

**REQUEST FOR PROPOSALS**

**TECHNICAL ASSISTANCE FOR THE**

**MARITIME LEGAL AND REGULATORY PROJECT**

Submission Deadline: **4:00 PM**

**LOCAL TIME (GMT+6)**

**DECEMBER 11, 2009**

Submission Place:

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SEALED PROPOSALS SHALL BE CLEARLY MARKED AND RECEIVED PRIOR TO THE TIME AND DATE SPECIFIED ABOVE. PROPOSALS RECEIVED AFTER SAID TIME AND DATE WILL NOT BE ACCEPTED OR CONSIDERED.

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## **Section 1: INTRODUCTION**

The U.S. Trade and Development Agency (USTDA) has provided a grant in the amount of US\$327,844 to KMG Transcaspian LLP (the "Grantee") in accordance with a grant agreement dated September 23, 2009 (the "Grant Agreement"). This Grant would fund technical assistance (the "Technical Assistance") for a proposed Maritime and Legal Regulatory project (the "Project") in Kazakhstan (the "Host Country"). The Grant Agreement is attached at Annex 4 for reference. The Grantee is soliciting technical proposals from qualified U.S. firms to provide expert consulting services to perform the Technical Assistance.

### **1.1 BACKGROUND SUMMARY**

Kazakhstani crude oil is currently shipped in limited amounts of approximately 150,000 barrels per day across the Caspian Sea from the Port of Aktau, currently the only major seaport in Kazakhstan, to Azerbaijan. Over the next 10 years however, Kazakhstan is expected to dramatically increase oil production, from its current capacity of approximately 70 million tons per year to an estimated 120 million tons per year by 2019. Most of this oil will be exported, necessitating an expansion of Kazakhstan's oil export infrastructure. The Republic of Kazakhstan (RK) has prioritized the development of KCTS (Kazakhstan Caspian Transportation System) and in particular the part of KCTS – Transcaspian project (TCP), to ensure that Kazakhstan's oil export infrastructure can accommodate rising production levels. The general overview and description of the Transcaspian project is stated in the Agreement between the Republic of Kazakhstan and the Republic of Azerbaijan on support of oil transportation from the Republic of Kazakhstan through the Caspian Sea and the territory of the Republic of Azerbaijan to the international markets by the Baku-Tbilisi-Ceyhan system, signed on June, 16, 2006 (Agreement). This project includes loading and discharging oil terminals on Kazakh and Azeri coastal territories of the Caspian Sea, tankers and vessels (designed for oil transportation and providing other operations within the Project), and a connection to the Baku-Tbilisi-Ceyhan oil pipeline. Initially, the Trans Caspian System (TCS) is expected to allow Kazakhstan to deliver approximately 500,000 barrels of oil per day directly to Azerbaijan via surface shipments across the Caspian Sea for onward transmission through the Baku-Tbilisi-Ceyhan pipeline, other pipelines are also allowed but beyond the frame of Agreement. This volume is expected to increase to approximately 750,000 to 1.2 million barrels per day when KCTS is fully operational. Improving the safety and environmental management of Caspian Sea ship traffic through improved maritime laws and regulations inspire confidence in TCP. In addition to Aktau, the RK plans to develop the Port of Kuryk as a marine oil loading and transport terminal. Eventually, the RK believes that the majority of oil exported from Kazakhstan via the Caspian will pass through Kuryk rather than Aktau.

Initial groundwork for the development of TCP has already begun. In November 2008, KazMunaiGas (KMG) and the State Oil Company of Azerbaijan (SOCAR) signed an agreement on the core principles of TCP. The two national oil companies agreed to set up a joint venture that will manage all aspects of the project—from developing feasibility studies to overseeing the

construction and operation of the system. A special purpose joint venture was recently formed to cover a feasibility study of the Transcaspian Project.

KMG Transcaspian LLP has been tasked with the responsibility of determining the necessary institutional, economic and technical factors that must be resolved to facilitate the implementation of TCP. Implementation and compliance with international maritime treaties, laws, and regulations will have a significant impact on technical infrastructure requirements, capital investment, and operating costs, and therefore will have a significant impact on the viability of TCP. KMG Transcaspian LLP is a subsidiary of state-owned Kazakhstan oil and gas company KMG, which is itself a subsidiary of the state-owned holding company Samruk-Kazyna.

Various RK agencies are being approached with suggestions and recommendations as to what is needed to implement the necessary maritime laws and regulations. These include the international maritime agencies (IMO, etc.), regional safety and security organizations (Oil Spill Preparedness Regional Initiative, Organization for Security and Cooperation in Europe), the IOCs, international financial institutions, other donor agencies, and foreign governments.

Excerpts from a Definitional Mission Final Report are provided for reference in Annex 2.

## **1.2 OBJECTIVE**

The objective of these terms of Reference (TOR) are to assist KMG Transcaspian LLP in a) defining the International Treaty Accessions, Maritime laws and Regulations that Kazakhstan has to implement, and b) a definition of how these requirements should be implemented. The Terms of Reference (TOR) for this Technical Assistance are attached as Annex 5.

## **1.3 PROPOSALS TO BE SUBMITTED**

Technical proposals are solicited from interested and qualified U.S. firms. The administrative and technical requirements as detailed throughout the Request for Proposals (RFP) will apply. Specific proposal format and content requirements are detailed in Section 3.

The amount for the contract has been established by a USTDA grant of US\$327,844. The USTDA grant of US\$327,844 is a fixed amount. Accordingly, COST will not be a factor in the evaluation and therefore, cost proposals should not be submitted. Upon detailed evaluation of technical proposals, the Grantee shall select one firm for contract negotiations.

#### **1.4 CONTRACT FUNDED BY USTDA**

In accordance with the terms and conditions of the Grant Agreement, USTDA has provided a grant in the amount of US\$327,844 to the Grantee. The funding provided under the Grant Agreement shall be used to fund the costs of the contract between the Grantee and the U.S. firm selected by the Grantee to perform the TOR. The contract must include certain USTDA Mandatory Contract Clauses relating to nationality, taxes, payment, reporting, and other matters. The USTDA nationality requirements and the USTDA Mandatory Contract Clauses are attached at Annexes 3 and 4, respectively, for reference.

## **Section 2: INSTRUCTIONS TO OFFERORS**

### **2.1 PROJECT TITLE**

The project is called the Maritime Legal and Regulatory Technical Assistance Project.

### **2.2 DEFINITIONS**

Please note the following definitions of terms as used in this RFP.

The term "Request for Proposals" means this solicitation of a formal technical proposal, including qualifications statement.

The term "Offeror" means the U.S. firm, including any and all subcontractors, which responds to the RFP and submits a formal proposal and which may or may not be successful in being awarded this procurement.

### **2.3 DEFINITIONAL MISSION REPORT**

USTDA sponsored a Definitional Mission to address technical, financial, sociopolitical, environmental and other aspects of the proposed project. Excerpts from the report are attached at Annex 2 for background information only. Please note that the TOR referenced in the report are included in this RFP as Annex 5.

### **2.4 EXAMINATION OF DOCUMENTS**

Offerors should carefully examine this RFP. It will be assumed that Offerors have done such inspection and that through examinations, inquiries and investigation they have become familiarized with local conditions and the nature of problems to be solved during the execution of the Technical Assistance.

Offerors shall address all items as specified in this RFP. Failure to adhere to this format may disqualify an Offeror from further consideration.

Submission of a proposal shall constitute evidence that the Offeror has made all the above mentioned examinations and investigations, and is free of any uncertainty with respect to conditions which would affect the execution and completion of the Technical Assistance.

## **2.5 PROJECT FUNDING SOURCE**

The Technical Assistance will be funded under a grant from USTDA. The total amount of the grant is not to exceed \$327,844.

## **2.6 RESPONSIBILITY FOR COSTS**

Offeror shall be fully responsible for all costs incurred in the development and submission of the proposal. Neither USTDA nor the Grantee assumes any obligation as a result of the issuance of this RFP, the preparation or submission of a proposal by an Offeror, the evaluation of proposals, final selection or negotiation of a contract.

## **2.7 TAXES**

Offerors should submit proposals that note that in accordance with the USTDA Mandatory Contract Clauses, USTDA grant funds shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in the Host Country.

## **2.8 CONFIDENTIALITY**

The Grantee will preserve the confidentiality of any business proprietary or confidential information submitted by the Offeror, which is clearly designated as such by the Offeror, to the extent permitted by the laws of the Host Country.

## **2.9 ECONOMY OF PROPOSALS**

Proposal documents should be prepared simply and economically, providing a comprehensive yet concise description of the Offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

## **2.10 OFFEROR CERTIFICATIONS**

The Offeror shall certify (a) that its proposal is genuine and is not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with, and agreement of, any undisclosed group, association, organization, or corporation; (b) that it has not directly or indirectly induced or solicited any other Offeror to put in a false proposal; (c) that it has not solicited or induced any other person, firm, or corporation to refrain from submitting a proposal; and (d) that it has not sought by collusion to obtain for itself any advantage over any other Offeror or over the Grantee or USTDA or any employee thereof.

## 2.11 CONDITIONS REQUIRED FOR PARTICIPATION

Only U.S. firms are eligible to participate in this tender. However, U.S. firms may utilize subcontractors from the Host Country and Azerbaijan (use of subcontractors from Azerbaijan is permitted only for review and analysis of Azerbaijani law and regulations) for up to 20 percent (20%) of the amount of the USTDA grant for specific services from the TOR identified in the subcontract. USTDA's nationality requirements, including definitions, are detailed in Annex 3.

## 2.12 LANGUAGE OF PROPOSAL

All proposal documents shall be prepared and submitted in English and Russian.

## 2.13 PROPOSAL SUBMISSION REQUIREMENTS

The **Cover Letter** in the proposal must be addressed to:

Mr. Berik Z. Tolumbayev  
Acting General Director  
KMG-Transcaspian LLP  
6, Saryarka ave., Business center "Arman", 7<sup>th</sup> floor  
Astana 010000, Republic of Kazakhstan  
Phone: 7 (7172) 79 30 99  
Fax: 7 (7172) 79 30 58

**An Original and eight (8) copies of your proposal in both English and Russian (18 copies in total) must be received at the above address no later than 4:00 PM (GMT+6), on DECEMBER 11, 2009.**

Proposals may be either sent by mail, overnight courier, or hand-delivered. Whether the proposal is sent by mail, courier or hand-delivered, the Offeror shall be responsible for actual delivery of the proposal to the above address before the deadline. Any proposal received after the deadline will be returned unopened. The Grantee will promptly notify any Offeror if its proposal was received late.

Upon timely receipt, all proposals become the property of the Grantee.

## 2.14 PACKAGING

The original and each copy of the proposal must be sealed to ensure confidentiality of the information. The proposals should be individually wrapped and sealed, and labeled for content including "original" or "copy number x"; the original and eight (8) copies should be collectively wrapped and sealed, and clearly labeled.

Neither USTDA nor the Grantee will be responsible for premature opening of proposals not properly wrapped, sealed and labeled.

## **2.15 AUTHORIZED SIGNATURE**

The proposal must contain the signature of a duly authorized officer or agent of the Offeror empowered with the right to bind the Offeror.

## **2.16 EFFECTIVE PERIOD OF PROPOSAL**

The proposal shall be binding upon the Offeror for NINETY (90) days after the proposal due date, and Offeror may withdraw or modify this proposal at any time prior to the due date upon written request, signed in the same manner and by the same person who signed the original proposal.

## **2.17 EXCEPTIONS**

All Offerors agree by their response to this RFP announcement to abide by the procedures set forth herein. No exceptions shall be permitted.

## **2.18 OFFEROR QUALIFICATIONS**

As provided in Section 3, Offerors shall submit evidence that they have relevant past experience and have previously delivered advisory, Technical Assistance and/or other services similar to those required in the TOR, as applicable.

## **2.19 RIGHT TO REJECT PROPOSALS**

The Grantee reserves the right to reject any and all proposals.

## **2.20 PRIME CONTRACTOR RESPONSIBILITY**

Offerors have the option of subcontracting parts of the services they propose. The Offeror's proposal must include a description of any anticipated subcontracting arrangements, including the name, address, and qualifications of any subcontractors. USTDA nationality provisions apply to the use of subcontractors and are set forth in detail in Annex 3. The successful Offeror shall cause appropriate provisions of its contract, including all of the applicable USTDA Mandatory Contract Clauses, to be inserted in any subcontract funded or partially funded by USTDA grant funds.

## **2.21 AWARD**

The Grantee shall make an award resulting from this RFP to the best qualified Offeror, on the basis of the evaluation factors set forth herein. The Grantee reserves the right to reject any and all proposals received and, in all cases, the Grantee will be the judge as to whether a proposal has or has not satisfactorily met the requirements of this RFP.

## **2.22 COMPLETE SERVICES**

The successful Offeror shall be required to (a) provide local transportation, office space and secretarial support required to perform the TOR if such support is not provided by the Grantee; (b) provide and perform all necessary labor, supervision and services; and (c) in accordance with best technical and business practice, and in accordance with the requirements, stipulations, provisions and conditions of this RFP and the resultant contract, execute and complete the TOR to the satisfaction of the Grantee and USTDA.

## **2.23 INVOICING AND PAYMENT**

Deliverables under the contract shall be delivered on a schedule to be agreed upon in a contract with the Grantee. The Contractor may submit invoices to the designated Grantee Project Director in accordance with a schedule to be negotiated and included in the contract. After the Grantee's approval of each invoice, the Grantee will forward the invoice to USTDA. If all of the requirements of USTDA's Mandatory Contract Clauses are met, USTDA shall make its respective disbursement of the grant funds directly to the U.S. firm in the United States. All payments by USTDA under the Grant Agreement will be made in U.S. currency. Detailed provisions with respect to invoicing and disbursement of grant funds are set forth in the USTDA Mandatory Contract Clauses attached in Annex 4.

### **Section 3: PROPOSAL FORMAT AND CONTENT**

To expedite proposal review and evaluation, and to assure that each proposal receives the same orderly review, all proposals must follow the format described in this section.

Proposal sections and pages shall be appropriately numbered and the proposal shall include a Table of Contents. Offerors are encouraged to submit concise and clear responses to the RFP. Proposals shall contain all elements of information requested without exception. Instructions regarding the required scope and content are given in this section. The Grantee reserves the right to include any part of the selected proposal in the final contract.

The proposal shall consist of a technical proposal only. A cost proposal is NOT required because the amount for the contract has been established by a USDA grant of US\$327,844, which is a fixed amount.

Offerors shall submit one (1) original and eight (8) copies of the proposal in English and Russian. Proposals received by fax cannot be accepted.

Each proposal must include the following:

- Transmittal Letter,
- Cover/Title Page,
- Table of Contents,
- Executive Summary,
- Company Information,
- Organizational Structure, Management Plan, and Key Personnel,
- Technical Approach and Work Plan, and
- Experience and Qualifications.

Detailed requirements and directions for the preparation of the proposal are presented below.

#### **3.1 EXECUTIVE SUMMARY**

An Executive Summary should be prepared describing the major elements of the proposal, including any conclusions, assumptions, and general recommendations the Offeror desires to make. Offerors are requested to make every effort to limit the length of the Executive Summary to no more than five (5) pages.

## **3.2 COMPANY INFORMATION**

For convenience, the information required in this Section 3.2 may be submitted in the form attached in Annex 6 hereto.

### **3.2.1 Company Profile**

Provide the information listed below relative to the Offeror's firm. If the Offeror is proposing to subcontract some of the proposed work to another firm(s), the information below must be provided for each subcontractor.

1. Name of firm and business address (street address only), including telephone and fax numbers.
2. Year established (include predecessor companies and year(s) established, if appropriate).
3. Type of ownership (e.g. public, private or closely held).
4. If private or closely held company, provide list of shareholders and the percentage of their ownership.
5. List of directors and principal officers (President, Chief Executive Officer, Vice-President(s), Secretary and Treasurer; provide full names including first, middle and last). Please place an asterisk (\*) next to the names of those principal officers who will be involved in the Technical Assistance.
6. If Offeror is a subsidiary, indicate if Offeror is a wholly-owned or partially-owned subsidiary. Provide the information requested in items 1 through 5 above for the Offeror's parent(s).
7. Project Manager's name, address, telephone number, e-mail address and fax number .

### **3.2.2 Offeror's Authorized Negotiator**

Provide name, title, address, telephone number, e-mail address and fax number of the Offeror's authorized negotiator. The person cited shall be empowered to make binding commitments for the Offeror and its subcontractors, if any.

### **3.2.3 Negotiation Prerequisites**

1. Discuss any current or anticipated commitments which may impact the ability of the Offeror or its subcontractors to complete the Technical Assistance as proposed and reflect such impact within the project schedule.
2. Identify any specific information which is needed from the Grantee before commencing contract negotiations.

### 3.2.4 Offeror's Representations

If any of the following representations cannot be made, or if there are exceptions, the Offeror must provide an explanation.

1. Offeror is a corporation [*insert applicable type of entity if not a corporation*] duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_. The Offeror has all the requisite corporate power and authority to conduct its business as presently conducted, to submit this proposal, and if selected, to execute and deliver a contract to the Grantee for the performance of the Technical Assistance. The Offeror is not debarred, suspended, or to the best of its knowledge or belief, proposed for debarment, or ineligible for the award of contracts by any federal or state governmental agency or authority. The Offeror has included, with this proposal, a certified copy of its Articles of Incorporation, and a certificate of good standing issued within one month of the date of its proposal by the State of \_\_\_\_\_.
2. Neither the Offeror nor any of its principal officers have, within the three-year period preceding this RFP, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal or state criminal tax laws, or receiving stolen property.
3. Neither the Offeror, nor any of its principal officers, is presently indicted for, or otherwise criminally or civilly charged with, commission of any of the offenses enumerated in paragraph 2 above.
4. There are no federal or state tax liens pending against the assets, property or business of the Offeror. The Offeror, has not, within the three-year period preceding this RFP, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied. Taxes are considered delinquent if (a) the tax liability has been fully determined, with no pending administrative or judicial appeals; and (b) a taxpayer has failed to pay the tax liability when full payment is due and required.
5. The Offeror has not commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law. The Offeror has not had filed against it an involuntary petition under any bankruptcy, insolvency or similar law.

The selected Offeror shall notify the Grantee and USTDA if any of the representations included in its proposal are no longer true and correct at the time of its entry into a contract with the Grantee. USTDA retains the right to request an updated certificate of good standing from the selected Offeror.

### **3.3 ORGANIZATIONAL STRUCTURE, MANAGEMENT, AND KEY PERSONNEL**

Describe the Offeror's proposed project organizational structure. Discuss how the project will be managed including the principal and key staff assignments for this Technical Assistance (TA). Identify the Project Manager who will be the individual responsible for this project. The Project Manager shall have the responsibility and authority to act on behalf of the Offeror in all matters related to the Technical Assistance.

Provide a listing of personnel (including subcontractors) to be engaged in the project, including both U.S. and local subcontractors, with the following information for key staff: position in the project; pertinent experience, curriculum vitae; other relevant information. If subcontractors are to be used, the Offeror shall describe the organizational relationship, if any, between the Offeror and the subcontractor.

A manpower schedule and the level of effort for the project period, by activities and tasks, as detailed under the Technical Approach and Work Plan shall be submitted. A statement confirming the availability of the proposed project manager and key staff over the duration of the project must be included in the proposal.

### **3.4 TECHNICAL APPROACH AND WORK PLAN**

Describe in detail the proposed Technical Approach and Work Plan (the "Work Plan"). Discuss the Offeror's methodology for completing the project requirements. Include a brief narrative of the Offeror's methodology for completing the tasks within each activity series. Begin with the information gathering phase and continue through delivery and approval of all required reports.

Prepare a detailed schedule of performance that describes all activities and tasks within the Work Plan, including periodic reporting or review points, incremental delivery dates, and other project milestones.

Based on the Work Plan, and previous project experience, describe any support that the Offeror will require from the Grantee. Detail the amount of staff time required by the Grantee or other participating agencies and any work space or facilities needed to complete the Technical Assistance. Describe the availability of the Offeror to answer reasonable requests for information by the Grantee directly related to the work done under the Terms of Reference of the TA for a period of up to six months after the TA has been completed.

### **3.5 SECTION 5: EXPERIENCE AND QUALIFICATIONS**

Provide a discussion of the Offeror's experience and qualifications that are relevant to the objectives and TOR for the Technical Assistance. If a subcontractor(s) is being used, similar information must be provided for the prime and each subcontractor firm proposed for the project. The Offeror shall provide information with respect to relevant experience and qualifications of key staff proposed. The Offeror shall include letters of commitment from the individuals proposed confirming their availability for contract performance.

As many as possible but not more than six (6) relevant and verifiable project references must be provided for the Offeror and any subcontractor, including the following information:

- Project name,
- Name and address of client (indicate if joint venture),
- Client contact person (name/ position/ current phone and fax numbers),
- Period of Contract,
- Description of services provided,
- Dollar amount of Contract, and
- Status and comments.

Offerors are strongly encouraged to include in their experience summary primarily those projects that are similar to or larger in scope than the Technical Assistance as described in this RFP.

**Section 4: AWARD CRITERIA**

Individual proposals will be initially evaluated by a Procurement Selection Committee of representatives from the Grantee. The Committee will then conduct a final evaluation and completion of ranking of qualified Offerors. The Grantee will notify USTDA of the best qualified Offeror, and upon receipt of USTDA's no-objection letter, the Grantee shall promptly notify all Offerors of the award and negotiate a contract with the best qualified Offeror. If a satisfactory contract cannot be negotiated with the best qualified Offeror, negotiations will be formally terminated. Negotiations may then be undertaken with the second most qualified Offeror and so forth.

The selection of the Contractor will be based on the following criteria:

	<i>Criteria</i>	<i>Weight</i>
1.	Knowledge of legal aspects of International Maritime Laws and Regulations	35
2.	Experience in working on similar projects including provision of gap analysis, or implementation of changes to existing Legal and regulatory framework, or consultancy for crude oil shipment projects demonstrated capability to provide effective recommendations regarding this Project	30
3	Knowledge and Experience of Maritime Laws and regulations and special conditions applicable to the Caspian Sea	20
4.	Experience in working in the Central Asian Region including language skills, customs and practices	15

Proposals that do not include all requested information may be considered non-responsive.

Price will not be a factor in contractor selection.

**ANNEX 1**

MR. BERIK Z. TOLUMBAYEV, ACTING GENERAL DIRECTOR, KMG  
TRANSCASPIAN LLP, 6 SARYARKA AVE., BUSINESS CENTER "ARMAN", 7<sup>th</sup>  
FLOOR, OFFICE 735, ASTANA, 010000, KAZAKHSTAN, +7 (7172) 79 30 99

B –KAZAKHSTAN: MARITIME LEGAL AND REGULATORY TECHNICAL  
ASSISTANCE PROJECT

POC John Kusnierek, USTDA, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901, Tel: (703) 875-4357, Fax: (703) 875-4009. KAZAKHSTAN: MARITIME LEGAL AND REGULATORY TECHNICAL ASSISTANCE PROJECT The Grantee invites submission of qualifications and proposal data (collectively referred to as the "Proposal") from interested U.S. firms which are qualified on the basis of experience and capability to perform technical assistance to

- a) assist KMG Transcaspian LLP in defining the International Treaty Accessions, Maritime laws and Regulations that Kazakhstan has to implement and to,
- b) establish a definition of how these requirements should be implemented.

Kazakh crude oil is currently shipped in limited amounts of approximately 150,000 barrels per day across the Caspian Sea from the Port of Aktau, currently the only major seaport in Kazakhstan to Azerbaijan. Over the next 10 years however, Kazakhstan is expected to dramatically increase oil production, from its current capacity of approximately 70 million tons per year to an estimated 120 million tons per year by 2019. Most of this oil will be exported, necessitating an expansion of Kazakhstan's oil export infrastructure. The Republic of Kazakhstan (RK) has prioritized the development of KCTS (Kazakhstan Caspian Transportation System) and in particular the part of KCTS – Transcaspian project (TCP), to ensure that Kazakhstan's oil export infrastructure can accommodate rising production levels. Initially, the Trans Caspian System (TCS) is expected to allow Kazakhstan to deliver approximately 500,000 barrels of oil per day directly to Azerbaijan via surface shipments across the Caspian Sea for onward transmission through the Baku-Tbilisi-Ceyhan pipeline, other pipelines are also allowed but beyond the frame of Agreement. This volume is expected to increase to approximately 750,000 to 1.2 million barrels per day when KCTS is fully operational. Improving the safety and environmental management of Caspian Sea ship traffic through improved maritime laws and regulations inspire confidence in TCP. In addition to Aktau, the RK plans to develop the Port of Kuryk as a marine oil loading and transport terminal. Eventually, the RK believes that the majority of oil exported from Kazakhstan via the Caspian will pass through Kuryk rather than Aktau.

The U.S. firm selected will be paid in U.S. dollars from a \$327,844 grant to the Grantee from the U.S. Trade and Development Agency (USTDA).

A detailed Request for Proposals (RFP), which includes requirements for the Proposal, the Terms of Reference, and a background definitional mission report are available from USTDA, at 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901. To request the RFP in PDF format, please go to: <https://www.ustda.gov/USTDA/FedBizOpps/RFP/rfpform.asp>. Requests for a mailed hardcopy version of the RFP may also be faxed to the IRC, USTDA at 703-875-4009. In the

fax, please include your firm's name, contact person, address, and telephone number. Some firms have found that RFP materials sent by U.S. mail do not reach them in time for preparation of an adequate response. Firms that want USTDA to use an overnight delivery service should include the name of the delivery service and your firm's account number in the request for the RFP. Firms that want to send a courier to USTDA to retrieve the RFP should allow one hour after faxing the request to USTDA before scheduling a pick-up. Please note that no telephone requests for the RFP will be honored. Please check your internal fax verification receipt. Because of the large number of RFP requests, USTDA cannot respond to requests for fax verification. Requests for RFPs received before 4:00 PM (GMT +6) will be mailed the same day. Requests received after 4:00 PM (GMT+6) will be mailed the following day. Please check with your courier and/or mail room before calling USTDA.

Only U.S. firms and individuals may bid on this USTDA financed activity. Interested firms, their subcontractors and employees of all participants must qualify under USTDA's nationality requirements as of the due date for submission of qualifications and proposals and, if selected to carry out the USTDA-financed activity, must continue to meet such requirements throughout the duration of the USTDA-financed activity. All goods and services to be provided by the selected firm shall have their nationality, source and origin in the U.S. or host country. The U.S. firm may use subcontractors from the host country for up to 20 percent of the USTDA grant amount. Details of USTDA's nationality requirements and mandatory contract clauses are also included in the RFP.

Interested U.S. firms should submit their Proposal in English and Russian directly to the Grantee by 4:00 PM (GMT+6), DECEMBER 11, 2009 at the above address. Evaluation criteria for the Proposal are included in the RFP. Requests for clarification on any aspect of the RFP should be directed to POC John Kusnierek, USTDA, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901, Tel: (703) 875-4357, Fax: (703) 875-4009. Any such request must be received no later than 4:00 PM (GMT+6), DECEMBER 11, 2009 in order to be honored. Price will not be a factor in contractor selection, and therefore, cost proposals should NOT be submitted. The Grantee reserves the right to reject any and/or all Proposals. The Grantee also reserves the right to contract with the selected firm for subsequent work related to the project. The Grantee is not bound to pay for any costs associated with the preparation and submission of Proposals.

**A N N E X 2**

**Excerpts from the Definitional Mission Report**

## **B. PROJECT DESCRIPTION**

### *Host country*

Kazakhstan

### *Sector*

Energy, Environment

### *Project location*

Caspian Sea including terminals on Azerbaijan and Kazakhstan sides

### **Introduction**

Kazakh crude oil is currently shipped in limited amounts across the Caspian Sea from the Port of Aktau. The KCTS envisages that with the development of the Kashagan Resources, oil transportation across the Caspian will rise to 30 million tonnes p.a. by 2015. But the International Oil Companies (IOCs) have repeated that they will not transport oil unless they have confidence in the system. Hence, it is essential for Kazakhstan to have an effective system of transportation in place, *adhering to the highest international standards and regulation.*

KMG-Transcaspian has been tasked with the responsibility of determining the necessary institutional, economic and technical factors that must be resolved to facilitate the implementation of the Transcaspian project. Implementation and compliance with International Maritime Treaties, Laws and Regulations will have a significant impact on the technical infrastructure requirements, capital investment and operating costs and therefore the viability of the Transcaspian project.

Various Government of Kazakhstan (GOK) agencies are being inundated with suggestions and recommendations as to what is needed to implement the necessary Maritime Laws and Regulations. These include the International Maritime Agencies (IOM, etc.), Regional Safety and Security Organizations (OSPRI, OSCE), the IOC, IFIs, other Donor Agencies, and foreign governments.

The objective of these Terms of Reference (TOR) are to assist KMG-Transcaspian in a) defining the International Treaty Accessions, Maritime laws and Regulations that Kazakhstan needs to implement; b) determining how these requirements should be implemented; and c) assessing the impact that these changes will have on the Trans Caspian System infrastructure requirements investment and economics.

## **Background**

USTDA has received requests for assistance to support the development of the Transcaspian project (TCP), a cross-Caspian oil shipping project. The purpose of the Definitional Mission (DM) was to identify, investigate, and develop USTDA funding opportunities related to TCP, especially environmental, safety and security aspects of the loading and unloading oil terminals in Kazakhstan and Azerbaijan.

Over the next 10 years, Kazakhstan is expected to drastically increase oil production, from its current capacity of approximately 70 million tons per year to an estimated 120 million tons per year by 2019. Most of this oil will be exported, necessitating an expansion of Kazakhstan's oil export infrastructure. The GOK has prioritized the development of TCP to ensure that Kazakhstan's oil export infrastructure can accommodate rising production levels. Initially TCP is expected to allow Kazakhstan to deliver approximately 500,000 barrels of oil per day directly to Azerbaijan via surface shipments across the Caspian Sea for onward transmission through the Baku-Tbilisi-Ceyhan pipeline. This volume is expected to increase to approximately 750,000 to 1.2 million barrels per day when TCP is fully operational.

Initial groundwork for the development of TCP has already begun. In November 2008, KazMunaiGas (KMG) and the State Oil Company of Azerbaijan (SOCAR) signed an agreement on the core principles of TCP. The two national oil companies agreed to set up a joint venture that will manage all aspects of the project—from developing feasibility studies to overseeing the construction and operation of the system. A special purpose joint venture (SPV) was recently formed to cover the feasibility study and all other aspects of the TCP. This SPV is a 50/50 venture, comprising SOCAR from the Azerbaijan side and KMG-Transcaspian (a wholly owned subsidiary of National Company KazMunayGas JSC), from the Kazakh side. The legal structure, corporate form and responsibilities are still under formulation. It is expected that all activities and decisions will require joint agreement between the Azeri and Kazakh counterparts.

### ***Source of raw materials***

The KCTS project is conceptualized primarily to transport the crude oil production from the offshore Northern Caspian Kashagan fields currently being developed by a consortium of International Oil Companies (IOC). This route is being developed as an alternative southern outlet for Kazakh crude oil to the current pipelines and rail links north through Russia, and eastward to China. This transportation system would also be available to ship crude oil from existing reserves (Mangistau, Kashagan, and Tengiz) as well as potential future offshore discoveries.

## ***Infrastructure requirements***

The TCP will consist of:

1. A 300 km marine leg from the Kyryk loading port (to be located approximately 80 km south of the port of Aktau) to a marine unloading terminal in the vicinity of Baku in Azerbaijan. These will be linked by marine tanker ships of yet to be determined size and number. This leg including the terminals at both ends has been designated as the Trans Caspian System (TCS);
2. Connecting pipeline infrastructure connecting the terminal near Baku to the terminal of the Baku-Tbilisi-Ceyhan (BTC) pipeline.

## ***Legal and regulatory framework (licenses, permits, etc.)***

According to the IOCs, the lack of legal and regulatory framework for marine operations on the Caspian Sea is a major impediment to the TCP. KMG also recognizes that major improvements are needed in the legal and regulatory framework. The following appear to be the major issues that have to be addressed by the GOK and Government of Azerbaijan (GOA) to resolve these shortcomings:

### **International standards for maritime shipping**

- Adopt of international standards
- Ensure compatibility between Caspian region and IMO regimes
- Focus port state control resources should be focused on eliminating high-risk and substandard ships. High-risk ships should be inspected more frequently.

### **National Maritime Administration**

- Kazakhstan does have a port administration (Aktau Sea Port), but it is not operating at a national level. Maritime policy is currently not coordinated, with jurisdiction falling under various state bodies. Kazakhstan needs advice and sharing of examples of best practice to help Kazakhstan set up a national maritime administration.

### **Safety and security of the Caspian infrastructure**

- Promote international standards for terminal management and provide support to terminals in resolving safety concerns
- Develop a national environmental contingency plan

### **Training of crews and specialists**

- Assist Kazakhstan in the training of maritime personnel to conform with international certification standards

- Provide ship inspection training in international standards and best practices, including relevant IMO regulations, for port control officers.

### ***Implementation schedule***

The implementation of the TCP is supposed to coincide with the development of the Kashagan resources and be in place for the potential transport of first oil. The Kashagan development has been plagued with problems up till now, and the anticipated first oil has been repeatedly delayed. The current expectation is for first oil production in 2012, though some skeptics expect continued delays, with the most pessimistic targeting 2019 as being closer to the mark.

TCP is expected to deliver Kazakh oil to Azerbaijan and then to Turkey's Ceyhan terminal on the Mediterranean coast. Its first stage, with an annual capacity of 23 million tons of oil per annum, is to be commissioned in 2014.

## **C. PROJECT SPONSOR'S CAPABILITIES AND COMMITMENT**

### **KMG Transcaspian**

KMG-Transcaspian is a wholly owned subsidiary of National company KazMunayGas JSC, the State Oil Company. KMG-Transcaspian was created to oversee Kazakhstan's interest in TCP. Headquartered in Astana, it has a staff of approximately 30 people. KMG-Transcaspian will be responsible for the Kazakh portion of the 50/50 SPV with Azerbaijan's SOCAR to implement the TCP.

### **KazMorTransFlot (KMTF)**

KMTF is Kazakhstan's national shipping company. It is 50% owned by National Wealth Fund Samruk-Kazyna and 50% owned by National company KazMunaiGas JSC. KMTF was formed in 1998 to develop sea transport. It has been operating since November 2001. KMTF is responsible for setting up the national shipping fleet of Kazakhstan and arranging international maritime shipment. The company carries out transportation of all freight including crude and oil products, general cargo, containers and so forth; construction, operation and repair of all types of vessels; and chartering and leasing services.

KMTF accounts for approximately 50 percent of the oil shipped out of Aktau, totaling approximately 4 million tons per year. Destinations for these exports are the Russian ports of Makhachkala, Iran's Neka port, and Baku in Azerbaijan.

Recently KMTF signed a contract for construction of three 13,000-dwt oil tankers with Krasnoye Sormovo shipyard (Nizhniy Novgorod, Russia). The first tanker will be delivered to the KMTF in September 2009, the second and the third – in May and August 2010, respectively. In addition, this contract includes the possibility of building 60,000-dwt tankers.

#### D. IMPLEMENTATION FINANCING

The financing of the TCP project is at the center of ongoing negotiations between the IOCs and the governments of Kazakhstan and Azerbaijan. Ultimately it is expected that the TCP project will be jointly funded by KMG, SOCAR and the IOCs potentially with debt financing from commercial and/or multilateral banks. The exact proportion that each of the stakeholders will contribute is the main negotiation point today. While the current project participation and source of funds is being negotiated we can expect that the final outcome will be depending on world crude oil prices and the political will of the GOK and GOA.

#### E. U.S. EXPORT POTENTIAL

The implementation of the TCP is an important and integral part of the overall KCTS system and has to be considered as part of the overall potential exports of goods and services that will be required for the system as a whole. Table 1 below shows a conservative estimate of the capital investment requirement for the overall KCTS system, which is on the order of USD2 billion. If the current experience of U.S. participation at Kashagan were to be replicated on the KCTS project, the U.S. export potential is estimated to be USD 332 million, assuming a U.S. company were the prime contractor, with USD136 million under foreign leadership.

Table 1 - APPROXIMATE KCTS COSTS						
<i>Component</i>	<i>Location</i>		<i>Unit</i>		<i>Unit Cost</i>	<i>Total MM USD</i>
Pipeline	Eskene to Kuryk	760	km	2	MM\$/Km	\$1520
Terminal & Storage	Kuryk					\$100
Ships	6x60K DWT	360	K DWT	2	MM\$/K DWT	\$720
Terminal and Storage	Baku					\$100
Pipeline	Post Baku (to Batumi)	100	Km	2	MM\$/Km	\$200
Total Cost KCTS						\$2640
Potential US Exports	KCO Italy	7.9	%			\$209
	KCO US (Prime)	19.3	%			\$510

It is not possible to define the immediate isolated impact of the legal assistance to the project on U.S. exports in isolation from the overall KCTS. The results of this TA are, however, expected to be a catalyst in the development of a coherent national Marine Administration and Strategy that will foster the implementation of the KCTS in a timely fashion.

## F. FOREIGN COMPETITION AND MARKET ENTRY ISSUES

The competition for the supply of goods and services for petroleum production facilities in the Caspian area can be illustrated by the breakdown of suppliers by nationality on the Kashagan project. Table 2 below compares the relative volume of goods and services used in that project between 2001 and mid-2008. It should be noted that the prime contractor for this project was AGIP, an Italian company, which explains the very high Italian component (19.3%) of supplies to the project.

**Table 2**  
**Source of Goods and Services**  
**January 2001 through June 2008**

<i>Source</i>	<i>Million USD</i>	<i>Percentage</i>
France	285	1.8
Uruguay	334	2.2
Norway	620	4
Turkey	694	4.5
United Arab Emirates	763	4.9
Switzerland	983	6.4
United States	1,228	7.9
Netherlands	1,626	10.5
Italy	2,992	19.3
Kazakhstan	2,872	18.6
United Kingdom	2,290	14.8
Total	15,472	100.0

### *Shipping*

On the TCP, the major component will be supply of tankers. Recently KMTF held an open tender for the supply of three 12,000-dwt tankers. Seven companies responded to the tender: Krasnoye Sormovo (Russia), Maritim Shipyard (Poland), Hyundai

Corporation (S. Korea), Astrakhan SPO (Russia), MTG-Dorphan-AD (Bulgaria), Vyborg shipyard, and Wadan Yards Ocean (Ukraine).

A Russian consortium (MNP Group) won the competition. MNP included the leading Russian shipyards: Krasnoye Sormovo Shipyard (Nizhniy Novgorod), Volgograd Shipyard, as well as Sormovskoye Mashinostroeniye (Nizhniy Novgorod), Volgograd Special Engineering Plant and Volgo-Caspian Design Bureau.

The competition for the larger vessels (up to 60,000 dwt) will be more limited and require a more innovative approach. The limitation of the access to the Caspian Sea via the Volga/Don Canal will mean that the vessels will have to be built wholly (or partially from shipped in sections) in facilities in the Caspian area. KMTF is reportedly already discussing possible approaches with the MNP Group of building 60,000 dwt tankers for the KCTS.

## **G. DEVELOPMENTAL IMPACT**

### ***Primary Developmental Benefits***

- **Infrastructure (including any positive environmental impacts):** The KCTS is a major infrastructure project with far-reaching political and strategic implications. This route if properly constructed should be environmentally neutral since any increase in Caspian Sea tanker traffic would be offset by a corresponding decrease in traffic across the Black Sea (i.e., KCTS versus CPC/Black Sea route.)
- **Human Capacity Building (including jobs and training):** The major impact on human resources will take place during the construction phase of the project, when a labor force of several thousand people will be required. This will include skilled and nonskilled labor necessary to construct the pipelines, terminals and ships. Substantial skilled marine crews will also be required to man the tankers. There will be a significant multiplier effect as the project will need additional people in the administration of operations both in Kazakhstan and Azerbaijan. Total incremental long-term staff will probably exceed several thousand people for the whole transportation chain. Marine crew training-related requirements will also provide employment opportunities.
- **Technology Transfer and Productivity Improvements:** Employing the latest environmental, safety and security technologies will be needed to ensure the highest standard of design and operational compliance with international standards. This TA will be instrumental in defining these technologies.
- **Market-Oriented Reforms:** Implementation of the KCTS should open a more competitive route for the export of Kazak crude oil. Second, it will put cost pressures on the alternative Russian export routes north and west, thus

exerting a multiplier effect on increasing the competition for getting Kazak crude oil to market.

- **Productivity Improvements:** The establishment of an alternative route for the export of Kazakhstan's oil resources will increase the competition to the current Russian monopoly. This route will also provide an alternative to the expected increase in the export of oil eastward to China.

## **H. IMPACT ON THE ENVIRONMENT**

The TCP project will result in a major increase in oil tanker traffic across the Caspian Sea. This could lead to environmental degradation both on land and offshore in what is an environmentally sensitive area. The IOCs as main shippers need to be assured that the operations of this export route will conform with the highest international standards and regulations. This will require changes to the institutional and administrative structure in Kazakhstan and adherence to international regulations and standards.

The activities addressed in this report are primarily targets of this objective.

## **I. IMPACT ON U.S. LABOR**

Based upon this DM review, ITech has found that the TCP as a part of KCTS project does not provide (a) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; (b) assistance for any project or activity that contributes to the violation of internationally recognized workers rights; or (c) direct assistance for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

This project will transport crude oil produced in Kazakhstan from its source across the Caspian sea for export through the BTC pipeline or other routes to the Mediterranean area. It will in no way impact the U.S. petroleum industry or reduce employment in the United States.

**ANNEX 3**



**U.S. TRADE AND DEVELOPMENT AGENCY  
Arlington, VA 22209-2131**

**NATIONALITY, SOURCE, AND ORIGIN REQUIREMENTS**

The purpose of USTDA's nationality, source, and origin requirements is to assure the maximum practicable participation of American contractors, technology, equipment and materials in the prefeasibility, feasibility, and implementation stages of a project.

**USTDA STANDARD RULE (GRANT AGREEMENT STANDARD LANGUAGE):**

Except as USTDA may otherwise agree, each of the following provisions shall apply to the delivery of goods and services funded by USTDA under this Grant Agreement: (a) for professional services, the Contractor must be either a U.S. firm or U.S. individual; (b) the Contractor may use U.S. subcontractors without limitation, but the use of subcontractors from Host Country and Azerbaijan (use of subcontractors from Azerbaijan is permitted only for review and analysis of Azerbaijani law and regulations) may not exceed twenty percent (20%) of the USTDA Grant amount and may only be used for specific services from the Terms of Reference identified in the subcontract; (c) employees of U.S. Contractor or U.S. subcontractor firms responsible for professional services shall be U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the U.S.; (d) goods purchased for implementation of the Study and associated delivery services (e.g., international transportation and insurance) must have their nationality, source and origin in the United States; and (e) goods and services incidental to Study support (e.g., local lodging, food, and transportation) in Host Country and Azerbaijan are not subject to the above restrictions. USTDA will make available further details concerning these standards of eligibility upon request.

**NATIONALITY:**

1) Rule

Except as USTDA may otherwise agree, the Contractor for USTDA funded activities must be either a U.S. firm or a U.S. individual. Prime contractors may utilize U.S. subcontractors without limitation, but the use of Host Country and Azerbaijan subcontractors is limited to 20% of the USTDA grant amount.

## 2) Application

Accordingly, only a U.S. firm or U.S. individual may submit proposals on USTDA funded activities. Although those proposals may include subcontracting arrangements with Host Country and Azerbaijan firms or individuals for up to 20% of the USTDA grant amount, they may not include subcontracts with third country entities. U.S. firms submitting proposals must ensure that the professional services funded by the USTDA grant, to the extent not subcontracted to host country entities, are supplied by employees of the firm or employees of U.S. subcontractor firms who are U.S. individuals.

Interested U.S. firms and consultants who submit proposals must meet USTDA nationality requirements as of the due date for the submission of proposals and, if selected, must continue to meet such requirements throughout the duration of the USTDA-financed activity. These nationality provisions apply to whatever portion of the Terms of Reference is funded with the USTDA grant.

## 3) Definitions

A "U.S. individual" is (a) a U.S. citizen, or (b) a non-U.S. citizen lawfully admitted for permanent residence in the U.S. (a green card holder).

A "U.S. firm" is a privately owned firm which is incorporated in the U.S., with its principal place of business in the U.S., and which is either (a) more than 50% owned by U.S. individuals, or (b) has been incorporated in the U.S. for more than three (3) years prior to the issuance date of the request for proposals; has performed similar services in the U.S. for that three (3) year period; employs U.S. citizens in more than half of its permanent full-time positions in the U.S.; and has the existing capability in the U.S. to perform the work in question.

A partnership, organized in the U.S. with its principal place of business in the U.S., may also qualify as a "U.S. firm" as would a joint venture organized or incorporated in the United States consisting entirely of U.S. firms and/or U.S. individuals.

A nonprofit organization, such as an educational institution, foundation, or association may also qualify as a "U.S. firm" if it is incorporated in the United States and managed by a governing body, a majority of whose members are U.S. individuals.

## **SOURCE AND ORIGIN:**

### 1) Rule

In addition to the nationality requirement stated above, any goods (e.g., equipment and materials) and services related to their shipment (e.g., international transportation and insurance) funded under the USTDA Grant Agreement must have their source and origin in the United States, unless USTDA otherwise agrees. However, necessary purchases of goods and project support services which are unavailable from a U.S. source (e.g., local food, housing and transportation) are eligible without specific USTDA approval.

### 2) Application

Accordingly, the prime contractor must be able to demonstrate that all goods and services purchased in the Host Country and/or Azerbaijan to carry out the Terms of Reference for a USTDA Grant Agreement that were not of U.S. source and origin were unavailable in the United States.

### 3) Definitions

“Source” means the country from which shipment is made.

“Origin” means the place of production, through manufacturing, assembly or otherwise.

*Questions regarding these nationality, source and origin requirements may be addressed to the USTDA Office of General Counsel.*

ANNEX 4

## GRANT AGREEMENT

This Grant Agreement is entered into between the Government of the United States of America, acting through the U.S. Trade and Development Agency ("USTDA") and KMG-Transcaspian LLP ("Grantee"). USTDA agrees to provide the Grantee under the terms of this Agreement US\$327,844 ("USTDA Grant") to fund the cost of goods and services required for technical assistance ("TA") on the proposed Maritime Legal and Regulatory project ("Project") in the Republic of Kazakhstan ("Host Country").

### 1. USTDA Funding

The funding to be provided under this Grant Agreement shall be used to fund the costs of a contract between the Grantee and the U.S. firm selected by the Grantee ("Contractor") under which the Contractor will perform the TA ("Contract"). Payment to the Contractor will be made directly by USTDA on behalf of the Grantee with the USTDA Grant funds provided under this Grant Agreement.

### 2. Terms of Reference

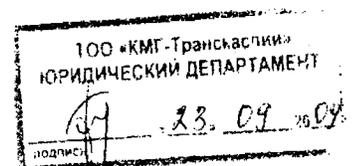
The Terms of Reference for the TA ("Terms of Reference") are attached as Annex I and are hereby made a part of this Grant Agreement. The TA will examine the technical, financial, environmental, institutional, economic, legal, and other critical aspects of the proposed Project. The Terms of Reference for the TA shall also be included in the Contract.

### 3. Standards of Conduct

USTDA and the Grantee recognize the existence of standards of conduct for public officials, and commercial entities, in their respective countries. The parties to this Grant Agreement and the Contractor shall observe these standards, which include not accepting payment of money or anything of value, directly or indirectly, from any person for the purpose of illegally or improperly inducing anyone to take any action favorable to any party in connection with the TA.

### 4. Grantee Responsibilities

The Grantee shall undertake its best efforts to provide reasonable support for the Contractor, such as local transportation, office space, and secretarial support in the Host Country.



## 5. USTDA as Financier

### (A) USTDA Approval of Competitive Selection Procedures

Selection of the U.S. Contractor shall be carried out by the Grantee according to its procedures for the competitive selection of contractors with advance notice of the procurement published online through *Federal Business Opportunities* ([www.fedbizopps.gov](http://www.fedbizopps.gov)). Upon request, the Grantee will submit these contracting procedures and related documents to USTDA for information and/or approval.

### (B) USTDA Approval of Contractor Selection

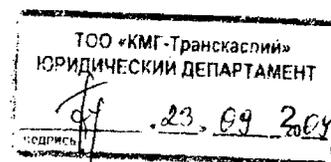
The Grantee shall notify USTDA at the address of record set forth in Article 17 below upon selection of the Contractor to perform the TA. Upon approval of this selection by USTDA, the Grantee and the Contractor shall then enter into a contract for performance of the TA. The Grantee shall notify in writing the U.S. firms that submitted unsuccessful proposals to perform the TA that they were not selected.

### (C) USTDA Approval of Contract Between Grantee and Contractor

The Grantee and the Contractor shall enter into a contract for performance of the TA. This contract, and any amendments thereto, including assignments and changes in the Terms of Reference, must be approved by USTDA in writing. To expedite this approval, the Grantee (or the Contractor on the Grantee's behalf) shall transmit to USTDA, at the address set forth in Article 17 below, a photocopy of an English language version of the signed contract or a final negotiated draft version of the contract.

### (D) USTDA Not a Party to the Contract

It is understood by the parties that USTDA has reserved certain rights such as, but not limited to, the right to approve the terms of the contract and any amendments thereto, including assignments, the selection of all contractors, the Terms of Reference, the Final Report, and any and all documents related to any contract funded under the Grant Agreement. The parties hereto further understand and agree that USTDA, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these approval rights shall be made as a financier in the course of funding the TA and shall not be construed as making USTDA a party to the contract. The parties hereto understand and agree that USTDA may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the Project with the parties to the contract or any subcontract, jointly or separately, without thereby incurring any responsibility or liability to such parties. Any approval or failure to approve by USTDA shall not bar the Grantee or USTDA from asserting any right they might have against the



Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Grantee or USTDA.

**(E) Grant Agreement Controlling**

Regardless of USTDA approval, the rights and obligations of any party to the contract or subcontract thereunder must be consistent with this Grant Agreement. In the event of any inconsistency between the Grant Agreement and any contract or subcontract funded by the Grant Agreement, the Grant Agreement shall be controlling.

**6. Disbursement Procedures**

**(A) USTDA Approval of Contract Required**

USTDA will make disbursements of Grant funds directly to the Contractor only after USTDA approves the Grantee's contract with the Contractor.

**(B) Contractor Invoice Requirements**

The Grantee should request disbursement of funds by USTDA to the Contractor for performance of the TA by submitting invoices in accordance with the procedures set forth in the USTDA Mandatory Clauses in Annex II.

**7. Effective Date**

The effective date of this Grant Agreement ("Effective Date") shall be the date of signature by both parties or, if the parties sign on different dates, the date of the last signature.

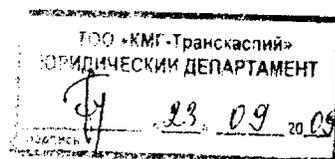
**8. TA Schedule**

**(A) TA Completion Date**

The completion date for the TA, which is December 31<sup>st</sup>, 2010 or other earlier date agreed by the Grantee and the Contractor and approved in the Contract by USTDA, is the date by which the parties estimate that the TA will have been completed.

**(B) Time Limitation on Disbursement of USTDA Grant Funds**

Except as USTDA may otherwise agree, (a) no USTDA funds may be disbursed under this Grant Agreement for goods and services which are provided prior to the Effective Date of the Grant Agreement; and (b) all funds made available under the Grant Agreement must be disbursed within four (4) years from the Effective Date of the Grant Agreement.



## 9. USTDA Mandatory Clauses

All contracts funded under this Grant Agreement shall include the USTDA mandatory clauses set forth in Annex II to this Grant Agreement. All subcontracts funded or partially funded with USTDA Grant funds shall include the USTDA mandatory clauses, except for clauses B(1), G, H, I, and J.

## 10. Use of U.S. Carriers

### (A) Air

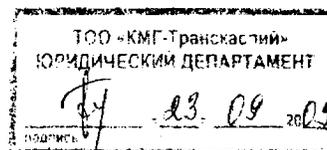
Transportation by air of persons or property funded under the Grant Agreement shall be on U.S. flag carriers in accordance with the Fly America Act, 49 U.S.C. 40118, to the extent service by such carriers is available, as provided under applicable U.S. Government regulations.

### (B) Marine

Transportation by sea of property funded under the Grant Agreement shall be on U.S. carriers in accordance with U.S. cargo preference law.

## 11. Nationality, Source and Origin

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and services funded by USTDA under the Grant Agreement: (a) for professional services, the Contractor must be either a U.S. firm or U.S. individual; (b) the Contractor may use U.S. subcontractors without limitation, but the use of subcontractors from Host Country and Azerbaijan (use of subcontractors from Azerbaijan is permitted only for review and analysis of Azerbaijani law and regulations) may not exceed in total twenty percent (20%) of the USTDA Grant amount and may only be used for specific services from the Terms of Reference identified in the subcontract; (c) employees of U.S. Contractor or U.S. subcontractor firms responsible for professional services shall be U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the U.S.; (d) goods purchased for performance of the TA and associated delivery services (e.g., international transportation and insurance) must have their nationality, source and origin in the United States; and (e) goods and services incidental to TA support (e.g., local lodging, food, and transportation) in Host Country and Azerbaijan are not subject to the above restrictions. USTDA will make available further details concerning these provisions upon request.



## 12. Taxes

USTDA funds provided under the Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in Host Country. Neither the Grantee nor the Contractor will seek reimbursement from USTDA for such taxes, tariffs, duties, fees or other levies.

## 13. Cooperation Between Parties and Follow-Up

The parties will cooperate to assure that the purposes of the Grant Agreement are accomplished. For five (5) years following receipt by USTDA of the Final Report (as defined in Clause I of Annex II), the Grantee agrees to respond to any reasonable inquiries from USTDA about the status of the Project.

## 14. Implementation Letters

To assist the Grantee in the implementation of the TA, USTDA may, from time to time, issue implementation letters that will provide additional information about matters covered by the Grant Agreement. The parties may also use jointly agreed upon implementation letters to confirm and record their mutual understanding of matters covered by the Grant Agreement.

## 15. Recordkeeping and Audit

The Grantee agrees to maintain books, records, and other documents relating to the TA and the Grant Agreement adequate to demonstrate implementation of its responsibilities under the Grant Agreement, including the selection of contractors, receipt and approval of contract deliverables, and approval or disapproval of contractor invoices for payment by USTDA. Such books, records, and other documents shall be separately maintained for three (3) years after the date of the final disbursement by USTDA. The Grantee shall afford USTDA or its authorized representatives the opportunity at reasonable times to review books, records, and other documents relating to the TA and the Grant Agreement.

## 16. Representation of Parties

For all purposes relevant to the Grant Agreement, the Government of the United States of America will be represented by the U. S. Ambassador to Host Country or USTDA and Grantee will be represented by the General Director. The parties hereto may, by written notice, designate additional representatives for all purposes under the Grant Agreement.

## 17. Addresses of Record for Parties

Any notice, request, document, or other communication submitted by either party to the other under the Grant Agreement shall be in writing or through a wire or electronic medium which produces a tangible record of the transmission, such as a telegram, cable or facsimile, and will be deemed duly given or sent when delivered to such party at the following:

To: Mr. Mukhit M. Mazhenov  
General Director  
KMG-Transcaspian LLP  
6, Saryarka ave.  
Astana 01000

Phone: 7 (7172) 79 30 99  
Fax: 7 (7172) 79 30 58  
Email: mazhenov@kmg-tc.kz

To: U.S. Trade and Development Agency  
1000 Wilson Boulevard, Suite 1600  
Arlington, Virginia 22209-3901  
USA

Phone: (703) 875-4357  
Fax: (703) 875-4009

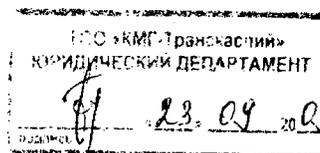
All such communications shall be in English, unless the parties otherwise agree in writing. In addition, the Grantee shall provide the Commercial Section of the U.S. Embassy in Host Country with a copy of each communication sent to USTDA which may be delivered by hand or by email.

Any communication relating to this Grant Agreement shall include the following fiscal data:

Appropriation No.: 11X1001  
Appropriation No.: 118/91001  
Activity No.: 2009-81037A  
Reservation No.: 2009810048  
Grant No.: GH2009810016

## 18. Termination Clause

Either party may terminate the Grant Agreement by giving the other party thirty (30) days advance written notice. The termination of the Grant Agreement will end any obligations of the parties to provide financial or other resources for the TA, except for payments



which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the written notice of termination.

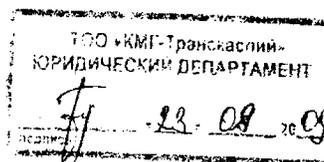
**19. Non-waiver of Rights and Remedies**

No delay in exercising any right or remedy accruing to either party in connection with the Grant Agreement shall be construed as a waiver of such right or remedy.

**20. U.S. Technology and Equipment**

By funding this TA, USTDA seeks to promote the project objectives of the Host Country through the use of U.S. technology, goods, and services. In recognition of this purpose, the Grantee agrees that it will allow U.S. suppliers to compete in the procurement of technology, goods and services needed for Project implementation.

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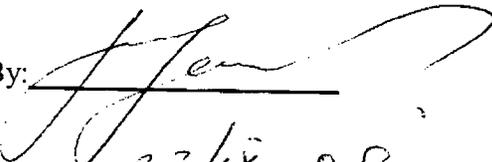
IN WITNESS WHEREOF, the Government of the United States of America and KMG-Transcaspian LLP, each acting through its duly authorized representative, have caused this Agreement to be signed in the English language in their names and delivered as of the day and year written below. In the event that this Grant Agreement is signed in more than one language, the English language version shall govern.

For the Government of the  
United States of America

By: 

Date: 23-09-2009

For KMG-Transcaspian LLP

By: 

Date: 23/ix-09

Annex I -- Terms of Reference

Annex II -- USTDA Mandatory Clauses

ООО «КМГ-Транскаспий»  
ЮРИДИЧЕСКИЙ ДЕПАРТАМЕНТ  
 23.09.2009

## Annex I

### Terms of Reference

#### **Background and Objectives**

Kazakh Crude Oil is currently shipped in limited amounts across the Caspian Sea from the Port of Aktau. The Transcaspian Project envisages that with the development of the Kashagan Resources, oil transportation across the Caspian will rise to 30 million tons per annum by 2015.

The general overview and description of the Transcaspian project is stated in the Agreement between the Republic of Kazakhstan (hereinafter RK) and the Republic of Azerbaijan (hereinafter RA) on support of oil transportation from the Republic of Kazakhstan through the Caspian Sea and the territory of the Republic of Azerbaijan to the international markets by the Baku-Tbilisi-Ceyhan (BTC) system, signed on June, 16, 2006.

This project includes loading and discharging oil terminals on Kazakh and Azeri coastal territories of the Caspian Sea, tankers and vessels (designed for oil transportation and providing other operations within the Project), and a connection to the Baku-Tbilisi-Ceyhan oil pipeline.

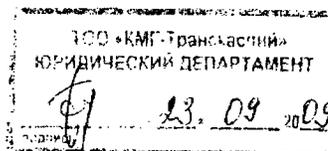
Whereas this project is as significant for Kazakhstan itself as for oil producing companies in Kazakhstan, in particular those operating in Tengiz and the North-Caspian oilfields, the issue of confidence in the system becomes a focal point. It is essential for Kazakhstan to have an effective system of transportation in place, adhering to the highest international standards and regulation.

Kazakhstan does have a port administration (Aktau Sea Port), but it is not operating at a national level. Maritime policy is currently not coordinated, with jurisdiction falling under various state bodies. The lack of a clear definition of the necessary international standards and of consistency in applying them is seen as an impediment to the development of Transcaspian Project.

KMG-Transcaspian LLP has been tasked with the responsibility of determining the necessary institutional, economic and technical factors that need to be resolved to facilitate the implementation of the Transcaspian Project. The objective of these terms of Reference (TOR) are to assist KMG-Transcaspian in a) defining the International Treaty Accessions, Maritime laws and Regulations that Kazakhstan has to implement, and b) a definition of how these requirements should be implemented.

#### **Task 1: Assessment of Current Status in Kazakhstan**

The Contractor shall travel to Kazakhstan to meet with the Grantee and other RK entities, as well as private sector companies to develop an understanding of the current status of marine related legislation in place, administrative infrastructure and operations. The Contractor shall work closely with the Grantee as well as other RK entities identified by

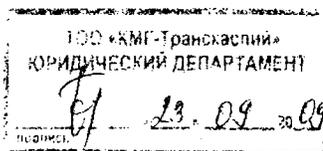


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the Grantee that have functional responsibilities for administrating Marine related legislation, regulations and/or operations. The Contractor shall also meet with other entities that the Contractor deems necessary to carry out its work. This shall include but not be limited to Regional Authorities, International Oil Companies, Shipping Companies, Port Authorities and Safety/Security Companies.

The assessment shall include but not be limited to the following activities:

- Assess the current status of International Maritime Treaty Accessions by Kazakhstan including the existing process used to ratify international treaties such as the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention on Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), etc.
- Assess the current status of Kazakhstan Maritime Laws and Regulations including the process used to issue "regulatory requirements" to ship owners, ship operators, port facilities, and mariners that are at a level lower than national law.
- Assess the necessity of unification of the legislation both Kazakhstan and Azerbaijan for the successful implementation of the Transcaspian project.
- Assess the current status of the environmental liability that shall be shared between the parties, involved in the Trans Caspian System (TCS) implementation, such as contractor of construction, ship operator, shippers, ship owners according to the norms of international agreements/conventions and national legislation both for RK and RA.
- Assess the status of any Caspian Sea agreements and national legislation of Kazakhstan and Azerbaijan that affect shipping and port operations.
- Assess the current status of Kazakhstan Commercial Ship and Mariner Registration and Recordkeeping
- Assess the current status of Kazakhstan Commercial Mariner Licensing Registration and Recordkeeping
- Assess the current status of the established Kazakhstan program to comply with to the International Convention for Safety of Life at Sea and its International Ship and Port Facility Security Code (ISPS Code), Part A and Part B (in force since 1 July 2004)
- Assess what International Maritime Treaty Accessions are needed to be executed by Kazakhstan where necessary such as UNCLOS, SOLAS, MARPOL, STCW etc
- Assess the possibility of reciprocal (Kazakhstan and Azerbaijan) port State control in accordance with international practice, such as the Paris Memorandum on Port State Control
- Assess, in general, the degree of compliance by ship operators, port facilities and mariners with SOLAS, MARPOL, and STCW.



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- Assess in general, the current capabilities of KOC, ship operators, port facilities oil spill response and clean up.

### ***Deliverable for Task 1***

The Contractor shall provide the Grantee with a report setting out finding relating to the above items and giving a general assessment of the steps needed to close any "gaps" indentified.

### **Task 2: Assessment of Other Ongoing Activities (Donor, NGO, Institutions, IFIs)**

The Contractor shall identify, review and assess other activities being carried out by other Agencies and Institutions directed at the legal and regulatory administration of maritime traffic in the Caspian Area as it pertains to Kazakhstan. This shall also include the identification of foreign assistance proposed to the RK. The Contractor shall identify any duplication and /or overlaps that may be occurring and suggest resolution to any contradictions and differences suggested by the different activities.

This shall include discussions with agencies including but not limited to: the International Maritime Organization (IMO), the Oil Companies International Marine Forum (OCIMF), the Organization for Security and Co-operation in Europe (OSCE), Lloyds Register, ABS Europe, and the Oil Spill Preparedness Regional Initiative (OSPRI).

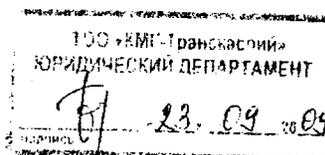
### ***Deliverable for Task 2***

The Contractor shall provide an assessment of other ongoing activities to the Grantee.

### **Task 3: Implementation Planning**

Based on the results of Task 1 and 2 above, the Contractor shall develop recommendations for actions that need to be taken by the RK to reach compliance with International standards which will include but not be limited to the following:

- Develop a comprehensive listing of International Maritime Treaty accessions needed to be carried out by Kazakhstan together with a plan to implement.
- Develop a comprehensive listing of national laws and regulations needed to be enacted by Kazakhstan together with a plan to implement.
- Develop a plan to develop a comprehensive approach to come into compliance with the International Convention for Safety of Life at Sea and its International Ship and Port Facility Security Code (ISPS Code), Part A and Part B (in force since 1 July 2004)
- Provide a proposal for any recommended computer based "state of the art" Commercial Ship Registration and Recordkeeping program for use by the Kazakhstan government



- Provide a proposal for any recommended computer based “state of the art” Commercial Mariner Licensing Registration and Recordkeeping program for use by the Kazakhstan government
- Provide a proposal on the implementation of reciprocal (Kazakhstan and Azerbaijan) port State control in accordance with international practice, such as the Paris Memorandum on Port State Control
- Develop a plan for establishing the necessary infrastructure for RK, ship operators, and port facilities to meet oil spill response and clean up responsibilities.

***Deliverable for Task 3***

The Contractor shall provide the Grantee with the implementation plan.

**Task 4: Impact Assessment on TCS**

The Contractor shall identify and assess the impact that the implementation of the International Maritime Laws and Regulations identified will have on the development of the TCS. This shall include but not be limited to analyzing the institutional, infrastructure and other requirements to comply at the national, regional, local levels. The Contractor’s analysis of potential impact and compliance needs shall be as concrete and detailed as possible and shall include financial, economic and technical definition of the compliance actions.

***Deliverable for Task 4***

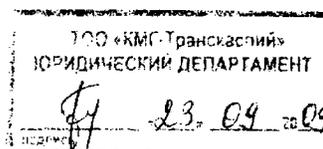
The Contractor shall provide the Grantee with the impact assessment.

**Task 5: Final Report**

The Contractor shall prepare and deliver to the Grantee and USTDA a substantive and comprehensive final report of all work performed under these Terms of Reference (“Final Report”). The Final Report shall be organized according to the above tasks, including all deliverables and documents that have been provided to the Grantee. The Final Report shall be prepared and delivered to USTDA in accordance with Clause I of Annex II of the Grant Agreement. The Contractor shall provide the Grantee with 6 copies of the final report in both English and Russian on CD-ROM.

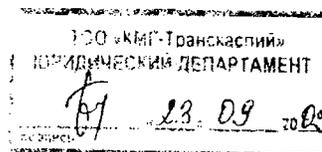
***Deliverable for Task 5***

The Contractor shall provide the Grantee and USTDA with the Final Report.



**Notes:**

- (1) The Contractor is responsible for compliance with U.S. export licensing requirements, if applicable, in the performance of the Terms of Reference.**
- (2) The Contractor and the Grantee shall be careful to ensure that the public version of the Final Report contains no security or confidential information.**
- (3) The Grantee and USTDA shall have an irrevocable, worldwide, royalty-free, non-exclusive right to use and distribute the Final Report and all work product that is developed under these Terms of Reference.**



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Annex II

**USTDA Mandatory Contract Clauses**

**A. USTDA Mandatory Clauses Controlling**

The parties to this contract acknowledge that this contract is funded in whole or in part by the U.S. Trade and Development Agency ("USTDA") under the Grant Agreement between the Government of the United States of America acting through USTDA and KMG-Transcaspian LLP ("Client"), dated \_\_\_\_\_ ("Grant Agreement"). The Client has selected \_\_\_\_\_ ("Contractor") to perform technical assistance ("TA") for the proposed Maritime Legal and Regulatory project ("Project") in the Republic of Kazakhstan ("Host Country"). Notwithstanding any other provisions of this contract, the following USTDA mandatory contract clauses shall govern. All subcontracts entered into by Contractor funded or partially funded with USTDA Grant funds shall include these USTDA mandatory contract clauses, except for clauses B(1), G, H, I, and J. In addition, in the event of any inconsistency between the Grant Agreement and any contract or subcontract thereunder, the Grant Agreement shall be controlling.

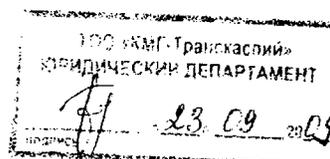
**B. USTDA as Financier**

**(1) USTDA Approval of Contract**

All contracts funded under the Grant Agreement, and any amendments thereto, including assignments and changes in the Terms of Reference, must be approved by USTDA in writing in order to be effective with respect to the expenditure of USTDA Grant funds. USTDA will not authorize the disbursement of USTDA Grant funds until the contract has been formally approved by USTDA or until the contract conforms to modifications required by USTDA during the contract review process.

**(2) USTDA Not a Party to the Contract**

It is understood by the parties that USTDA has reserved certain rights such as, but not limited to, the right to approve the terms of this contract and amendments thereto, including assignments, the selection of all contractors, the Terms of Reference, the Final Report, and any and all documents related to any contract funded under the Grant Agreement. The parties hereto further understand and agree that USTDA, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing the TA and shall not be construed as making USTDA a party to the contract. The parties hereto understand and agree that USTDA may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the Project with the parties to the contract or any subcontract, jointly or separately, without thereby incurring any responsibility or liability to such parties. Any approval or failure to approve by USTDA shall not bar



the Client or USTDA from asserting any right they might have against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Client or USTDA.

### C. Nationality, Source and Origin

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and services funded by USTDA under the Grant Agreement: (a) for professional services, the Contractor must be either a U.S. firm or U.S. individual; (b) the Contractor may use U.S. subcontractors without limitation, but the use of subcontractors from Host Country and Azerbaijan (use of subcontractors from Azerbaijan is permitted only for review and analysis of Azerbaijani law and regulations) may not exceed in total twenty percent (20%) of the USTDA Grant amount and may only be used for specific services from the Terms of Reference identified in the subcontract; (c) employees of U.S. Contractor or U.S. subcontractor firms responsible for professional services shall be U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the U.S.; (d) goods purchased for performance of the TA and associated delivery services (e.g., international transportation and insurance) must have their nationality, source and origin in the United States; and (e) goods and services incidental to TA support (e.g., local lodging, food, and transportation) in Host Country and Azerbaijan are not subject to the above restrictions. USTDA will make available further details concerning these provisions upon request.

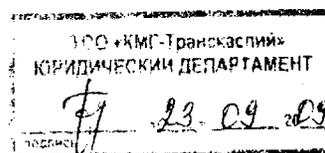
### D. Recordkeeping and Audit

The Contractor and subcontractors funded under the Grant Agreement shall maintain, in accordance with generally accepted accounting procedures, books, records, and other documents, sufficient to reflect properly all transactions under or in connection with the contract. These books, records, and other documents shall clearly identify and track the use and expenditure of USTDA funds, separately from other funding sources. Such books, records, and documents shall be maintained during the contract term and for a period of three (3) years after final disbursement by USTDA. The Contractor and subcontractors shall afford USTDA, or its authorized representatives, the opportunity at reasonable times for inspection and audit of such books, records, and other documentation.

### E. U.S. Carriers

#### (1) Air

Transportation by air of persons or property funded under the Grant Agreement shall be on U.S. flag carriers in accordance with the Fly America Act, 49 U.S.C. 40118, to the extent service by such carriers is available, as provided under applicable U.S. Government regulations.



**(2) Marine**

Transportation by sea of property funded under the Grant Agreement shall be on U.S. carriers in accordance with U.S. cargo preference law.

**F. Workman's Compensation Insurance**

The Contractor shall provide adequate Workman's Compensation Insurance coverage for work performed under this Contract.

**G. Reporting Requirements**

The Contractor shall advise USTDA by letter as to the status of the Project on March 1st annually for a period of two (2) years after completion of the TA. In addition, if at any time the Contractor receives follow-on work from the Client, the Contractor shall so notify USTDA and designate the Contractor's contact point including name, telephone, and fax number. Since this information may be made publicly available by USTDA, any information which is confidential shall be designated as such by the Contractor and provided separately to USTDA. USTDA will maintain the confidentiality of such information in accordance with applicable law.

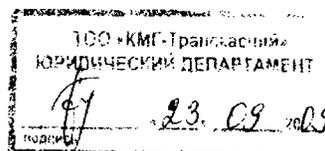
**H. Disbursement Procedures**

**(1) USTDA Approval of Contract**

Disbursement of Grant funds will be made only after USTDA approval of this contract. To make this review in a timely fashion, USTDA must receive from either the Client or the Contractor a photocopy of an English language version of a signed contract or a final negotiated draft version to the attention of the General Counsel's office at USTDA's address listed in Clause M below.

**(2) Payment Schedule Requirements**

A payment schedule for disbursement of Grant funds to the Contractor shall be included in this Contract. Such payment schedule must conform to the following USTDA requirements: (1) up to twenty percent (20%) of the total USTDA Grant amount may be used as a mobilization payment; (2) all other payments, with the exception of the final payment, shall be based upon contract performance milestones; and (3) the final payment may be no less than fifteen percent (15%) of the total USTDA Grant amount, payable upon receipt by USTDA of an approved Final Report in accordance with the specifications and quantities set forth in Clause I below. Invoicing procedures for all payments are described below.



### **(3) Contractor Invoice Requirements**

USTDA will make all disbursements of USTDA Grant funds directly to the Contractor. The Contractor must provide USTDA with an ACH Vendor Enrollment Form (available from USTDA) with the first invoice. The Client shall request disbursement of funds by USTDA to the Contractor for performance of the contract by submitting the following to USTDA:

#### **(a) Contractor's Invoice**

The Contractor's invoice shall include reference to an item listed in the Contract payment schedule, the requested payment amount, and an appropriate certification by the Contractor, as follows:

##### **(i) For a mobilization payment (if any):**

"As a condition for this mobilization payment, the Contractor certifies that it will perform all work in accordance with the terms of its Contract with the Client. To the extent that the Contractor does not comply with the terms and conditions of the Contract, including the USTDA mandatory provisions contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA."

##### **(ii) For contract performance milestone payments:**

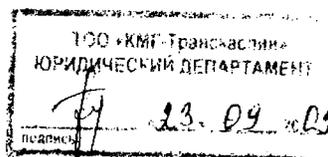
"The Contractor has performed the work described in this invoice in accordance with the terms of its contract with the Client and is entitled to payment thereunder. To the extent the Contractor has not complied with the terms and conditions of the Contract, including the USTDA mandatory provisions contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA."

##### **(iii) For final payment:**

"The Contractor has performed the work described in this invoice in accordance with the terms of its contract with the Client and is entitled to payment thereunder. Specifically, the Contractor has submitted the Final Report to the Client, as required by the Contract, and received the Client's approval of the Final Report. To the extent the Contractor has not complied with the terms and conditions of the Contract, including the USTDA mandatory provisions contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA."

#### **(b) Client's Approval of the Contractor's Invoice**

(i) The invoice for a mobilization payment must be approved in writing by the Client.



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(ii) For contract performance milestone payments, the following certification by the Client must be provided on the invoice or separately:

"The services for which disbursement is requested by the Contractor have been performed satisfactorily, in accordance with applicable Contract provisions and the terms and conditions of the USTDA Grant Agreement."

(iii) For final payment, the following certification by the Client must be provided on the invoice or separately:

"The services for which disbursement is requested by the Contractor have been performed satisfactorily, in accordance with applicable Contract provisions and terms and conditions of the USTDA Grant Agreement. The Final Report submitted by the Contractor has been reviewed and approved by the Client. "

**(c) USTDA Address for Disbursement Requests**

Requests for disbursement shall be submitted by courier or mail to the attention of the Finance Department at USTDA's address listed in Clause M below.

**(4) Termination**

In the event that the Contract is terminated prior to completion, the Contractor will be eligible, subject to USTDA approval, for reasonable and documented costs which have been incurred in performing the Terms of Reference prior to termination, as well as reasonable wind down expenses. Reimbursement for such costs shall not exceed the total amount of undisbursed Grant funds. Likewise, in the event of such termination, USTDA is entitled to receive from the Contractor all USTDA Grant funds previously disbursed to the Contractor (including but not limited to mobilization payments) which exceed the reasonable and documented costs incurred in performing the Terms of Reference prior to termination.

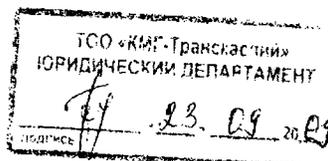
**I. USTDA Final Report**

**(1) Definition**

"Final Report" shall mean the Final Report described in the attached Annex I Terms of Reference or, if no such "Final Report" is described therein, "Final Report" shall mean a substantive and comprehensive report of work performed in accordance with the attached Annex I Terms of Reference, including any documents delivered to the Client.

**(2) Final Report Submission Requirements**

The Contractor shall provide the following to USTDA:



(a) One (1) complete version of the Final Report for USTDA's records. This version shall have been approved by the Client in writing and must be in the English language. It is the responsibility of the Contractor to ensure that confidential information, if any, contained in this version be clearly marked. USTDA will maintain the confidentiality of such information in accordance with applicable law.

and

(b) One (1) copy of the Final Report suitable for public distribution ("Public Version"). The Public Version shall have been approved by the Client in writing and must be in the English language. As this version will be available for public distribution, it must not contain any confidential information. If the report in (a) above contains no confidential information, it may be used as the Public Version. In any event, the Public Version must be informative and contain sufficient Project detail to be useful to prospective equipment and service providers.

and

(c) Two (2) CD-ROMs, each containing a complete copy of the Public Version of the Final Report. The electronic files on the CD-ROMs shall be submitted in a commonly accessible read-only format. As these CD-ROMs will be available for public distribution, they must not contain any confidential information. It is the responsibility of the Contractor to ensure that no confidential information is contained on the CD-ROMs.

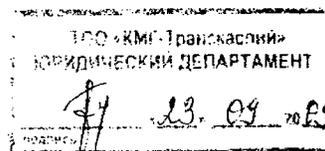
The Contractor shall also provide one (1) copy of the Public Version of the Final Report to the Foreign Commercial Service Officer or the Economic Section of the U.S. Embassy in Host Country for informational purposes.

### (3) Final Report Presentation

All Final Reports submitted to USTDA must be paginated and include the following:

(a) The front cover of every Final Report shall contain the name of the Client, the name of the Contractor who prepared the report, a report title, USTDA's logo, USTDA's mailing and delivery addresses. If the complete version of the Final Report contains confidential information, the Contractor shall be responsible for labeling the front cover of that version of the Final Report with the term "Confidential Version." The Contractor shall be responsible for labeling the front cover of the Public Version of the Final Report with the term "Public Version." The front cover of every Final Report shall also contain the following disclaimer:

"This report was funded by the U.S. Trade and Development Agency (USTDA), an agency of the U. S. Government. The opinions, findings, conclusions or recommendations expressed in this document are those of the author(s) and do not necessarily represent the official position or policies of



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USTDA. USTDA makes no representation about, nor does it accept responsibility for, the accuracy or completeness of the information contained in this report."

(b) The inside front cover of every Final Report shall contain USTDA's logo, USTDA's mailing and delivery addresses, and USTDA's mission statement. Camera-ready copy of USTDA Final Report specifications will be available from USTDA upon request.

(c) The Contractor shall affix to the front of the CD-ROM a label identifying the Host Country, USTDA Activity Number, the name of the Client, the name of the Contractor who prepared the report, a report title, and the following language:

"The Contractor certifies that this CD-ROM contains the Public Version of the Final Report and that all contents are suitable for public distribution."

(d) The Contractor and any subcontractors that perform work pursuant to the Grant Agreement must be clearly identified in the Final Report. Business name, point of contact, address, telephone and fax numbers shall be included for Contractor and each subcontractor.

(e) The Final Report, while aiming at optimum specifications and characteristics for the Project, shall identify the availability of prospective U.S. sources of supply. Business name, point of contact, address, telephone and fax numbers shall be included for each commercial source.

(f) The Final Report shall be accompanied by a letter or other notation by the Client which states that the Client approves the Final Report. A certification by the Client to this effect provided on or with the invoice for final payment will meet this requirement.

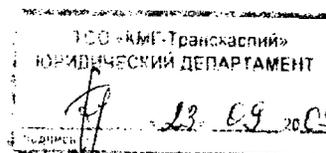
## J. Modifications

All changes, modifications, assignments or amendments to this contract, including the appendices, shall be made only by written agreement by the parties hereto, subject to written USTDA approval.

## K. TA Schedule

### (1) TA Completion Date

The completion date for the TA, which is December 31<sup>st</sup>, 2010 or other earlier date agreed by the Grantee and the Contractor and approved in the Contract by USTDA, is the date by which the parties estimate that the TA will have been completed.



## (2) Time Limitation on Disbursement of USTDA Grant Funds

Except as USTDA may otherwise agree, (a) no USTDA funds may be disbursed under this contract for goods and services which are provided prior to the Effective Date of the Grant Agreement; and (b) all funds made available under the Grant Agreement must be disbursed within four (4) years from the Effective Date of the Grant Agreement.

### L. Business Practices

The Contractor agrees not to pay, promise to pay, or authorize the payment of any money or anything of value, directly or indirectly, to any person (whether a governmental official or private individual) for the purpose of illegally or improperly inducing anyone to take any action favorable to any party in connection with the TA. The Client agrees not to receive any such payment. The Contractor and the Client agree that each will require that any agent or representative hired to represent them in connection with the TA will comply with this paragraph and all laws which apply to activities and obligations of each party under this Contract, including but not limited to those laws and obligations dealing with improper payments as described above.

### M. USTDA Address and Fiscal Data

Any communication with USTDA regarding this Contract shall be sent to the following address and include the fiscal data listed below:

U.S. Trade and Development Agency  
1000 Wilson Boulevard, Suite 1600  
Arlington, Virginia 22209-3901  
USA

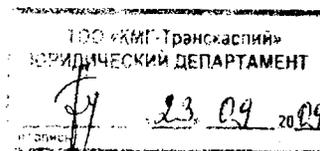
Phone: (703) 875-4357  
Fax: (703) 875-4009

#### Fiscal Data:

Appropriation No.: 11X1001  
Appropriation No.: 118/91001  
Activity No.: 2009-81037A  
Reservation No.: 2009810048  
Grant No.: GH2009810016

### N. Definitions

All capitalized terms not otherwise defined herein shall have the meaning set forth in the Grant Agreement.



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**O. Taxes**

USTDA funds provided under the Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in Host Country. Neither the Client nor the Contractor will seek reimbursement from USTDA for such taxes, tariffs, duties, fees or other levies.

ООО «КМГ-Транскастий»  
ЮРИДИЧЕСКИЙ ДЕПАРТАМЕНТ  
23.09.09

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**ANNEX 5**

## TERMS OF REFERENCE

### **Background and Objectives**

Kazakh Crude Oil is currently shipped in limited amounts across the Caspian Sea from the Port of Aktau. The Transcaspian project envisages that with the development of the Kashagan Resources, oil transportation across the Caspian will rise to 30 million tons per annum by 2015.

The general overview and description of the Transcaspian project is stated in the Agreement between the Republic of Kazakhstan (hereinafter RK) and the Republic of Azerbaijan (hereinafter RA) on support of oil transportation from the Republic of Kazakhstan through the Caspian Sea and the territory of the Republic of Azerbaijan to the international markets by the Baku-Tbilisi-Ceyhan (BTC) system, signed on June, 16, 2006.

This project includes loading and discharging oil terminals on Kazakh and Azeri coastal territories of the Caspian Sea, tankers and vessels (designed for oil transportation and providing other operations within the project), and a connection to the Baku-Tbilisi-Ceyhan oil pipeline.

Whereas this project is as significant for Kazakhstan itself as for oil producing companies in Kazakhstan, in particular those operating in Tengiz and the North-Caspian oilfields, the issue of confidence in the system becomes a focal point. It is essential for Kazakhstan to have an effective system of transportation in place, adhering to the highest international standards and regulation.

Kazakhstan does have a port administration (Aktau Sea Port), but it is not operating at a national level. Maritime policy is currently not coordinated, with jurisdiction falling under various state bodies. The lack of a clear definition of the necessary international standards and of consistency in applying them is seen as an impediment to the development of Transcaspian project.

KMG-Transcaspian LLP has been tasked with the responsibility of determining the necessary institutional, economic and technical factors that need to be resolved to facilitate the implementation of the Transcaspian project. The objective of these terms of Reference (TOR) are to assist KMG-Transcaspian in a) defining the International Treaty Accessions, Maritime laws and Regulations that Kazakhstan has to implement, and b) a definition of how these requirements should be implemented.

### **Task 1: Assessment of Current Status in Kazakhstan**

The Contractor shall travel to Kazakhstan to meet with the Grantee and other RK entities, as well as private sector companies to develop an understanding of the current status of marine related legislation in place, administrative infrastructure and operations. The Contractor shall work closely with the Grantee as well as other RK entities identified by

the Grantee that have functional responsibilities for administrating Marine related legislation, regulations and/or operations. The Contractor shall also meet with other entities that the Contractor deems necessary to carry out its work. This shall include but not be limited to Regional Authorities, International Oil Companies, Shipping Companies, Port Authorities and Safety/Security Companies.

The assessment shall include but not be limited to the following activities:

- Assess the current status of International Maritime Treaty Accessions by Kazakhstan including the existing process used to ratify international treaties such as the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention on Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), etc.
- Assess the current status of Kazakhstan Maritime Laws and Regulations including the process used to issue “regulatory requirements” to ship owners, ship operators, port facilities, and mariners that are at a level lower than national law.
- Assess the necessity of unification of the legislation both Kazakhstan and Azerbaijan for the successful implementation of the Transcaspian project.
- Assess the current status of the environmental liability that shall be shared between the parties, involved in the Trans Caspian System (TCS) implementation, such as contractor of construction, ship operator, shippers, ship owners according to the norms of international agreements/conventions and national legislation both for RK and RA.
- Assess the status of any Caspian Sea agreements and national legislation of Kazakhstan and Azerbaijan that affect shipping and port operations.
- Assess the current status of Kazakhstan Commercial Ship and Mariner Registration and Recordkeeping
- Assess the current status of Kazakhstan Commercial Mariner Licensing Registration and Recordkeeping
- Assess the current status of the established Kazakhstan program to comply with to the International Convention for Safety of Life at Sea and its International Ship and Port Facility Security Code (ISPS Code), Part A and Part B (in force since 1 July 2004)
- Assess what International Maritime Treaty Accessions are needed to be executed by Kazakhstan where necessary such as UNCLOS, SOLAS, MARPOL, STCW etc

- Assess the possibility of reciprocal (Kazakhstan and Azerbaijan) port State control in accordance with international practice, such as the Paris Memorandum on Port State Control
- Assess, in general, the degree of compliance by ship operators, port facilities and mariners with SOLAS, MARPOL, and STCW.
- Assess in general, the current capabilities of KOC, ship operators, port facilities oil spill response and clean up.

***Deliverable for Task 1***

The Contractor shall provide the Grantee with a report setting out finding relating to the above items and giving a general assessment of the steps needed to close any “gaps” indentified.

**Task 2: Assessment of Other Ongoing Activities (Donor, NGO, Institutions, IFIs)**

The Contractor shall identify, review and assess other activities being carried out by other Agencies and Institutions directed at the legal and regulatory administration of maritime traffic in the Caspian Area as it pertains to Kazakhstan. This shall also include the identification of foreign assistance proposed to the RK. The Contractor shall identify any duplication and /or overlaps that may be occurring and suggest resolution to any contradictions and differences suggested by the different activities.

This shall include discussions with agencies including but not limited to: the International Maritime Organization (IMO), the Oil Companies International Marine Forum (OCIMF), the Organization for Security and Co-operation in Europe (OSCE), Lloyds Register, ABS Europe, and the Oil Spill Preparedness Regional Initiative (OSPRI).

***Deliverable for Task 2***

The Contractor shall provide an assessment of other ongoing activities to the Grantee.

**Task 3: Implementation Planning**

Based on the results of Task 1 and 2 above, the Contractor shall develop recommendations for actions that need to be taken by the RK to reach compliance with International standards which will include but not be limited to the following:

- Develop a comprehensive listing of International Maritime Treaty accessions needed to be carried out by Kazakhstan together with a plan to implement.
- Develop a comprehensive listing of national laws and regulations needed to be enacted by Kazakhstan together with a plan to implement.

- Develop a plan to develop a comprehensive approach to come into compliance with the International Convention for Safety of Life at Sea and its International Ship and Port Facility Security Code (ISPS Code), Part A and Part B (in force since 1 July 2004)
- Provide a proposal for any recommended computer based “state of the art” Commercial Ship Registration and Recordkeeping program for use by the Kazakhstan government
- Provide a proposal for any recommended computer based “state of the art” Commercial Mariner Licensing Registration and Recordkeeping program for use by the Kazakhstan government
- Provide a proposal on the implementation of reciprocal (Kazakhstan and Azerbaijan) port State control in accordance with international practice, such as the Paris Memorandum on Port State Control
- Develop a plan for establishing the necessary infrastructure for RK, ship operators, and port facilities to meet oil spill response and clean up responsibilities.

***Deliverable for Task 3***

The Contractor shall provide the Grantee with the implementation plan.

**Task 4: Impact Assessment on TCS**

The Contractor shall identify and assess the impact that the implementation of the International Maritime Laws and Regulations identified will have on the development of the TCS. This shall include but not be limited to analyzing the institutional, infrastructure and other requirements to comply at the national, regional, local levels. The Contractor’s analysis of potential impact and compliance needs shall be as concrete and detailed as possible and shall include financial, economic and technical definition of the compliance actions.

***Deliverable for Task 4***

The Contractor shall provide the Grantee with the impact assessment.

**Task 5: Final Report**

The Contractor shall prepare and deliver to the Grantee and USTDA a substantive and comprehensive final report of all work performed under these Terms of Reference (“Final Report”). The Final Report shall be organized according to the above tasks, including all

deliverables and documents that have been provided to the Grantee. The Final Report shall be prepared and delivered to USTDA in accordance with Clause I of Annex II of the Grant Agreement. The Contractor shall provide the Grantee with 6 copies of the final report in both English and Russian on CD-ROM.

***Deliverable for Task 5***

The Contractor shall provide the Grantee and USTDA with the Final Report.

**Notes:**

- (1) The Contractor is responsible for compliance with U.S. export licensing requirements, if applicable, in the performance of the Terms of Reference.**
- (2) The Contractor and the Grantee shall be careful to ensure that the public version of the Final Report contains no security or confidential information.**
- (3) The Grantee and USTDA shall have an irrevocable, worldwide, royalty-free, non-exclusive right to use and distribute the Final Report and all work product that is developed under these Terms of Reference.**



7. Project Manager's name, address, telephone number, e-mail address and fax number .

**B. Offeror's Authorized Negotiator**

Provide name, title, address, telephone number, e-mail address and fax number of the Offeror's authorized negotiator. The person cited shall be empowered to make binding commitments for the Offeror and its subcontractors, if any.

**C. Negotiation Prerequisites**

1. Discuss any current or anticipated commitments which may impact the ability of the Offeror or its subcontractors to complete the Technical Assistance as proposed and reflect such impact within the project schedule.
  
2. Identify any specific information which is needed from the Grantee before commencing contract negotiations.

**D. Offeror's Representations**

Please provide exceptions and/or explanations in the event that any of the following representations cannot be made:

1. Offeror is a corporation [*insert applicable type of entity if not a corporation*] duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_ . The Offeror has all the requisite corporate power and authority to conduct its business as presently conducted, to submit this proposal, and if selected, to execute and deliver a contract to the Grantee for the performance of the Technical Assistance. The Offeror is not debarred, suspended, or to the best of its knowledge or belief, proposed for debarment, or ineligible for the award of contracts by any federal or state governmental agency or authority. The Offeror has included, with this

proposal, a certified copy of its Articles of Incorporation, and a certificate of good standing issued within one month of the date of its proposal by the State of \_\_\_\_\_.

2. Neither the Offeror nor any of its principal officers have, within the three-year period preceding this RFP, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal or state criminal tax laws, or receiving stolen property.
3. Neither the Offeror, nor any of its principal officers, is presently indicted for, or otherwise criminally or civilly charged with, commission of any of the offenses enumerated in paragraph 2 above.
4. There are no federal or state tax liens pending against the assets, property or business of the Offeror. The Offeror, has not, within the three-year period preceding this RFP, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied. Taxes are considered delinquent if (a) the tax liability has been fully determined, with no pending administrative or judicial appeals; and (b) a taxpayer has failed to pay the tax liability when full payment is due and required.
5. The Offeror has not commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law. The Offeror has not had filed against it an involuntary petition under any bankruptcy, insolvency or similar law.

The selected Offeror shall notify the Grantee and USTDA if any of the representations included in its proposal are no longer true and correct at the time of its entry into a contract with the Grantee. USTDA retains the right to request an updated certificate of good standing from the selected Offeror.

Signed: \_\_\_\_\_  
(Authorized Representative)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_