.</p> <p>The Contractor shall provide details of the procedures and software to be employed as a tender deliverable.</p>
1.3.7	Digital Data Media	All Data shall be delivered on USB 3.0 hard drives (or equivalent). No rendered data file shall be larger than 2 Gigabytes in size.
1.3.8.	Report of Survey (RoS)	A Report of Survey (RoS) shall be rendered in digital format
1.3.9.	Bathymetric Data Attribution	Processed bathymetric data shall contain the following attributes for each sounding as a minimum: position and depth; swath and beam number; backscatter intensity; 95% statistical uncertainty estimation for position; 95% statistical uncertainty estimate for depth. Files shall be full density (i.e. not "thinned") with rejected soundings flagged but not deleted from the data set.
1.3.10.	Tidal Data	<p>Tide gauge records are to be rendered in a text file or Excel spreadsheet and containing the meta - data about the deployment, which as a minimum must be:-</p> <p>(i) Position of instrument</p> <p>(ii) Depth of water at the deployment site</p> <p>(iii) Start/ End of deployment time and date</p>

	Subject	Notes
		<p>(iv) Units in metres</p> <p>The tide gauge observations must be rendered in metres and not solely in pressure readings.</p> <p>The following forms should be utilised:</p> <ul style="list-style-type: none"> • H516 (Summary of Checks on Automatic Tide gauge) • H143 Record of Tidal Observations
1.3.11.	Tidal Stream Data	<p>An Excel spreadsheet containing the meta - data about the deployment:-</p> <ol style="list-style-type: none"> a) Position of instrument b) Depth of water at the deployment site c) Height of instrument above the seabed d) Start/ End of deployment time and date e) Local variable parameters <ol style="list-style-type: none"> (i) Magnetic Variation (ii) Mean Water Density (iii) Barometric Pressure <p>If the ADCP is also able to record tidal height data, then this must be configured in the deployment and supplied in Excel format, either accompanying the main tidal stream data or in a separate tab / spreadsheet.</p> <p>The stream data in the Excel spreadsheet must be displayed for each bin recorded in departures E and N, as well as Magnitude and Degrees (true). Units of the rates must be clearly stated.</p>
1.3.12.	Comparison with Published Chart	<p>The sounding detail shown on the largest scale published chart of the survey area is to be critically examined and any significant differences reported. In particular, a comment is required for any charted dangers that were not discovered during the survey, or where the least depth found over a danger during the survey is deeper than charted. Any other errors, ambiguities or other defects shall be reported.</p>

	Subject	Notes
1.3.13.	Retention of Data	All raw and processed digital records shall be retained and maintained by the Contractor for a period of 3 years from the date of the final contract payment. On completion of this 3 year period, the Contractor may seek permission from KMA to dispose of the data as they so wish.
1.3.14.	KMA Copyright	All data and accompanying documents and records, both working and fair, originating from the survey become the property of Kenya Government and must be handed over on demand. Where appropriate, they are to carry the following official markings: KMA COPYRIGHT 2017* FOR OFFICIAL USE ONLY *year as appropriate
1.4	Swathe Bathymetry Data Deliverables	
	Format of BathymetricData	Processed bathymetric data shall be rendered as files in fully attributed CARIS HIPS/SIPS (Project) format. The data shall contain the following attributes for each sounding as a minimum: Position Depth swathe and beam number 95% statistical horizontal uncertainty estimate 95% statistical vertical uncertainty estimate Files shall be full density (i.e. not “thinned”) with rejected soundings flagged but not deleted from the data set. Corresponding raw (i.e. unprocessed) files shall also be supplied in proprietary format containing full backscatter. In addition, a CUBE surface shall be rendered. Outliers do not need to be cleaned out from the HIPS dataset, as long as they do not adversely affect the resultant statistical CUBE surface
	Total Propagated Uncertainty (TPU)	THU (Horizontal TPU) and TVU (Depth TPU) values must be calculated for every depth and these values must reflect the full density data. If the TVU is smaller than the general spread of data on a flat seabed then it doesn’t represent the data and should be adjusted. The magnitude of any tidal busts

	Subject	Notes
		within the survey should be represented in the TVU values.
	Bathymetric Surface Deliverable	<p>The required bathymetric deliverables are;</p> <ol style="list-style-type: none"> 1. An up -to-date CUBE surface, preferably in CARIS BASE format, or alternatively in Fledermaus PFM format. 1. A finalised version of the CUBE surface, with all hydrographer selected shoal feature depths applied to the surface. 2. The full density soundings that were used to create the CUBE surface, correctly flagged as accepted, rejected or designated/feature where appropriate. Each depth should only have one of these flags. 3. If the CUBE surface deliverable is in Fledermaus PFM format, any cleaning/editing that has been conducted in the PFM should be unloaded back into the source CARIS HIPS project. <p>The specifications for the CUBE surface are listed below</p>
	CUBE Surface Layers	<p>The CUBE surface should contain at least the following layers:</p> <ol style="list-style-type: none"> 1. Density (of accepted soundings on node used in CUBE surface); 2. CUBE depth 3. Hypothesis count 4. Hypothesis strength 5. Node standard deviation 6. Standard deviation 7. Uncertainty 8. User nominated (or custom hypotheses)

	Subject	Notes												
	CUBE Surface Resolution	<p data-bbox="727 373 1341 405">Surfaces are required for the following depth bands:</p> <table border="1" data-bbox="732 434 1559 993"> <thead> <tr> <th data-bbox="737 434 1146 522">Depth Range (m)</th> <th data-bbox="1146 434 1554 522">Surface Resolution (m)</th> </tr> </thead> <tbody> <tr> <td data-bbox="737 522 1146 619">Any drying depth – 40</td> <td data-bbox="1146 522 1554 619">1</td> </tr> <tr> <td data-bbox="737 619 1146 716">38 – 80</td> <td data-bbox="1146 619 1554 716">2</td> </tr> <tr> <td data-bbox="737 716 1146 812">78 – 120</td> <td data-bbox="1146 716 1554 812">4</td> </tr> <tr> <td data-bbox="737 812 1146 909">118 – 200</td> <td data-bbox="1146 812 1554 909">6</td> </tr> <tr> <td data-bbox="737 909 1146 993">198 – 300</td> <td data-bbox="1146 909 1554 993">10</td> </tr> </tbody> </table> <p data-bbox="727 1058 1406 1115">For surveys with depths that span several depth ranges multiple surfaces should be used each with the correct resolution.</p> <p data-bbox="727 1150 1554 1236">The values for the depth ranges and their related surface resolutions shown in the above table are the minimum requirements and relate to the object detection requirements.</p> <p data-bbox="727 1272 1554 1419">The resolutions can be extended for deeper depths than the ranges stated in the above table if the survey system is capable of supporting this (consider beam footprint size etc.) and the data density is sufficiently high. Resolutions must not be used for shoal depths than the ranges shown in the above table.</p> <p data-bbox="727 1455 1554 1572">The surface resolutions must always be used in the order shown in the table, even if extending them to deeper depths. Not all resolutions need be used, but if a series of surfaces are made, resolutions within the series should not be missed out.</p> <p data-bbox="727 1608 1554 1726">e.g. a 1m resolution surface can be used to a depth of 81m (if the system is capable of detecting 2m features at this depth). The next resolution used for data deeper than 81m must then be 2m (not 4m, the 2m resolution cannot be leapfrogged)</p>	Depth Range (m)	Surface Resolution (m)	Any drying depth – 40	1	38 – 80	2	78 – 120	4	118 – 200	6	198 – 300	10
Depth Range (m)	Surface Resolution (m)													
Any drying depth – 40	1													
38 – 80	2													
78 – 120	4													
118 – 200	6													
198 – 300	10													

	Subject	Notes
	CUBESurface Capture Radius	When creating the CUBE surface a fixed capture radius of 0.707 x the bin size must be used.
	CUBE Surface Capture Distance Scale	When creating the CUBE surface the capture distance scale must either not be used or set small enough to not affect the data (e.g. =<1%).
	Data Density	<p>Each bin must contain at least 3 valid soundings (this is intended to provide at least 5 soundings per node within the capture radius for the CUBE surface). Each CUBE surface node must have at least 5 soundings.</p> <p>100% of all bins and nodes must pass this specification. There must be no empty bins.</p>
	Systematic Errors	<p>Systematic errors (e.g. tidal, sound speed etc.) that cause problems with the CUBE surface should be corrected appropriately (e.g. manually cleaned/filtered or whole line rejected etc.). If these are not corrected they can create “tearing” of the CUBE surface.</p> <p>All areas of CUBE surface “tearing” should be resolved. E.g. if the seabed has moved during the survey (sand waves) and 2 coincident survey lines that were correct at the time of gathering now disagree and cause “Tearing”, the CUBE should be fully resolved by forcing the correct (usually the shoalest) hypotheses to be used.</p>
	Designated Soundings (a.k.a. Feature Soundings, Golden Soundings)	<p>Critical soundings over important features (wrecks, contacts, complex natural seabed etc.) must be designated. The designated soundings must be the controlling depths over the feature. More than 1 sounding should be designated over larger features (but the surveyor should still be selective and not over designate too many soundings). To find these features effectively, a conventional shoal biased surface should be used.</p> <p>The difference between the CUBE surface and the reliable shoaler sounding(s) must not deviate by more than ¾ of the IHO depth accuracy allowance. If they deviate by more than this soundings must be designated as appropriate or use the methods described in “CUBE Surface Editing” . This applies to the entire CUBE surface not only over important features.</p>
	CUBE Surface Editing	<p>Where the CUBE surface is incorrect and either the wrong hypotheses has been chosen by the CUBE disambiguation or if there is not a suitable hypothesis at the required depth, the hydrographer must correct the CUBE surface using one of the following methods:</p> <ol style="list-style-type: none"> 1. Reject soundings as necessary and re-CUBE the data in that location to force the CUBE disambiguation to select the hydrographer’s preferred hypotheses depth. The ‘user nominate’ hypotheses function should not be used as any edits made this way will be undone if the data is re-CUBEd.

	Subject	Notes
		<p>2. If rejecting soundings and re-CUBEing the data does not provide the hydrographer's preferred hypotheses depth, the required sounding (s) must be designated. This will ensure that the hydrographer's choice of depth is retained.</p>
	Outliers	<p>Where the CUBE surface is honouring the seafloor correctly outliers need not be removed from the full density data.</p> <p>Where outliers cause the CUBE surface to be shoaler or deeper than the likely true seafloor by an amount greater than $\frac{3}{4}$ of the IHO depth accuracy allowance, the methods described in "CUBE Surface Editing" must be used to ensure the correct depth is represented in the final CUBE surface.</p> <p>In areas of mobile seabed, the hydrographer should ensure that the final CUBE surface gives a safe depiction of the area and multiple surfaces due to changes in seabed level are adequately resolved. If 2 survey lines were correct at the time of gathering but disagree due to the seabed changing, the CUBE surface should not jump between the 2 results, it should be forced to go with the data the surveyor believes to be the safest (usually the shoalest).</p> <p>The potential for such issues should ideally be minimized by avoiding large time gaps between overlapping swathes in mobile areas.</p>
	CUBE Surface Uncertainty	<p>The standard deviation and the uncertainty for each node of the final CUBE surface must be less than the IHO depth accuracy allowance. The only exception will be on steep gradients.</p>
	Finalized CUBE Surface	<p>When all editing is complete, the CUBE surface must be "finalized" to ensure that all edits and designated/feature soundings are applied correctly.</p>
	Reporting of Bathymetric Processing	<p>The Report of Survey should include:</p> <ul style="list-style-type: none"> (i) A detailed description of the CUBE parameters that were used to create the surface. (ii) A section explaining the calculation of the THU / TVU and TPU values for all soundings and CUBE nodes. How these were computed (i.e. the tide and SV errors that were used, the vessel model file explained) and why the contractor thinks that the values accurately represent the data. (iii) Any areas of unusually high uncertainty should be commented on and explained. (iv) Lists of wrecks and contacts and significant features.

	Subject	Notes
1.5	Survey Geodesy	
		<p>All data (including bathymetry positioning) and reports rendered as part of this survey shall preferably be quoted in terms of the ITRF 2000 reference frame. Alternatively, all data and reports rendered as part of this survey shall be quoted in terms of either the ITRF2005 or ETRF 89 reference frame. A clear statement shall be included in the Report of Survey and any relevant metadata (including appropriate file headers) stating the Reference Frame used.</p> <p>All rendered positions shall be quoted as geographical co-ordinates (i.e. in terms of Lat. / Long) as degrees and decimal minutes</p>

Section IX. Contract Forms

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Performance Bank Guarantee (Conditional)

This Agreement is made on the _____ day of _____, _____ between _____ of _____ (hereinafter called "the Guarantor") of the one part and _____ of _____ (hereinafter called "the Employer") of the other part.

Whereas

(1) This Agreement is supplemental to a contract (hereinafter called the Contract) made between _____ of _____ (hereinafter called the Service Provider) of the one part and the Employer of the other part whereby the Service Provider agreed and undertook to execute the Services of _____ for the sum of _____ being the Contract Price; and

(2) The Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

Now therefore the Guarantor hereby agrees with the Employer that upon receipt of

- (1) a written notice to the Guarantor from the Service Provider, or
- (2) a written notice to the Guarantor from the Adjudicator, or
- (3) a binding arbitration or Court award confirming that the amount of the Guarantee is payable to the Employer,

the Guarantor will indemnify and pay the Employer the sum of _____, _____ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, provided that the Employer or his authorized representative has notified the Guarantor to that effect and has made a claim against the Guarantor not later than the date of issue of the Defects Liability Certificate.

The Guarantor shall not be discharged or released from his Guarantee by an arrangement between the Service Provider and the Employer, with or without the consent of the Guarantor, or by any alteration in the obligations undertaken by the Service Provider, or by any forbearance on the part of the Service Provider, whether as to the payment, time, performance or otherwise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

Given under our hand on the date first mentioned above.

Signed by _____
for and on behalf of the Guarantor in the presence of _____

Signed by _____
for and on behalf of the Employer in the presence of _____

Performance Bank Guarantee (Unconditional)

To: _____

Whereas _____ (hereinafter called "the Service Provider") has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (hereinafter called "the Contract");

And whereas it has been stipulated by you in the said Contract that the Service Provider shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Service Provider such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider, up to a total of _____, _____, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____/ as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Service Provider before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Services to be performed there under or of any of the Contract documents which may be made between you and the Service Provider shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor _____

Name of Bank _____

Address _____

Date _____

Performance Bond

By this Bond, _____ as Principal (hereinafter called “the Service Provider”) and _____ as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____ as Obligee (hereinafter called “the Employer”) in the amount of _____ / for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Service Provider and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Service Provider has entered into a Contract with the Employer dated the _____ day of _____, _____ for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

Now, therefore, the Condition of this Obligation is such that, if the Service Provider shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Service Provider shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations there under, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by the Employer to the Service Provider under the Contract, less the amount properly paid by the Employer to the Service Provider; or
- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Service Provider has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this _____ day of _____, _____.

Signed by _____
on behalf of _____
In the capacity of _____
In the presence of _____
Date _____

Signed by _____
on behalf of _____
In the capacity of _____
In the presence of _____
Date _____

Bank Guarantee for Advance Payment

To: _____

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 6.4 (“Terms and Conditions of Payment”) of the above-mentioned Contract, _____ (hereinafter called “the Service Provider”) shall deposit with _____ a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of _____

We, the _____, as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ on his first demand without whatsoever right of objection on our part and without his first claim to the Service Provider, in the amount not exceeding _____

We further agree that no change or addition to or other modification of the terms of the Contract or of Services to be performed there under or of any of the Contract documents which may be made between _____ and the Service Provider, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ receives full repayment of the same amount from the Service Provider.

Yours truly,

Signature and seal: _____

Name of Bank/Financial Institution: _____

Address: _____

Date: _____

