



BIDDING DOCUMENTS

for
Procurement of
Light Diesel Oil (Gas Oil) for period January 2023 to
December 2025
(Under Framework Agreement)

(RESTRICTED BIDDING)

Procurement Reference No: MPA 558/2022
Under e-Procurement Reference No: MPA/IFB/2022/141
CPB Reference No: CPB/60/2022

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Online e-Tendering

The e-Procurement System of the Republic of Mauritius has now reached its Phase 2 with evaluation of bids online up to award. The next and last Phase is expected to be completed shortly.

The e-Procurement System now allows for invitation for bids, downloading of bidding documents, request for clarification from suppliers, response to clarification and issue of addendum, submission of bids, closing of bids, bid opening, evaluation of bids and award of contract to be done online.

The process for Challenge and Review shall continue to be offline for some time.

The Employer will respond online to any request for clarification within (7) seven days, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Applications

Bidders are hereby advised that it is a mandatory condition to have a digital certificate issued by a Certifying Authority licensed by the Republic of Mauritius to respond to any Invitation for Bid on the e-Procurement System. Further information may be obtained from the Supplier's User Guide attached to this bidding document.

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PART 1 - Bidding Procedures

Section I. Instructions to Bidders

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Section I. Instructions to Bidders

A. General

1. Scope of Bid

1.1 The Mauritius Ports Authority (MPA), also refers herein as the **Purchaser**, intends to procure Light Diesel Oil (Gas Oil) for its requirement under a Framework Agreement as follows:

(a) **Lot 1 - Quay C- Bulk Delivery for Harbour Tank**

Successful bidder should provide their own harbour tank with a capacity of 10,000 litres and would be responsible for maintenance of same.

(b) **Lot 2 - Quay C- Bulk Delivery for Big Tugs**

Delivery to Tugs shall be by road transportation using road trucks at the bidder's own cost.

(c) **Lot 3 - Delivery for MPA Vehicles at Retail Distribution Outlets (Filling Stations)**

The Selected Petroleum Company shall arrange with their distribution outlets for MPA vehicles to take delivery of diesel. The distribution outlets shall be located in Port Louis or in close vicinity of the Mauritius Port Authority (MPA).

1.2 Bids for Light Diesel Oil (Gas Oil) are invited through the Government e-Procurement System (e-PS) from the four (4) Petroleum Companies duly licensed in Mauritius; **namely Vivo Energy (Mauritius) Ltd, Total (Mauritius) Ltd, Engen Petroleum (Mauritius) Ltd and Indian Oil (Mauritius) Ltd** for the supply of Light Diesel Oil (Gas Oil) in bulk inclusive of transport and unloading and to provide retailed services over a period of 36 months to:

Lot 1: Quay C, Mer Rouge- Bulk Delivery for Harbour Tank;

Lot 2: Quay C, Mer Rouge- Bulk Delivery for Big Tugs; and

Lot 3: Delivery of for MPA Vehicles at Retail Distribution Outlets (Filling Stations).

The estimated requirement of supply of Light Diesel Oil (Gas Oil) for the period 01 January 2023 to 31 December 2025:

In Bulk: 3,000,000 Litres (Lot 1: 690,000 Litres & Lot 2: 2,310,000 Litres)

At Retail Distribution Outlets: 240,000 Litres (Lot 3)

The procurement shall be financed by the MPA's own fund.

1.3 Once the Framework Agreement is established, the Mauritius Ports Authority (MPA) will procure Light Diesel Oil (Gas Oil) through **Call-Offs** from the Successful bidder.

1.4 The framework agreement shall be a closed framework agreement without second-stage bidding. It means that it is a framework agreement where the terms and conditions of the procurement are set out at the time the agreement is entered into, as set out at Section IV of the framework agreement in the bidding document.

2. Challenge and Appeal

2.1 Unsatisfied bidders shall follow procedures prescribed in Sections 41, 43 and 45 of the Public Procurement ACT 2006 to challenge procurement proceedings and award of procurement contracts or to file application for review at the Independent Review Panel.

2.2 Challenges shall be addressed to:

**The Director General,
Mauritius Ports Authority,
1st Floor, H. Ramnarain Building,
Mer Rouge, Port Louis.
Tel No : +230 206-5400
Fax No: +230 240-0856
E-mail: info@mauport.com**

2.3 Application for Review shall be addressed to:

**The Chairperson
Independent Review Panel
5th Floor, Belmont House
Intendance Street
Port Louis
Tel : +230 260 2288
Fax : + 230 214 9252
Email : irp@govmu.org**

3. Fraud and Corruption

3.1 The Government of the Republic of Mauritius requires that bidders/suppliers, participating in procurement in Mauritius observe the highest standard of ethics during the procurement process and execution of contracts.

3.2 Bidders, suppliers and public officials shall be aware of the provisions stated in sections 51 and 52 of the Public Procurement Act which can be consulted on the website of

3.3 It is the policy of the Government of the Republic of Mauritius to require Public Bodies, as well as bidders, suppliers, and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, observe the highest standard of ethics during the procurement and execution of contracts. ¹ In pursuance of this policy, the Government of the Republic of Mauritius:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party²;
 - (ii) “fraudulent practice” 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;³
 - (iii) “collusive practice” is an arrangement between two or more parties⁴ designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party⁵ 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

¹In this context, any action taken by a bidder, supplier, or any of its personnel, agents, sub-consultants, sub-contractors, service providers, suppliers and/or their employees to influence the procurement process or contract execution for undue advantage is improper.

² “Another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Purchaser’s staff and employees of other organizations taking or reviewing procurement decisions.

³ “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 “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, noncompetitive levels.

⁵ “Party” refers to a participant in the procurement process or contract execution.

investigation or making false statements to investigators in order to materially impede the Public Body's 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 Public Body's inspection and audit rights provided for under ITB sub-clause 3.4 and clause 14 of the Framework Agreement.

(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; and

(c) will sanction a firm or an individual, at any time, in accordance with prevailing legislations, including by publicly declaring such firm or individual ineligible, for a stated period of time: (i) to be awarded a public contract; and (ii) to be a nominated^b sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a public contract.

3.4 In further pursuance of this policy, Bidders shall permit the Public Body to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the Public Body.

3.5 The Purchaser commits itself to take all measures necessary to prevent fraud and corruption and ensures that none of its staff, personally or through his/her close relatives or through a third party, will in connection with the bid for, or the execution of a contract, demand, take a promise for or accept, for him/herself or third person, any material or immaterial benefit which he/she is not legally entitled to. If the Purchaser obtains information on the conduct of any of its

^b A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one whichever has been:(i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder's pre-qualification application or the bid; or (ii) appointed by the Purchaser.

employees which is a criminal offence under the relevant Anti-Corruption Laws of Mauritius or if there be a substantive suspicion in this regard, he will inform the relevant authority (ies) and in addition can initiate disciplinary actions. Furthermore, such bid shall be rejected.

4. Eligible Bidders

4.1 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- (a) they have a controlling partner in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
- (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one bid will result in the disqualification of all bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
- (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the bid.

4.2 (a) A Bidder that is under a declaration of ineligibility by the Government of Mauritius in accordance with applicable laws at the date of the deadline for bid submission or thereafter, shall be disqualified.

(b) Bids from suppliers appearing on the ineligibility lists of African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group shall be rejected.

Links for checking the ineligibility lists are available on the PPO's website: ppo.govmu.org

4.3 A firm shall be excluded if 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, Mauritius prohibits any import of Goods or contracting of Works or services from a country where it is based or any payment to persons or entities in that country.

- 4.4 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

B. Contents of Bidding Documents

- 5. Sections of Bidding Documents** 5.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any addendum issued in accordance with ITB Clause 7.

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bidding Forms

PART 2 Supply Requirements

- Section III. Schedule of Requirements

PART 3 Contract Forms and Conditions of Contract

- Section IV. Framework Agreement

- 6. Clarification of Bidding Documents** 6.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Purchaser using the online query feature available in the e-Procurement System. The Purchaser will respond online through the e-Procurement System to any request for clarification at latest seven (7) days prior to the deadline set for the submission of bids provided that such request is received fourteen (14) days at latest prior to the deadline set for submission of bids (bid preparation and hash submission). The Purchaser, through e-Procurement System, shall alert all those who have responded online to the Bidding Documents of any clarification/addendum issued by the Purchaser. The clarification shall include a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure provided in this bidding document

- 7. Amendment** 7.1 At any time prior to the deadline for submission of bids, the

of Bidding Documents

Purchaser may amend the Bidding Documents by issuing addendum.

7.2 Any addendum issued shall be part of the Bidding Documents. All those who have downloaded the bidding documents shall be alerted by the e-Procurement System.

7.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB Sub-Clause 20.2.

C. Preparation of Bids

8. Cost of Bidding

8.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

9. Language of Bid

9.1 The Bid, as well as all correspondences and documents relating to the bid exchanged by the Bidder and the Purchaser, shall be written in English.

9.2 Notwithstanding the above, documents in French submitted with the bid may be accepted without translation.

10. Documents Comprising the Bid

10.1 The Bid shall comprise the following:

- (a) The Bid Submission Form to be filled on the e-PS by filling in the response templates available in the system;
- (b) the applicable Price Schedules, in accordance with ITB Clauses 12 and 13, by filling in the response templates available on e-PS;
- (c) the list of distribution outlets (Filling Stations) which are located in Port Louis or in close vicinity of the Mauritius Port Authority (MPA) with address and phone number of each one of them (to be uploaded in **“Any Other Document” available on e-PS;**
- (d) a scaled map of Mauritius indicating the exact location of each distribution outlet (to be uploaded in **“Any Other Document” available on e-PS;**
- (e) the Bid Security in original, in accordance with ITB Clause 18;

- (f) an uploaded scanned copy of written evidence authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 19.3;
- (g) an uploaded scanned copy of written evidence establishing conformity of products as per ITB 15; and
- (h) Documents establishing qualification of bidder as per ITB 16.

- 11. Bid Submission Form** 11.1 The Bidder shall submit the Bid Submission Form online using the templates provided in the system.
- 12. Bid Prices and Discounts**
- 12.1 The prices and discounts quoted by the Bidder in the Bid Submission Form and in the Price Schedules on the e-Procurement system shall conform to the requirements specified below.
- 12.2 All items must be listed and priced in the Price Schedules.
- 12.3 The price to be quoted in the Bid Submission Form shall be the total price of the bid, **excluding VAT based on the estimated quantities and the prevailing prices as fixed by Government after discount offered.**
- 12.4 The Bidder shall quote any unconditional discount and indicate the method for their application in the Bid Submission Form.
- 12.5 During the Bidder's performance of the Contract, the Wholesale Price for Bulk Supplies and Retail Prices for Light Diesel Oil (Gas Oil) per litre shall be as per prices fixed by Government. The percentage (%) discount **to the nearest four (4) decimal places** quoted per litre shall remain fixed for the whole period of the **36 months, i.e. 1 January 2023 to 31 December 2025.**
- 13. Currencies of Bid** 13.1 The Bidder shall quote in Mauritian Rupees.
- 14. Documents establishing the eligibility of the bidder** 14.1 To establish their eligibility in accordance with ITB Clause 4, Bidders shall complete the Bid Submission Form, included in Section II: Bidding Forms.

- 15. Documents establishing the conformity of the products**
- 15.1 To establish the conformity of the products to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the products conform to the technical specifications and standards specified in Section III, Schedule of Requirements. Failure to provide the requested information along with the bid, may lead to rejection of the bid.
- 15.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the products, demonstrating substantial responsiveness of the products to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.
- 16. Documents establishing qualification of the bidders**
- 16.1 The documentary evidence to establish to the Purchaser's satisfaction that the Bidder meets the qualifications specified in hereunder:
1. Financial Capability
- The Bidder shall furnish documentary evidence of the latest copy of the **Financial Statement for the last 3 years and fill in the Key Financial Form available at Section II, Bidding Forms.**
- 17. Period of Validity of Bids**
- 17.1 The bid validity period shall be **ninety (90) days** as from the deadline date set for the submission of bids (bid preparation and hash submission), i.e up to **14 January 2023** whichever is later, the deadline date being counted as day one of the validity period. A bid validity for a shorter period shall be rejected by the Purchaser.
- 18. Bid Security**
- 18.1 The Bidder shall furnish as part of its bid, a Bid Security.
- 18.2 A Bid Security in the amount of **MUR 1,000,000** and shall be valid for **120 days** as from the date for submission of bids that is up to **13 February 2023** and shall:
- (a) be issued by a commercial bank/insurance company operating in Mauritius.
 - (b) be substantially in accordance with the forms of Bid Security included in Section II, Bidding Forms
 - (c) be payable promptly upon written demand by the Purchaser in case the conditions listed in ITB Sub-

Clause 18.5 are invoked;

- (d) be submitted in its original form; copies will not be accepted;
- (e) remain valid for a period of 30 days beyond the validity period of the bids or as extended, if applicable, in accordance with ITB Sub-Clause 24.3;

18.3 Any bid not accompanied by an enforceable and substantially compliant Bid Security shall be rejected by the Purchaser as nonresponsive.

18.4 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 Sub-Clause 37.1.

18.5 The Bid Security shall be forfeited:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except for withdrawal prior to the dead line for submission of bids; or
- (b) if a Bidder refuses to accept a correction of an error appearing on the face of the Bid; or
- (c) if the successful Bidder fails to: sign the Framework Agreement in accordance with ITB 36; or furnish a performance security in accordance with ITB 37;

**19. Format and
Signing of
Bid**

19.1 Bidders shall prepare their bids online in the templates provided for, comprising of the bid as described in ITB Clause 10.

19.2 The online bid shall be prepared and shall be digitally signed by a person duly authorized to sign on behalf of the Bidder.

19.3 The Bidder shall submit along with its bid scanned copy of written evidence certifying that the signatory of the bid is duly authorized to commit the bidder for this bid. It may include a delegation of power by resolution of the Board of a company or from the CEO, himself holding power from the Board or through a Power of Attorney.

The name and position held by each person signing the authorization must be typed or printed below the signature.

(The power of Attorney or other written authorization to sign may

be for a determined period or limited to a specific purpose).

D. Submission and Opening of Bids

- 20. Deadline for Submission of Bids**
- 20.1(a) Bidders shall submit their bids **online** by the end date and time set for bid preparation and hash submission as follows:
- End Date and Time (Mauritian): Monday 17 October 2022 up to 13.30 hours. (Local Time) at latest.**
- Bids submitted manually shall not be accepted except for the Bid Security or any other items such as product catalogues which are not available in soft copies or may not be scanned for submission online.**
- (b) The **Original Bid Security** in sealed envelope clearly marked **CPB/60/2022 - Procurement of Light Diesel Oil (Gas Oil) for period January 2023 to December 2025** should be addressed to the **Chief Executive, Central Procurement Board and submitted by post/courier or deposited at the Central Procurement Board, 1st Floor, Social Security House, Avenue Julius Nyere, Rose-Hill** on or before **Monday 17 October 2022 up to 13.30 hours.**
- (c) Bidders shall follow the Guidelines provided for online submission.
- 20.2 The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 21. Late Bids**
- 21.1 The **Central Procurement Board (CPB)** shall not consider any Bid Security or samples that arrives after the deadline for their submissions,
- 22. (i)(Decryption and Re-encryption of bid**
- 22.1 Bidders shall decrypt and re-encrypt their bids on the e-PS to enable opening of their bids as follows:
- Start Date and Time (Mauritian): Monday 17 October 2022 as from 14.31 hours**
- End Date and Time (Mauritian): Wednesday 19 October 2022 up to 14.00 hours**
- The time lock feature in the system will not allow bidders to decrypt and encrypt their bids outside the specified time frame.
- 22.2 Where the bidder does not execute the decryption and re-

encryption of its bid within the time frame provided in ITB 22.1, the bid shall not be accessible for opening. In such cases the bid shall be deemed to have been withdrawn by the bidder.

**(ii) Bid
Opening**

22.3 The **Central Procurement Board (CPB)** shall conduct the bid opening online on the e-PS at **the Central Procurement Board, 1st Floor, Social Security House, Avenue Julius Nyere, Rose-Hill** in the presence of bidders or their representatives who choose to attend as follows:

Start Date and Time (Mauritian): Wednesday 19 October 2022 as from 14.01 hours

End Date and Time (Mauritian): Wednesday 19 October 2022 up to 18.00 hours

The online opening shall allow bidders to view the status of bids received online, name of bidders, prices as appearing in the Bid Submission Forms and Comparison Statements.

22.4 The bid opening of envelope containing the bid security shall follow immediately after the bid opening of the online submission at **the Central Procurement Board, 1st Floor, Social Security House, Avenue Julius Nyere, Rose-Hill.**

22.5 The **Central Procurement Board (CPB)** will shortly after completing the online opening provide a record of the Bid opening online that shall include, as a minimum: the name of the Bidder, the Bid Price per lot if applicable, including any discounts, presence of Bid Security and samples if requested and alternative offers if they were permitted.

E. Evaluation and Comparison of Bids

23. Confidentiality

23.1 Information relating to the examination, evaluation, comparison and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process.

23.2 Any effort by a Bidder to influence the Purchaser and/or Central Procurement Board in the examination, evaluation, comparison, and post-qualification of the bids or contract award decisions may result in the rejection of its Bid.

23.3 Notwithstanding ITB Sub-Clause 23.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser/Central Procurement Board on any matter related to the bidding process, it should do so in writing.

24. Validity of Bids

24.1 The bid validity period shall be **ninety (90)** days as from the deadline date set for submission of bids or up to **14 January 2023**, whichever is later, the deadline date for submission of bids being counted as day one of the validity.

24.2 A bid valid for a shorter period shall be rejected by the Central Procurement Board as non-responsive. In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser and/or Central Procurement Board may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing.

24.3 The Bid Security shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security.

24.5 A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB Sub-Clause 27.3.

25. Clarification of Bids

25.1 To assist in the examination, evaluation and comparison of the bids, the Central Procurement Board may, at its discretion, ask any Bidder for a clarification of its Bid.

Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Central Procurement Board shall not be considered. The Central Procurement Board's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Central Procurement Board in the Evaluation of the bids, in accordance with ITB Clause 27.3.

26. Responsiveness of Bids

26.1 The Central Procurement Board's determination of a bid's responsiveness is to be based on the contents of the bid itself.

26.2 A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- (a) affects in a substantial way the scope, quality, or performance of the Light Diesel Oil (Gas Oil) and Related Services specified in the Agreement; or

- (b) limits in a substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Agreement; or
- (c) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

26.3 If a bid is not substantially responsive to the Bidding Documents, it shall be rejected by the Central Procurement Board and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

27. Non-conformities, Errors, and Omissions

27.1 Provided that a Bid is substantially responsive, the Central Procurement Board may waive any non-conformities or omissions in the Bid that do not constitute a material deviation.

27.2 Provided that a bid is substantially responsive, the Central Procurement Board may request the Bidder to submit the necessary information or documentation, within a reasonable period of time, or to rectify non-material non-conformities or omissions in the bid relating to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

27.3 Provided that the Bid is substantially responsive, the Central Procurement Board shall correct arithmetical errors as per Section 37 of the PPA:

28. Preliminary Examination of Bids

28.1 The Central Procurement Board shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 10 have been provided, and to determine the completeness of each document submitted.

28.2 The Central Procurement Board shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.

- (a) Bid Submission Form, in accordance with ITB Sub-Clause 11.1;
- (b) Price Schedules, in accordance with ITB Sub-Clause 12.2; and

(c) Bid Security

29. Examination of Terms and Conditions; Technical Evaluation

29.1 The Central Procurement Board shall examine the Bid to confirm that all terms and conditions specified in the Framework Agreement have been accepted by the Bidder without any material deviation or reservation.

29.2 The Central Procurement Board shall evaluate the technical and financial aspects of the Bid submitted in accordance with ITB Clause 10, to confirm that all requirements specified in the Bidding Documents have been met without any material deviation or reservation.

29.3 If, after the examination of the terms and conditions and the technical evaluation, the Central Procurement Board determines that the Bid is not substantially responsive in accordance with ITB Clause 26, it shall reject the Bid.

30. Evaluation of Bids

30.1 The Central Procurement Board shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.

30.2 To evaluate a Bid, the Central Procurement Board shall use only the factors, methodologies and criteria defined in ITB Clause 28 & 29. No other criteria or methodology shall be permitted.

30.3 To evaluate a Bid, the Central Procurement Board shall consider the following:

- (a) the percentage (%) discount per lot as quoted in accordance with ITB Clause 12;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 27.3; and

30.4 The evaluation for Lot 1, Lot 2 and Lot 3 will be based on the maximum percentage discount offered in respect of each lot for the supply of Light Diesel Oil (Gas Oil) for the estimated quantity. The Bid offering the highest percentage discount for each lot and substantially responsive to Bidding requirements shall be deemed to be the lowest evaluated bid. Award of contract will be made on a lot-wise.

The Mauritius Ports Authority reserves the right to split the contract on a lot wise basis.

30.5 The framework agreement may be concluded with one or more

suppliers for the three lots.

- 31. Comparison of Bids** 31.1 The Central Procurement Board shall compare all substantially responsive bids to determine the lowest-evaluated bid per lot, in accordance with ITB Clause 30.
- 32. Post-qualification of the Bidder** 32.1 The Central Procurement Board shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily.
- 32.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 16.
- 32.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.
- 32.4 Notwithstanding anything stated above, the Central Procurement Board reserves the right to assess the Bidder's capabilities and capacity to execute the Contract satisfactorily before deciding on award.
- 33. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids** 33.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders

F. Award of Contract

- 34. Award Criteria** 34.1 The Purchaser shall conclude the Agreement with the bidder(s) whose offer(s) has/have been determined to be the lowest evaluated bid(s) and is/are substantially responsive to the Bidding Documents provided further that the Bidder(s) is/are determined to be qualified to perform the contract satisfactorily.
- 34.2 (i) In line with Government decision, the Mauritius Ports Authority shall, prior to award request the lowest substantially responsive bidder to submit a "Tax Clearance Certificate" from the MRA within a period of one week, confirming that the

bidder has filled his tax returns and paid due tax.

(ii) In case the successful bidder does not submit the "Tax Clearance Certificate", the Mauritius Ports Authority may consider the next lowest substantially responsive bidder to equally comply with paragraph 1 above.

(iii) It is brought to the attention of the bidders that the MRA put in place a system for responsive bidders, on receipt of a letter from a Public Body requesting for a Tax Clearance Certificate, to apply for same electronically on MRA website www.mra.mu. The bidder is requested to use the reference of the letter issued by the Public Body to access the system.

35. Notification of Award

35.1 Prior to the expiration of the period of bid validity, the Purchaser shall, for framework agreement above the prescribed threshold, notify the selected bidder of the proposed award and accordingly notify unsuccessful bidders. Subject to Challenge and Appeal the Purchaser shall notify the selected Bidder, in writing, by a Letter of Acceptance for award of contract. The Letter of Acceptance shall specify the sum that the Purchaser will pay the Supplier in consideration of the execution and completion of the Contract (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). Within seven days from the issue of Letter of Acceptance, the Purchaser shall publish on the Public Procurement Portal (publicprocurement.govmu.org) and the Purchaser's website, the results of the Bidding Process identifying the bid and lot numbers and the following information:

(i) name of the successful Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded; and

(ii) an executive summary of the Bid Evaluation Report

35.2 Until a formal Framework Agreement is prepared and executed, the letter of Acceptance shall constitute a binding Contract.

35.3 Upon the successful Bidder's furnishing the signed Framework Agreement and Performance Security pursuant to ITB Clause 37, the Purchaser will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Sub-Clause 18.4.

- 36. Signing of Framework Agreement**
- 36.1 Promptly after issue of Letter of Acceptance, the Purchaser shall send the successful Bidder the Framework Agreement
- 36.2 Within twenty-eight (28) days of receipt of the Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.
- 37. Performance Security**
- 37.1 Within twenty-eight (28) days from the date of issue of the Letter of Acceptance from the Purchaser, the successful Bidder shall furnish the Performance Security representing **10 %** of the total contract amount valid 21 days beyond the contract period or any extension thereof.
- 37.2 Failure of the successful Bidder to submit the above-mentioned Performance Security shall lead to the annulment of the award and forfeiture of the Bid Security. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder, whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.
- 38. Debriefing**
- 38.1 The Purchaser shall attend to all debriefing for the contract made in writing and within 30 days from the date of the publication of the award or date the unsuccessful bidders are informed about the award, whichever is the case by following regulation 9 of the Public Procurement Regulations 2008 as amended.

Section II. Bidding Forms

Table of Forms

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1. Bidder Information Form

NOTE: Bidder shall submit a scanned copy of the below Bidder Information Form duly filled and upload same online in the response template for “Any Other Document”. No alterations to its format shall be permitted and no substitutions shall be accepted.

Date:
Procurement No.: **CPB/60/2022**

1. Bidder’s Legal Name: <i>[insert Bidder’s legal name]</i>
2. In case of JV, legal name of each party: <i>[insert legal name of each party in JV]</i> NOT APPLICABLE
3. Bidder’s actual or intended Country of Registration: <i>[insert actual or intended Country of Registration]</i>
4. Bidder’s Year of Registration: <i>[insert Bidder’s year of registration]</i>
5. Bidder’s Legal Address in Country of Registration: <i>[insert Bidder’s legal address in country of registration]</i>
6. Bidder’s Authorized Representative Name: <i>[insert Authorized Representative’s name]</i> Address: <i>[insert Authorized Representative’s Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative’s telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative’s email address]</i>

2. Bid Submission Form [to be filled on the e-Procurement System(e-PS)]

3. Price Schedule (TO BE FILLED ON THE e-PS)

[The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated.]

The supply of Light Diesel Oil (Gas Oil) shall be as follows:

- (a) **Lot 1 - Quay C, Mer Rouge - Bulk Delivery for Harbour Tank (*inclusive of transport, unloading and other charges*);**
Successful bidder shall provide their own harbour tank with a capacity of 10,000 litres and shall be responsible for maintenance of same.
- (b) **Lot 2 - Quay C, Mer Rouge - Bulk Delivery for Big Tugs (*inclusive of transport, unloading and other charges*);**
- (c) **Lot 3 - Delivery for MPA Vehicles at Retail Distribution Outlets (Filling Stations)**

Note:

- (1) **Prices should be inclusive of all duties, taxes and excluding VAT.**
- (2) **Bidders shall not quote discount in absolute rupees and cents terms.**
- (3) **Percentage discount (Nearest to Four Decimal Places) offered shall be unconditional and shall be valid for the whole duration of the contract period.**
- (4) **In case of discrepancy between percentage discount and calculated discount, the percentage discount shall prevail.**
- (5) **Bidders shall insert prices for both wholesale/retail per litre based on the estimated quantities as specified at Section III. Schedule of Requirements.**

Price Schedule for Framework Agreement - Wholesale Price (Lot 1 & Lot 2)

Sr. No	Description	QTY	Units	Quotations based on the prices prevailing on.	Wholesale Price as fixed by the Government excluding VAT per Litre (MUR) (to the nearest four (4) decimal place)	Percentage discount on Wholesale Price per Litre excluding VAT (in %) (For Supplier Numeric - (to the nearest four (4) decimal place)	Calculated discount amount per Litre on Wholesale Price excluding VAT (MUR)	Discounted bid price per Litre excluding VAT (MUR).	Total Discounted bid price per Litre excluding VAT (MUR)
1.1	Lot 1 - Quay C, Mer Rouge - Bulk Delivery for Harbour Tank (Estimated Quantity - 690,000 litres)	1	Litre	Bidder to Insert Date	Bidder to Insert	Bidder to Insert	Auto-calculate	Auto-calculate	Auto-calculate
1.2	Lot 2 - Quay C, Mer Rouge - Bulk Delivery for Big Tugs (Estimated Quantity - 2,310,000 litres)	1	Litre	Bidder to Insert Date	Bidder to Insert	Bidder to Insert	Auto-calculate	Auto-calculate	Auto-calculate

Price Schedule for Framework Agreement - Retail Price (Lot 3)

Sr. No	Description	QTY	Units	Quotations based on the prices prevailing on.	Retail Price as fixed by the Government excluding VAT per Litre (MUR) (to the nearest four (4) decimal place)	Percentage discount on Retail Price per Litre excluding VAT (in %) For Supplier Numeric - (to the nearest four (4) decimal place)	Calculated discount amount per Litre on Retail Price excluding VAT (MUR)	Discounted bid price per Litre excluding VAT (MUR).	Total Discounted bid price per Litre excluding VAT (MUR)
1.1	Lot 3 - Delivery of Gas oil for MPA Vehicles at Retail Distribution Outlets (Filling Stations) (Estimated Quantity - 240,000 litres)	1	Litre	Bidder to Insert Date	Bidder to Insert	Bidder to Insert	Auto-calculate	Auto-calculate	Auto-calculate

4 Bid Security (Bank/Insurance Guarantee)

(TO BE FILLED IN ORIGINAL AND SUBMITTED IN MANUAL FORM TO
CENTRAL PROCUREMENT BOARD (CPB))

.....[Bank/Insurance company's Name and Address of issuing Branch or Office]
.....

Beneficiary:[Name and Address of Public Body]
.....

Date:

BID **GUARANTEE** **No.:**
.....

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

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

At the request of the Bidder, we[name of Bank/Insurance company] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of[amount in figures](.....amount in words.....) 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 modified or withdrawn its Bid after the deadline for submission of its bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) has refused to accept a correction of an error appearing on the face of the Bid; or
- (c) having been notified of the acceptance of its Bid by the Public Body during the period of bid validity, (i) has failed or refused to sign the contract Form, if required, or (ii) has failed or refused to furnish the Performance Security, in accordance with the Instructions to Bidders.

This guarantee shall 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) thirty 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 before2022

.....[Bank/Insurance company's seal and authorized signature(s)]

5 Key Financial Information

Key Financial Information extracted from Audited Accounts/Financial Statements

Bidder's Legal Name: _____ Date: _____

JV Partner Legal Name: _____ Bidder's Reference No. _____

Page _____ of _____ pages

To be completed by the Bidder and, if JV, by each partner

Financial data in the currency reported in the Audited Accounts/Financial Statements	Historical Information		
	Year 1	Year 2	Year 3
Statement of Financial Position (Information from Balance Sheet)			
A. Current Assets (CA)			
B. Current Liabilities (CL)			
Working capital ratio or current ratio (A/B)			
Quick ratio or Acid Test ratio (Current Asset net of inventories / B)			
C. Total Assets (TA)			
D. Total Liabilities (TL)			
Net Worth (C-D)			
Cash in hand and at Bank			
Bank Overdrafts			
Other Liquid Assets			
Information from Income statement			
Key Profitability Indicators in the currency reported in the Audited Accounts/Financial Statements	Year 1	Year 2	Year 3
Total Revenue (TR)			
Profit / (Loss) Before Tax (PBT)			
Taxation			
Net Profit / (Loss) After Tax			
$\left(\frac{\text{Net Profit After Tax}}{\text{Total Revenue}} \right) \times 100$			
Certified by Bidder and/or associated JV partner, that above information is a true extract from Audited Accounts/Financial Statements Name: Signature: Capacity: Date:			

Please attach copies of financial statements (balance sheets, including all related notes,

and income statements) for the years required above complying with the following conditions:

- Must reflect the financial situation of the Bidder or partner to a JV;
- Historic financial statements must be audited by an accountant duly registered by the Mauritius Institute of Professional Accountants (MIPA);
- Historic financial statements must be complete, including all notes to the financial statements; and
- Historic financial statement must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

NOTE: Bidder shall submit a scanned copy of the table Key Financial Information duly filled and upload same online in the response template for “Any Other Document”.

PART 2 - Supply Requirements

Section III. Schedule of Requirements

1. Role and Responsibility of the Purchaser

The Purchaser has the responsibility to conduct the procurement exercise for the purchase of Light Diesel Oil (Gas Oil).

2. Product Requirements

The Purchaser is inviting bids for Light Diesel Oil (Gas Oil) based on an estimated quantity requirement as mentioned in the Framework Agreement. The Purchaser does not have any commitment to procure the estimated quantity as indicated, as the requirements may change as per consumption patterns.

The estimated quantities of Light Diesel Oil (Gas Oil) are as follows:

SN	Delivery	Quantity(Litres)	Quantity(Litres)	Quantity(Litres)	Total
		Year 2023	Year 2024	Year 2025	
1	Lot 1- Harbour Tank	230,000	230,000	230,000	690,000
2	Lot 2- Big Tugs	770,000	770,000	770,000	2,310,000
3	Lot 3 - At Retail Distribution Outlets (Filling Stations)	80,000	80,000	80,000	240,000
	TOTAL	1,080,000	1,080,000	1,080,000	3,240,000

3. Deliveries of Gas Oil.

Supplies in bulk shall be during working days and hours as per arrangements to be made between the Purchaser and the Petroleum Company. Delivery of bulk supplies should be effected within *three (3)* days after placement of **Call-Off** orders by the Purchaser.

Lot 1: Quay C- Bulk Delivery for Harbour Tank

The successful Bidder shall provide their own harbour tank with a capacity of 10,000 litres and shall be responsible for maintenance of same. The harbour tank to be removed at the end of the contract.

Lot 2: Quay C- Bulk Delivery for Big Tugs

Delivery to Tugs shall be by road transportation using road trucks at the bidder's own cost.

Delivery by piping system or other alternative shall not be accepted.

One time supply shall be a minimum of 2,500 litres or in multiples of 2,500, 3,000 or 5,000 litres.

Equipment to be provided for use

The successful Bidder shall supply, install and commission at its own cost the equipment at the terminal where fuel will be supplied during the whole contract period and during extension period of the contract if any.

The successful Bidder shall inspect and examine the worthiness of each and every equipment as required by the Occupational Safety and Health Inspectorate and issue necessary Inspection Certificate.

The successful Bidder shall provide its own harbour tank with a capacity of 10,000 litres and shall be responsible for the maintenance of same.

The tank shall be provided with a secondary containment system.

Lot 3: Delivery of Gas oil for MPA Vehicles at Retail Distribution Outlets (Filling Stations)

The successful Bidder shall arrange with their distribution outlets for motor vehicles to take delivery of Light Diesel Oil (Gas Oil) during normal operating hours and days of these distribution outlets. The distribution outlets shall be located in Port Louis or in close vicinity of the Mauritius Port Authority (MPA).

4. Product Quality and Quantity

For bulk deliveries the quantities shall be measured on site as per dip or otherwise in accordance with approved standard practices.

The Product shall comply with following Technical Specifications and Standards:

Item No	Name of Product	Technical Specifications and Standards
Lot 1- Harbour Tank	Light Diesel Oil (Gas Oil)	Sulphur Content – Max. 50 ppm Density at 15° C g/ml Max 0.860 Min 0.820
Lot 2- Big Tugs	Light Diesel Oil (Gas Oil)	Sulphur Content – Max. 50 ppm Density at 15° C g/ml Max 0.860 Min 0.820
Lot 3 – Delivery of Gas oil for MPA Vehicles at Retail Distribution Outlets (Filling Stations)	Light Diesel Oil (Gas Oil)	Sulphur Content – Max. 50 ppm Density at 15° C g/ml Max 0.860 Min 0.820

Bidder to submit a Certificate of Quality for the Light Diesel Oil (Gas Oil) from an Independent Accredited Laboratory and a scanned copy of same must be uploaded on template “Any Other Document.”

Technical Compliance Sheet
(To fill on online Template)

Item No	Specifications and Performance Required	Evaluation Criteria	Compliance of Specifications and Performance Offered	Details of Non-Compliance/ Deviation (if applicable)
<i>A*</i>	<i>B*</i>	<i>C</i>	<i>D</i>	<i>E</i>
1	Light Diesel Oil (Gas Oil)	Sulphur Content - Max. 50 ppm Density at 15° C g/ml Max 0.860 Min 0.820		

PART 3 - Contract Forms and Conditions of Contract

Section IV. Framework Agreement

NOTES

This Framework Agreement is drafted based on the assumption that a Contract will be concluded with one or more suppliers; and Light Diesel Oil (Gas Oil) will be delivered in quantities as per the requirements of each lot.

Framework Agreement

THIS Agreement is made on [Insert Date]

BETWEEN:-

- (1) The Mauritius Ports Authority (MPA) whose principal place of business is at Mer Rouge, Port Louis (the **Purchaser**); and
- (2) [] (Supplier's Name whose registered address is at []⁶ (the **"Supplier"**)).

BACKGROUND

- (a) The Mauritius Ports Authority (MPA) issued Invitation for Bids through a Restricted Bidding Method on []⁷ to [Indicate Name of Supplier].
- (b) The Supplier submitted a bid on [].
- (c) On the basis of the Supplier's Bid, the Mauritius Ports Authority (MPA) selected the Supplier to enter a Framework Agreement to provide Light Diesel Oil (Gas Oil) for **Lot 1: Quay C- Bulk Delivery for Harbour Tank; Lot 2: Quay C- Bulk Delivery for Big Tugs; and Lot 3: Delivery for MPA Vehicles at Retail Distribution Outlets (Filling Stations)** on a Call-Off basis in accordance with this Framework Agreement.
- (d) This Framework Agreement sets out the award and ordering procedure for Light Diesel Oil (Gas Oil) which may be required by the power stations, and the obligations of the Supplier during and after the term of this Framework Agreement.

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Audit" means an audit carried out pursuant to Clause 14

"Auditor" means the Mauritius Ports Authority (MPA) internal auditor and/or the external auditor.

⁶ Insert name, company number and registered address of the Provider.

⁷ To be inserted.

"Bid"	means the document(s) submitted by the Supplier to the Public Body in response to the Public Body's invitation to suppliers for offers to supply Light Diesel Oil (Gas Oil) through the Framework Agreement.
"Call-Off "	means the request by the public body through order forms and approved vouchers, for the supply of Light Diesel Oil (Gas Oil).
"Commencement Date"	means (.....)
"Complaint"	means any formal complaint raised by the Public Body in relation to the performance of the Framework Agreement or any Call-Off in accordance with Clause 26.
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets or Intellectual Property Rights.
"Contract Rates"	means the prices of Light Diesel Oil (Gas Oil) payable to the Supplier by the Public Body under the Agreement, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Agreement.
"Public Body"	Means the Mauritius Ports Authority (MPA) which has conducted the bidding exercise with a view to entering into a Framework Agreement with one or more selected Suppliers that would enable the Mauritius Ports Authority (MPA) to procure Light Diesel Oil (Gas Oil) through Call-Offs.

"Force Majeure"	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:- (a) any industrial action occurring within the Supplier's or any sub-supplier's organisation; or (b) the failure by any sub-supplier to perform its obligations under any sub-contract
"Framework Agreement"	means an agreement or other arrangement between one or more public bodies and one or more suppliers which establishes the terms and conditions under which the supplier will enter into one or more contracts with the public body in the period during which the agreement or arrangement applies
"Fraud"	Means any corruption offence under the Prevention of Corruption Act in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Public Body.
"Law"	means Laws of the Republic of Mauritius
"Order"	means an order for Light Diesel Oil (Gas Oil) served by any public Body on the Supplier in accordance with the Ordering Procedures
"Party"	means the Public Body and/or the Supplier
"Staff"	means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement
"Term"	means the period commencing on the Commencement Date [<i>insert date</i>] and ending on [<i>insert date</i>] or on earlier termination of this Framework Agreement.
"Working Days"	means any day other than a Sunday or public holiday

PART ONE: FRAMEWORK AGREEMENT AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

3. SCOPE OF FRAMEWORK AGREEMENT

3.1 This Framework Agreement governs the relationship between the Mauritius Ports Authority (MPA) and the Supplier in respect of the supply of Light Diesel Oil (Gas Oil) by the Supplier to the Mauritius Ports Authority (MPA).

3.2 The Mauritius Ports Authority (MPA) may at its absolute discretion and from time-to-time order Light Diesel Oil (Gas Oil) from the Supplier in accordance with the ordering procedure during the Term. The Parties acknowledge and agree that the Mauritius Ports Authority (MPA) has the right to order Light Diesel Oil (Gas Oil) pursuant to this Framework Agreement provided that it complies at all times with the ordering procedures as agreed between the Supplier and the Public Body.

3.3 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Mauritius Ports Authority (MPA) in respect of the total quantities or values of the Light Diesel Oil (Gas Oil) to be ordered pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

4. SUPPLIER'S APPOINTMENT

The Mauritius Ports Authority (MPA) awards to the Supplier and hereby appoints the Supplier as a Supplier of the Light Diesel Oil (Gas Oil) and the Supplier shall be eligible to be considered for the placement of orders for such product by Mauritius Ports Authority (MPA) during the Term.

5. NON-EXCLUSIVITY

The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Mauritius Ports Authority (MPA) for Light Diesel Oil (Gas Oil) from the Supplier.

6. AWARD PROCEDURES

6.1 Awards under the Framework Agreement

If the Mauritius Ports Authority (MPA) decides to procure Light Diesel Oil (Gas Oil) through the Framework Agreement, it may make Call-Offs, for its requirements during the validity period of the Framework Agreement without reopening competition.

6.2 Responsibility for Monitoring Supplies

The Supplier acknowledges that the Mauritius Ports Authority (MPA) is responsible for the conduct of the monitoring of Call-Off under the Framework Agreement.

6.3 Form of Order

The Mauritius Ports Authority (MPA) may place an Order with the Supplier for bulk supplies through Order Forms, as per procedures that may from time to time be reviewed.

The Mauritius Ports Authority (MPA) may procure petroleum products from any distribution outlets indicated by the respective Supplier or place an Order with the respective Supplier for MPA Vehicles through agreed vouchers and or Order Forms, as per procedures that may from time to time be reviewed.

The Order constitutes a firm order by the Mauritius Ports Authority (MPA) to purchase the Light Diesel Oil (Gas Oil) subject to the terms and conditions of the Call-Off.

6.4 Terms and Conditions of Call-Off

6.4.1 Supplier's Status

At all times during the Agreement Period the Supplier shall be an independent Supplier and nothing in the Agreement shall create a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Agreement.

6.4.2 Supply of Light Diesel Oil (Gas Oil)

- (a) The Supplier shall ensure that the Light Diesel Oil (Gas Oil) is fully in compliance with the Mauritius Ports Authority's specifications and to the extent specified in the Order Form.
- (b) The Supplier acknowledges that the Mauritius Ports Authority (MPA) relies on the skill and judgment of the Supplier in the supply of the product and the performance of its obligations under the Agreement.

6.4.3 Delivery

- (a) The Supplier shall deliver the product at the time(s) and date(s) specified in the Framework Agreement or Call-Offs.
- (b) Where required, the Supplier shall obtain the authorisation of the respective petroleum companies for the use of the tanks on the premises and ensure that the tanks and accessories are in good operating conditions.
- (c) Delivery shall include the unloading of the Light Diesel oil (Gas oil) to the Mauritius Ports Authority Harbour tank and Big Tugs for bulk supply.
- (d) Time of delivery shall be of essence and if the Supplier fails to deliver the product within the time specified in the Framework Agreement, the Mauritius Ports Authority may release itself from any obligation to accept and pay for the products and/or terminate the Call-Off, in either case without prejudice to any other rights and remedies of the Public Body.
- (e) In exceptional circumstances, where the Supplier is unable to supply the Light Diesel Oil (Gas Oil) from its normal source, it has an obligation to make necessary arrangements to supply same from an alternative manner in an efficient and timely way, subject to prior acceptance of the Purchaser.
- (f) In case of closing down of a distribution outlet the supplier shall make necessary arrangements to ensure continuity of supplies within a reasonable distance from the closed outlet and at no additional cost.

6.4.4 Ownership

Ownership and risk in the products shall, without prejudice to any other rights or remedies of the Mauritius Ports Authority (MPA), pass to the Mauritius Ports Authority (MPA) at the time of acceptance of delivery.

6.4.5 Agreement Performance

- (i) The Supplier shall perform its obligations under the Agreement: -
 - (a) with appropriately experienced, qualified and trained Staff with all due skill, care and diligence; and
 - (b) in a timely manner.
- (ii) The Supplier shall ensure that:-
 - the products conform in all respects with the Order Form and, where applicable, with any sample approved by the Purchaser;
 - the products perform in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;

6.4.6 Contract Price

- (a) In consideration of the Supplier's performance of its obligations under the Call-Offs, the Mauritius Ports Authority (MPA) shall pay the Contract Price in accordance with Clause 6.4.7 (Payment).
- (b) The Mauritius Ports Authority (MPA) shall pay the Contract Price as per the rates indicated in the Annex.

6.4.7 Payment

- (a) In consideration of the Supplier performing its obligations under the Call-Offs, the Mauritius Ports Authority shall pay all sums due to the Supplier in cleared funds on a monthly basis within twenty-one (21) days upon receipt of invoice. Bidders should give in detail the payment terms and condition including any and credit facilities.
- (b) The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the product supplied and that it is supported by any other documentation reasonably required by the Mauritius Ports Authority (MPA) to substantiate the invoice.
- (c) The Mauritius Ports Authority shall pay interest as per the legal rate set by the Accountant General for any payment delayed by five days or above after the due date. The interest due shall be calculated as from the due date for payment.
- (d) The Supplier shall not suspend the supply of the product unless the Supplier is entitled to terminate the Agreement under Clause 17.1.3 (Termination on Default) for failure to pay undisputed sums of money.

6.4.8 Recovery of Sums Due

(a) Wherever under the Agreement any sum of money is recoverable from the Supplier (including any sum which the Supplier is liable to pay to the Public Body in respect of any breach of the Agreement), the Mauritius Ports Authority (MPA) may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with the Mauritius Ports Authority (MPA).

(b) Any overpayment by either Party, whether of the Contract Price or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

(c) The Supplier shall make any payment due to the Mauritius Ports Authority (MPA) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Mauritius Ports Authority (MPA) to the Supplier.

(d) All payments due shall be made within a reasonable time unless otherwise specified in the Agreement, in cleared funds, to such bank account as the recipient Party may from time to time direct.

6.4.9 Security

(a) The Supplier shall comply with all reasonable security requirements of the Mauritius Ports Authority (MPA) while on the premises and shall ensure that all Staff complies with such requirements.

(b) The Mauritius Ports Authority (MPA) shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

6.4.10 Insurance

The supplier shall take an Insurance Policy to cover the risk associated with operation of the tank **i.e Lot 1 - Quay C - Bulk Delivery for Harbour Tank.**

**PART TWO: SUPPLIER'S GENERAL OBLIGATIONS UNDER THE
FRAMEWORK AGREEMENT**

7. WARRANTIES AND REPRESENTATIONS

- 7.1 The Supplier warrants and represents to the Mauritius Ports Authority (MPA) that:-
- 7.1.1 it has full capacity and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
 - 7.1.2 this Framework Agreement is executed by a duly authorised representative of the Supplier;
 - 7.1.3 in entering into this Framework Agreement it has not committed any fraud;
 - 7.1.4 as at the Commencement Date, all information, statements and representations contained in the Bid are true, accurate and not misleading save as may have been specifically disclosed in writing to the Mauritius Ports Authority (MPA) prior to the execution of this Framework Agreement and it will promptly advise the Mauritius Ports Authority (MPA) of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 7.1.5 it has not entered into any agreement with any other person with the aim of preventing bids being made or as to the fixing or adjusting of the amount of any bid or the conditions on which any bid is made in respect of the Framework Agreement;
 - 7.1.6 it has not caused or induced any person to enter such Agreement.
 - 7.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to the bid under this Framework Agreement;
 - 7.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Mauritius Ports Authority (MPA);
 - 7.1.9 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement;

7.2 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

8. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

8.1 The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Mauritius Ports Authority (MPA) or person employed by or on behalf of the Mauritius Ports Authority (MPA) any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement/or for a Call-Off.

8.2 The Supplier warrants that it has not paid commission or agreed to pay any commission to the Mauritius Ports Authority (MPA) or any person employed by or on behalf of the Mauritius Ports Authority (MPA) in connection with this Framework Agreement, or any other contract with the Public Body or person employed by or on behalf of the Mauritius Ports Authority (MPA).

8.3 If the Supplier, its Staff or any person acting on the Supplier's behalf, engages in conduct prohibited by Clauses 8.1 or 8.2 above or commits any corruption offence under the Prevention of Corruption Act, the Mauritius Ports Authority (MPA) may:-

8.3.1 terminate the Framework Agreement with immediate effect by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss suffered by the Mauritius Ports Authority (MPA) resulting from the termination; or

8.3.2 recover in full from the Supplier, and the Supplier shall indemnify the Mauritius Ports Authority (MPA) in full from and against any other loss sustained by the Mauritius Ports Authority (MPA) in consequence of any breach of this clause, whether or not the Framework Agreement has been terminated.

9. **CONFLICTS OF INTEREST**

9.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Mauritius Ports Authority (MPA)) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Mauritius Ports Authority (MPA) under the provisions of this Framework Agreement or under a Call-Off.

9.2 The Supplier shall promptly notify and provide full particulars to the Mauritius Ports Authority (MPA) if such conflict as referred to in Clause 9.1 above arises or is reasonably foreseeable to arise.

9.3 The Mauritius Ports Authority (MPA) reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Mauritius Ports Authority (MPA), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Mauritius Ports Authority (MPA) under the provisions of this Framework Agreement. The action of the Mauritius Ports Authority (MPA) pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Mauritius Ports Authority (MPA).

10. **SAFEGUARD AGAINST FRAUD**

The Supplier shall safeguard the Mauritius Ports Authority (MPA)'s funding of the Framework Agreement and any Call-Off against fraud generally and, in particular, fraud on the part of the Supplier or its Staff. The Supplier shall notify the Mauritius Ports Authority (MPA) immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

11. **CALL-OFF PERFORMANCE**

11.1 The Supplier shall perform its obligations to supply Light Diesel Oil (Gas Oil) under a Call-Off from the Mauritius Ports Authority (MPA) in accordance with:-

11.1.1 the requirements of this Framework Agreement and

11.1.2 the terms and conditions of the respective Call-Off.

11.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off, the terms and conditions of this Framework Agreement shall prevail.

12. **PRICE FOR LIGHT DIESEL OIL (GAS OIL)**

The price offered by the Supplier under a Call-Off for Light Diesel Oil (Gas Oil) shall be as given in the Annex at time of signature of contract.

PART THREE: SUPPLIER'S INFORMATION OBLIGATIONS

13. PROVISION OF MANAGEMENT INFORMATION

- 13.1 The Supplier shall submit Management Information to the Mauritius Ports Authority (MPA) in the form as agreed by the parties throughout the Term on the last day of every Month and in respect of any Call-Off.
- 13.2 The Mauritius Ports Authority (MPA) may make changes to the Management Information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

14. RECORDS AND AUDIT ACCESS

- 14.1 The Supplier shall keep and maintain until five (5) years after the date of termination or expiry of the Term (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including Light Diesel Oil (Gas Oil) provided under the Call-Off and the amounts paid.
- 14.2 The Supplier shall keep the records and accounts referred to in Clause 14.1 above in accordance with good accountancy practice.
- 14.3 The Supplier shall submit to the Mauritius Ports Authority (MPA) and/or the Auditor access to such records and accounts as may be required from time to time.
- 14.4 The Mauritius Ports Authority (MPA) shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of Light Diesel Oil (Gas Oil) pursuant to the Call-Off, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Mauritius Ports Authority (MPA).

14.5 Subject to the Mauritius Ports Authority (MPA)'s rights of confidentiality, the Supplier shall, on demand, provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including all information requested by the Auditor within the scope of the Audit.

14.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 14, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Mauritius Ports Authority (MPA) for the Mauritius Ports Authority's reasonable costs incurred in relation to the Audit.

15. CONFIDENTIALITY

15.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

16. PUBLICITY

16.1 Subject to Clause 16.2, the Supplier shall not publicise this Framework Agreement in any way whatsoever, without the Mauritius Ports Authority (MPA)'s prior written consent.

16.2 The Mauritius Ports Authority (MPA) shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Mauritius Ports Authority (MPA), including any examination of this Framework Agreement by the Auditor or otherwise.

The Supplier shall not do anything, which may damage the reputation of the Mauritius Ports Authority (MPA) or bring the Mauritius Ports Authority (MPA) into disrepute.

PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

17. TERMINATION

17.1 Termination on Default

The Mauritius Ports Authority (MPA) may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:-

17.1.1 Where the Supplier commits a Material Default and:-

- (a) the Supplier has not remedied the Material Default to the satisfaction of the Mauritius Ports Authority (MPA) within twenty (20) Working Days, or such other period as may be specified by the Mauritius Ports Authority (MPA) after issue of a written notice specifying the Material Default and requesting it to be remedied; or
- (b) the Material Default is not, in the reasonable opinion of the Mauritius Ports Authority (MPA), capable of remedy; or

17.1.2 If the Supplier, in the judgement of the Mauritius Ports Authority (MPA), has engaged in fraud and corruption, as defined in clause 7 and 8 above, in competing for or in executing the Agreement.

17.1.3 If the Mauritius Ports Authority (MPA) fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Mauritius Ports Authority (MPA) in writing of such failure to pay. If the Mauritius Ports Authority (MPA) fails to pay such undisputed sums within thirty (30) Working Days of the date of such written notice, the Supplier may terminate the Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Mauritius Ports Authority (MPA) exercising its rights under Clause 6.4.8. (Recovery of Sum Due).

17.2 Termination on Financial Standing

The Mauritius Ports Authority (MPA) may terminate the Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Mauritius Ports Authority (MPA)), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Light Diesel Oil (Gas Oil) under this Framework Agreement.

17.3 Termination on Insolvency

The Mauritius Ports Authority (MPA) may at any time terminate the Agreement by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise

insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Mauritius Ports Authority (MPA).

17.4 **Termination for convenience by the Purchaser**

The Mauritius Ports Authority (MPA) shall have the right to terminate this Framework Agreement, at any time by giving one month written notice to the Supplier as follows:

(a) The Mauritius Ports Authority (MPA) may terminate a procurement contract for its convenience at any time upon a determination that because of changed circumstances, the continuation of the contract is not in the public interest; and

(b) upon such a termination, the suppliers will be entitled to reimbursement of expenses incurred in the performance of the contract, but will not be entitled to recover anticipated profits on the completion of the contract

(c) Notwithstanding any other enactment, the Mauritius Ports Authority (MPA) or the supplier(s) may terminate a contract where the other party(ies) to the contract commit a fundamental breach of the contract, as defined in this Agreement

18. **CONSEQUENCES OF TERMINATION AND EXPIRY**

18.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement.

18.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

18.3 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

18.4 The provisions of Clauses 7, 8, 9, 10, 14, 15, and 29 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

PART FIVE: OTHER PROVISIONS

19. PERFORMANCE SECURITY

- 19.1 The Supplier shall within twenty-eight (28) days from the date of issue of the Letter of Acceptance for the Framework Agreement award, provide a Performance Security for the performance of this Framework Agreement in the amount specified in the Letter of Acceptance.
- 19.2 The proceeds of the Performance Security shall be payable to the Mauritius Ports Authority (MPA) as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Framework Agreement.
- 19.3 The Performance Security shall be in the form of a bank guarantee as per the format indicated in Part 3 of the Bidding Document.
- 19.4 The Performance Security shall be discharged by the Mauritius Ports Authority (MPA) and returned to the Supplier not earlier than twenty-one (21) days following the date of completion or extended date of completion of the Supplier's performance obligations under the Framework Agreement.

20. TRANSFER AND SUBCONTRACTING

- 20.1 The Framework Agreement is personal to the Supplier and the Supplier shall not assign, or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Mauritius Ports Authority (MPA). The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

21. SEVERABILITY

- 21.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect

as if the Framework Agreement had been executed with the invalid provision eliminated.

22. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

22.1 Where a complaint is received about the manner in which supply has been made or about any other matter connected with the performance of the Supplier's obligations under the Agreement, the Mauritius Ports Authority (MPA) shall take all reasonable steps to investigate the complaint. The Mauritius Ports Authority (MPA) may uphold the complaint, or take further action in accordance with Clause dealing with the Termination of the Agreement.

22.2 In the event that the Mauritius Ports Authority (MPA) is of the reasonable opinion that there has been a material breach of the Agreement by the Supplier, it may, without prejudice to its rights under Clause dealing with Termination on Default, do any of the following:-

- (a) without terminating the Agreement, itself supply or procure the supply of all or part of the products until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Mauritius Ports Authority (MPA) that the Supplier will once more be able to supply the products in accordance with the Agreement;
- (b) without having recourse to termination of the whole of the Agreement, terminate the Agreement in respect of part of the requirement only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the product;
- (c) terminate, in accordance with Clause dealing with Termination on Default, the whole of the Agreement; and/or
- (d) charge the Supplier for, and the Supplier shall pay any costs reasonably incurred by the Mauritius Ports Authority (MPA) (including any reasonable administration costs) in respect of the supply of any part of the requirement by the Mauritius Ports Authority (MPA) or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such that part of supply part of the products and provided that the Mauritius Ports Authority (MPA) uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement products.

22.3 If the Supplier fails to supply the product in accordance with the provisions of the Agreement and such failure is capable of remedy, the Mauritius Ports Authority (MPA) shall instruct the Supplier to remedy the failure, and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within two Working Days of the Mauritius Ports Authority (MPA)'s instructions or such other period of time as the Mauritius Ports Authority (MPA) may direct.

22.4 In the event that the Supplier:-

- (a) fails to comply with Clause **22.3** above and the failure is materially adverse to the interests of the Mauritius Ports Authority (MPA) or prevents the Mauritius Ports Authority (MPA) from discharging a statutory duty; or
- (b) persistently fails to comply with Clause **22.3** above;

the Mauritius Ports Authority (MPA) may terminate the Agreement or part thereof with immediate effect by giving the Supplier notice in writing.

23. CUMULATIVE REMEDIES

Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

24. WAIVER

24.1 The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

24.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 23.

24.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

25. NOTICES

25.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

25.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 25.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

25.3 For the purposes of Clause 25.2, the address of each Party shall be:

25.3.1 For the Mauritius Ports Authority (MPA):-

Address: H. Ramnarain Building
Mer Rouge
Port Louis

For the attention of: The Director General

Tel: +230 206 5400

Fax: +230 240 0856

Email: info@mauport.mu

25.3.2 For the Supplier:-

[.....]

Address: [.....]

For the attention of: [.....]

Tel: [.....]

Fax: [.....]

Email: [.....]

25.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

26. COMPLAINTS HANDLING AND RESOLUTION

26.1 The Supplier shall, within two (2) Working Days of becoming aware of a Complaint, provide the Mauritius Ports Authority (MPA) with full details of the Supplier's plans to resolve such Complaint.

26.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Call-Off, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

27. FORCE MAJEURE

27.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Agreement for a period in excess of 1 month, either Party may terminate the Agreement with immediate effect by notice in writing.

27.2 Any failure or delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-supplier or supplier shall be regarded as due to Force Majeure only if that agent, sub-supplier or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.

If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 27.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

28. **DISPUTE RESOLUTION**

The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within 30 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 26 above.

29. **LAW AND JURISDICTION**

Subject to the provisions of Clause 26 and 28, the Mauritius Ports Authority (MPA) and the Supplier accept the exclusive jurisdiction of the Mauritian courts and agree that the Framework Agreement is to be governed by and construed according to the Laws of the Republic of Mauritius.

Made in two originals and SIGNED by or on behalf of the Parties on

SIGNED by) Name:.....
)
for and on behalf of the Mauritius Ports) Signature:.....
Authority (MPA))

**Seal of Mauritius Ports Authority
(MPA)**

SIGNED by Name:.....
)
for and on behalf of (*Insert Name of*) Signature:.....
Supplier))
(Director/Company Secretary))

SIGNED by

Name:.....

for and on behalf of (*Insert Name of Supplier*))

Signature:.....

(Director))

Seal of Company

Performance Security

[The bank/insurance company, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: *[insert date (as day, month, and year) of Bid Submission]*

Procurement Reference No. and title: *[insert no. and title of bidding process]*

Bank/Insurance Company's Branch or Office: *[insert complete name of Guarantor]*

Beneficiary: *[insert complete name of Purchaser]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)⁸ in figures and words]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire not later than 21 days of *[insert month]* *[insert year]*,⁹ and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[signatures of authorized representatives of the bank/insurance company and the Supplier]

⁸ The Bank/Insurance Company shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.

⁹ Dates established in accordance with Clause 18.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 16.2 of the GCC intended to be secured by a partial Performance Guarantee. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank/Insurance Company. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."