

United Nations Development Programme



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REQUEST FOR PROPOSAL (RFP)

Ref.: RFP-YEM-0021-2019

Date: 07/04/2019

Dear Sir / Madam:

We kindly request you to submit your Proposal for Provision of DESIGN AND CONSTRUCTION SUPERVISION FOR UNDP AL HODEIDAH SUB-OFFICE

Please be guided by the form attached hereto as Annex 2, in preparing your Proposal.

Proposal Submission Address e-Tendering Portal:

<https://etendering.partneragencies.org>

Documents uploaded in the system as part of your quotation must be free from any form of virus or corrupted contents, or the quotations shall be rejected.

It shall remain your responsibility to ensure that your quotation is submitted on or before the deadline indicated by UNDP in the e-Tendering system. Bids must be submitted in the online eTendering system in the following link: <https://etendering.partneragencies.org> using your username and password. If you have not registered in the system before, you can register now by logging in using

URL: <https://etendering.partneragencies.org>

username: event.guest

password: why2change

Follow the registration steps as specified in the system user guide or download the attached "eTendering Instructions Manual for Bidders" document. Upon your request UNDP will also provide videos for E-tendering registration guidance. Please follow the below link.

<http://www.undp.org/content/undp/en/home/operations/procurement/business/procurement-notices/resources/>

Quotations must be submitted through UNDP eTendering online system (<https://etendering.partneragencies.org>), The bidders requested ONLY to adhere the exact deadline time mentioned in the E-tendering website (<https://etendering.partneragencies.org>)..

Bidders can compress the file through rar/zip file.

Electronic submission (e-Tendering) requirements

- Format: PDF files only;
 - File names must be maximum 60 characters long and must not contain any letter or special character other than from Latin alphabet/keyboard;
 - All files must be free of viruses and not corrupted;
 - Password for financial proposal must not be provided to UNDP until the date as indicated in No. 14 (for email submission only) Password will be asked only from the bidders whose technical proposals are technically responsive and score the minimum pass marks;
- Max. File Size per transmission: 5MB;

Your Proposal must be expressed in the English, and valid for a minimum period of **90 days**

In the course of preparing your Proposal, it shall remain your responsibility to ensure that it reaches the address above on or before the deadline. Proposals that are received by UNDP after the deadline indicated above, for whatever reason, shall not be considered for evaluation. If you are submitting your Proposal by email, kindly ensure that they are signed and in the pdf format, and free from any virus or corrupted files.

Services proposed shall be reviewed and evaluated based on completeness and compliance of the Proposal and responsiveness with the requirements of the RFP and all other annexes providing details of UNDP requirements.

The Proposal that complies with all of the requirements, meets all the evaluation criteria and offers the best value for money shall be selected and awarded the contract. Any offer that does not meet the requirements shall be rejected.

Any discrepancy between the unit price and the total price shall be re-computed by UNDP, and the unit price shall prevail and the total price shall be corrected. If the Service Provider does not accept the final price based on UNDP's re-computation and correction of errors, its Proposal will be rejected.

No price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted by UNDP after it has received the Proposal. At the time of Award of Contract or Purchase Order, UNDP reserves the right to vary (increase or decrease) the quantity of services and/or goods, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

Any Contract or Purchase Order that will be issued as a result of this RFP shall be subject to the General Terms and Conditions attached hereto. The mere act of submission of a Proposal implies that the Service Provider accepts without question the General Terms and Conditions of UNDP, herein attached as **Annex 3**.

Please be advised that UNDP is not bound to accept any Proposal, nor award a contract or Purchase Order, nor be responsible for any costs associated with a Service Providers preparation and submission of a Proposal, regardless of the outcome or the manner of conducting the selection process.

UNDP's vendor protest procedure is intended to afford an opportunity to appeal for persons or firms not awarded a Purchase Order or Contract in a competitive procurement process. In the event that you believe you have not been fairly treated, you can find detailed information about vendor protest procedures in the following link:

<http://www.undp.org/content/undp/en/home/operations/procurement/protestandsanctions/>

UNDP encourages every prospective Service Provider to prevent and avoid conflicts of interest, by disclosing to UNDP if you, or any of your affiliates or personnel, were involved in the preparation of the requirements, design, cost estimates, and other information used in this RFP.

UNDP implements a zero tolerance on fraud and other proscribed practices, and is committed to preventing, identifying and addressing all such acts and practices against UNDP, as well as third parties involved in UNDP activities. UNDP expects its Service Providers to adhere to the UN Supplier Code of Conduct found in this link: http://www.un.org/depts/ptd/pdf/conduct_english.pdf

Thank you and we look forward to receiving your Proposal.

Sincerely yours,

Hari Kafle
Team Leader
Procurement and Travel



Description of Requirements

Context of the Requirement	Provision for Engineering Consulting Firm for Al Hodeidah Office
Implementing Partner of UNDP	None
Brief Description of the Required Services	Consultancy contract is to provide quality assurance on behalf of UNDP on the construction and renovation of the future UNDP Sub-Office buildings and compound in Al Hodeidah, to be undertaken by a private contractor during the period May through July 2019. The contract for quality assurance will allow UNDP to certify construction/renovation milestones and to release payments to the private contractor as per UNDP Contract and Purchase Order.
List and Description of Expected Outputs to be Delivered	Please see detailed TOR attached to this RFP as <u>Annex 4</u>
Person to Supervise the Work/Performance of the Service Provider	Head of UNDP Sub Office in Hodeidah
Frequency of Reporting	According to deliverables schedule and as prescribed in the TOR.
Progress Reporting Requirements	As prescribed in the TOR
Location of work	Al Hodeidah, Yemen
Expected duration of work	3 months (or 12 weeks)
Target start date	May 2019
Latest completion date	July 2019
Travels Expected	Up to the consultant to manage, the Site Engineer must be available on Site at least one day prior to contract commencement
Special Security Requirements	<p>The Engineering firm should full care of the Site Engineer and other personnel that will be deployed to the site at all times;</p> <p>UNDP will provide the ID Card to access the UNDP Premises and construction site;</p> <p><u>Cost involved in providing the security to the Site Engineer must be factored into the price proposal;</u></p>
Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)	<p>One working station with internet connectivity within UNDP Al Hodeidah Office Premises;</p> <p>The consulting firm must provide laptop, mobile and SIM Cards at its own cost;</p>
Implementation Schedule indicating breakdown and timing of activities/sub-activities	Not applicable
Names and curriculum vitae of individuals who will be involved in completing the services	Required. CVs of the all personnel indicated in the TOR must be submitted together with the proposal

Currency of Proposal	<p>Local Currency (<i>Yemeni Riyal</i>); or <i>US Dollar (USD)</i>; at the discretion of the bidder</p> <p>Payment currency in contract will be the one in which the bidder has quoted their price proposal;</p> <p>For the comparison purpose, UNDP will the UN Operational Exchange rate applicable on the last day of the bid closure</p>
Value Added Tax on Price Proposal	Must be exclusive of VAT and other applicable indirect taxes
Validity Period of Proposals (<i>Counting for the last day of submission of quotes</i>)	<p>90 days</p> <p>In exceptional circumstances, UNDP may request the Proposer to extend the validity of the Proposal beyond what has been initially indicated in this RFP. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Proposal.</p>
Partial Quotes	Not permitted
Payment Terms	As prescribed in the TOR.
Condition for Payment Release	<p>Within thirty (30) days from the date of meeting the following conditions:</p> <ol style="list-style-type: none"> UNDP's written acceptance (i.e., not mere receipt) of the quality of the outputs; and Receipt of invoice from the Service Provider; and Completion of the milestones from the deliverables stated in the TOR;
Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment	Head of Al Hodeidah Sub Office
Type of Contract to be Signed	Contract for Services
Preliminary Examination Criteria	<p>Proposals will be examined to determine whether they are complete and submitted in accordance with RFP requirements as per below criteria on a Yes/No basis:</p> <ul style="list-style-type: none"> Appropriate signatures Power of Attorney Minimum documents provided Technical and Financial Proposals submitted separately The price proposal must be password protected, the password should be provided by the bidders who are technically qualified and upon the request for the password by the UNDP Bid Validity
Criteria for Contract Award	<p><input checked="" type="checkbox"/> Combined Scoring Method: Technical and Price Proposals of the Technically Qualified Offerors (i.e. offers that are rated 70% and above) will be compared and highest scorer will be awarded the contract;</p> <p><input checked="" type="checkbox"/> Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criteria and cannot be deleted regardless of the nature of services required. Non acceptance of the GTC may be grounds for the rejection of the Proposal.</p>

Criteria for the Assessment of Proposal	Technical Proposal: <input checked="" type="checkbox"/> Expertise of the Firm (20%) <input checked="" type="checkbox"/> Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan (20%) <input checked="" type="checkbox"/> Management Structure and Qualification of Key Personnel (25%) <input checked="" type="checkbox"/> Proof of financial strength and capability to complete the task (15%) <input checked="" type="checkbox"/> Firm / Institution registration and in Yemen (10%) <input checked="" type="checkbox"/> Major clients and track record (10%) <input checked="" type="checkbox"/> Institution / firm construction Supervision and Quality Control capacity (10%)
UNDP will award the contract to:	<input checked="" type="checkbox"/> One Service Provider
Annexes to this RFP	<input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2) <input checked="" type="checkbox"/> General Terms and Conditions / Special Conditions (Annex 3) <input checked="" type="checkbox"/> Detailed TOR (Annex 4)
Contact Person for Inquiries (Written inquiries only)	<p>Bidders requesting clarification of any of the items, technical requirements, or conditions stipulated in this RFQ shall communicate in writing with UNDP office at procurement.yemen@undp.org. Any delay in UNDP's response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.</p>

FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL***(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery¹)***

[insert: Location].

[insert: Date]

To: Head of Procurement Unit

Dear Sir/Madam:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the RFP dated 07/04/2019, and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions:

A. Qualifications of the Service Provider

The Service Provider must describe and explain how and why they are the best entity that can deliver the requirements of UNDP by indicating the following:

- a) Profile – describing the nature of business, field of expertise, licenses, certifications, accreditations, not to exceed 15 pages;*
- b) Business Licenses – Registration Papers, etc.*
- c) Latest Audited Financial Statement, if available, – income statement and balance sheet to indicate its financial stability, liquidity, credit standing, and market reputation, etc. ;*
- d) Track Record – list of clients for similar services as those required by UNDP from the TOR, indicating description of contract scope, contract duration, contract value, contract references;*
- e) Certificates and Accreditation – including Quality Certificates, Patent Registrations, Environmental Sustainability Certificates, etc.*
- f) Written Self-Declaration that the company is not in the UN Security Council 1267/1989 List, UN Procurement Division List or Other UN Ineligibility List.*

Please see the Evaluation Matrix for the technical Scoring grid (Attachment A) to this RFP. Please submit all relevant document to provide evidence to the assessment of your proposal as stated in the Scoring Grid.

B. Proposed Methodology for the Completion of Services

The Service Provider must describe how it will address/deliver the demands of the RFP; providing a detailed description of the essential performance characteristics, reporting conditions and quality assurance mechanisms that will be put in place, while demonstrating that the proposed methodology will be appropriate to the local conditions and context of the service. Please state in brief how you intend to do quality control, financial control and administrative control

C. Qualifications of Key Personnel

If required by the RFP, the Service Provider must provide:

As per the TOR (annex 4):

¹ Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes

- a) Names and qualifications of the key personnel that will perform the services indicating who is Team Leader, who are supporting, etc.;
- b) CVs demonstrating qualifications must be submitted as required by the TOR and this RFP;
- c) Written confirmation from each personnel that they are available for the entire duration of the contract.

D. Financial Proposal:

Overall financial proposal format:

The price proposal must be password protected, the password should be provided by the bidders who are technically qualified and upon the request for the password by the UNDP

The bidders are required to submit the price proposal following the template below:

Currency: _____ (stat the bid currency here)

Cost Elements	Unit of Measure	Quantity a	Unit Price b	Total Price A X b
A. Professional Fee:				
A1. Site Engineer	Months	3		
A2. Project Manager (should be part of the management fee)	n/a	n/a	n/a	n/a
Sub-Total A				
B. Travel and Social Security Related Costs:				
B1. Travel Cost to and From the Duty Station – Site Engineer	Lump Sum (LS)	1		
B2. DSA for Site Engineer (DSA will be paid only for the actual nights spent in the Site)	Nights			
B.3. Cost of Travel for anticipated Travel of professional from the Consulting firm's head office (PROVISIONAL SUM) [It will be paid only if the travel occurs and confirmed by UNDP Head of Sub office]	Nights			
Sub-Total B				
Management and Overhead Costs:				
C1. Management fee for providing the support by the consultancy firm to UNDP Project	LS	1		
C2. Cost of Reproduction and Report Writing	LS			
C3. Overhead Fee *	LS	1		
Sub-Total C				
GRAND TOTAL				

Notes on the Price Proposal:

- 1. In case of discrepancy between unit price and total price, unit price shall prevail.
- 2. *The overhead fee shall be acceptable in the range of 5-10% of the total cost before adding overhead. In the case of the excessively charged overhead, UNDP reserves the right to negotiate the cost;

Company/ Business Name: -----

Authorized Person: -----

Functional Title: -----

Mailing Address -----

Contact Number (s): -----

Email: -----

Signature: -----

Date: -----

Attachment-A: Technical Scoring Grid:

Summary of Technical Proposal Evaluation Forms		Points Obtainable
1.	Bidder's qualification, capacity and experience	300
2.	Proposed Methodology, Approach and Implementation Plan	400
3.	Management Structure and Key Personnel <i>(Site Engineer to be given 80% of weightage and rest of the personnel 20% weightage)</i>	300
	Total	1000

Section 1. Bidder's qualification, capacity and experience		Points obtainable
1.1	Reputation of Organization and Staff Credibility / Reliability / Industry Standing <i>10 Years of Establishment as Engineering Firm. Must have the valid registration certificate 7 years of experience in Construction Supervision and Quality Control work Projects handled in the past with Similar Work scope and complexities: 3 similar projects within the last 2 years Number of Contracts and Contract Value supervised in the past 3 years: Minimum 2 contracts valuing between USD800,000 to USD1 million. For staff kindly see point# 9.2 below in TOR</i>	50
1.2	General Organizational Capability which is likely to affect implementation: management structure, financial stability and project financing capacity, project management controls, extent to which any work would be subcontracted <i>[Availability of established and working teams in the ground for immediate deployment, demonstrated construction supervision ability and experience, cash availability for resource mobilization etc.]</i>	90
1.3	Relevance of specialized knowledge and experience on similar engagements done in the region/country: <i>[Construction supervision and quality control jobs done in the region or in the country with the similar level of complexities and geographical coverage as in the case of this TOR in Yemen.]</i>	70
1.4	Quality assurance procedures and risk mitigation measures: <i>[The suitability and relevance of the quality assurance procedures proposed, appropriateness of the risks identified, and mitigating measures applied. The level of assurance provided to determine that quality etc.]</i>	60
1.5	Organizational Commitment to Sustainability (mandatory weight) -Organization is compliant with ISO 14001 or ISO 14064 or equivalent – 20 points	30

	-Organization is a member of the UN Global Compact -5 points -Organization demonstrates significant commitment to sustainability through some other means- 5 points, for example internal company policy documents on women empowerment, renewable energies or membership of trade institutions promoting such issues	
Total Section 1		300

Section 2. Proposed Methodology, and Approach		Points obtainable
2.1	Understanding of the requirement: Have the important aspects of the task been addressed in sufficient detail? Are the different components of the project adequately weighted relative to one another? <i>[Adequacy of resources proposed, assurance provided for the qualitative services based on accuracy and relevance of the proposed methodology and approach]</i>	80
2.2	Description of the Offeror's approach and methodology for meeting or exceeding the requirements of the Terms of Reference	100
2.3	Details on how the different service elements shall be organized, controlled and delivered	50
2.4	Description of quality control, financial control and administrative control and their appropriateness	50
2.5	Relevance of the work procedures proposed to the delivery of the milestone	70
2.6	Demonstration of ability to plan, integrate and effectively implement sustainability measures in the execution of the contract	50
Total Section 2		400

Section 3. Management Structure and Key Personnel			Points obtainable
3.1	Composition and structure of the team proposed. Are the proposed roles of the management and the team of key personnel suitable for the provision of the necessary services? <i>[Number of experts proposed, their qualification and experiences and management control mechanism vs. timeline available (maximum 3 months) to complete the project evaluation and report submission]</i>		20
3.2	Qualifications of key personnel proposed <i>(must be equivalent or of superior credentials stated in the TOR)</i>		
3.2 a	Site Engineer		192
	- Masters in Civil Engineering; and Site supervision experience of 7 years	52	
	- Site Supervision, Quality control and checking and managing the financials among other requirements from TOR	80	
	- Experience in Arab Region or/International experience in the countries involved in conflict and insecurity	40	
	- Language Qualifications (English and Arabic)	20	

3.2 b	Project Manager		44
	- Master's in civil engineering and at least 10 years of project management experience, including the supervision of technical staff and managing client relations, among other experiences required by TOR	30	
	- Experience in the middle east or/International experience in the countries involved in the conflict or insecurity	7	
	- Language Qualifications (English and Arabic). Ability to connect and communicate to the community people respecting the cultural and social aspects	7	
3.2 c	Other Experts (Mechanical Engineer, Electrical Engineer and Overseer) [The marks obtained by each will be averaged]		44
	- General Experience (As per TOR)	24	
	Experience in the middle east or/International experience in the countries involved in the conflict or insecurity	14	
	- Language Qualifications (English and Arabic).	6	
Total Section 3			300

Annex 3***General Terms and Conditions for Services*****1.0 LEGAL STATUS:**

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP). The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNDP or the United Nations.

2.0 SOURCE OF INSTRUCTIONS:

The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its services under this Contract. The Contractor shall refrain from any action that may adversely affect UNDP or the United Nations and shall fulfill its commitments with the fullest regard to the interests of UNDP.

3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

4.0 ASSIGNMENT:

The Contractor shall not assign, transfer, pledge, or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of UNDP.

5.0 SUB-CONTRACTING:

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of UNDP for all sub-contractors. The approval of UNDP of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.

6.0 OFFICIALS NOT TO BENEFIT:

The Contractor warrants that no official of UNDP or the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

7.0 INDEMNIFICATION:

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the

Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:

8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.

8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:

8.4.1 Name UNDP as additional insured;

8.4.2 Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the UNDP;

8.4.3 Provide that the UNDP shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

8.5 The Contractor shall, upon request, provide the UNDP with satisfactory evidence of the insurance required under this Article.

9.0 ENCUMBRANCES/LIENS:

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the UNDP against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

10.0 TITLE TO EQUIPMENT:

Title to any equipment and supplies that may be furnished by UNDP shall rest with UNDP and any such equipment shall be returned to UNDP at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to UNDP, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate UNDP for equipment determined to be damaged or degraded beyond normal wear and tear.

11.0 COPYRIGHT, PATENTS, AND OTHER PROPRIETARY RIGHTS:

11.1 Except as is otherwise expressly provided in writing in the Contract, the UNDP shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the

Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP.

11.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

11.3 At the request of the UNDP; the Contractor shall take all necessary steps, execute all necessary documents, and generally assist in securing such proprietary rights and transferring or licensing them to the UNDP in compliance with the requirements of the applicable law and of the Contract.

11.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

12.0 USE OF NAME, EMBLEM, OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with UNDP, nor shall the Contractor, in any manner whatsoever use the name, emblem, or official seal of UNDP or THE United Nations, or any abbreviation of the name of UNDP or United Nations in connection with its business or otherwise.

13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:

Information and data that is considered proprietary by both Party and that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:

13.1 The recipient ("Recipient") of such information shall:

13.1.1 use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,

13.1.2 use the Discloser's Information solely for the purpose for which it was disclosed.

13.2 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 13, the Recipient may disclose Information to:

13.2.1 Any other party with the Discloser's prior written consent; and,

13.2.2 the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:

- 13.2.2.1** A corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,
- 13.2.2.2** Any entity over which the Party exercises effective managerial control; or,
- 13.2.2.3** for the UNDP, an affiliated Fund such as UNCDF, UNWOMEN, and UNV.

- 13.3** The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- 13.4** The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions, or regulations of the General Assembly, or rules promulgated by the Secretary-General.
- 13.5** The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 13.6** These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

- 14.1** In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the UNDP, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the UNDP of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the UNDP shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.
- 14.2** If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the UNDP shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.
- 14.3** Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
- 14.4** The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which the UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract..

15.0 TERMINATION

- 15.1** Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.
- 15.2** UNDP reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case UNDP shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.
- 15.3** In the event of any termination by UNDP under this Article, no payment shall be due from UNDP to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.
- 15.4** Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the UNDP may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UNDP of the occurrence of any of the above events.

16.0 SETTLEMENT OF DISPUTES

- 16.1 Amicable Settlement:** The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.
- 16.2 Arbitration:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

17.0 PRIVILEGES AND IMMUNITIES:

Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

18.0 TAX EXEMPTION

18.1 Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter-alia that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately consult with the UNDP to determine a mutually acceptable procedure.

18.2 Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the UNDP before the payment thereof and the UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

19.0 CHILD LABOUR

19.1 The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.

19.2 Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, at no cost to UNDP.

20.0 MINES:

20.1 The Contractor represents and warrants that neither it nor any of its suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.

20.2 Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNDP.

21.0 OBSERVANCE OF THE LAW:

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

22.0 SEXUAL EXPLOITATION:

22.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its employees or any other persons who may be engaged by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all appropriate measures to prohibit its

employees or other persons engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. The Contractor acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of this representation and warranty shall entitle UNDP to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

22.2 The UNDP shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

23.0 AUTHORITY TO MODIFY:

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against UNDP unless provided by an amendment to this Contract signed by the Contractor and jointly by the UNDP Authorized Official.

Terms of Reference (ToR)

for

Consultancy Services

Project: DESIGN AND CONSTRUCTION SUPERVISION FOR UNDP AL HODEIDAH SUB-OFFICE
Location: AL HODEIDAH, YEMEN

1. Objective

The main purpose of this consultancy contract is to provide quality assurance on behalf of UNDP on the construction and renovation of the future UNDP Sub-Office buildings and compound in Al Hodeidah, to be undertaken by a private contractor during the period May through July 2019. The contract for quality assurance will allow UNDP to certify construction/renovation milestones and to release payments to the private contractor as per UNDP Contract and Purchase Order.

2. Background

United Nations Development Programme (UNDP), hereinafter refereed to as the Employer, wishes to solicit consulting services from a recognized Engineering/Architectural firm for the quality assurance and site supervision during the process of designing, implementing and completing the construction/renovation of its Sub-Office in Hodeidah.

The construction/renovation works entail the following:

- Security measures and up-grades like wall, fences, gates, doors, safe spaces, lights, electrical installations;
- Renovation works converting residential buildings to become offices, accommodations, cafeteria's, bathrooms, conference facilities;
- Landscaping and paving to create parking lots, multi-functional and recreational space.

3. Scope of the Works

Among other requirements, which may be necessary in course of designing preparing, implementing and certifying these construction/renovation works, the following are the basic services required from the consultancy firm:

Quality Control:

- 3.1 Analyze and validate the designs and BOQ's of the construction/renovation works as per the building code of conduct and finalize the design in consultation with UNDP;
- 3.2 Prepare and provide an independent and detailed cost estimate for the construction/renovation works;
- 3.3 Analyze and validate the construction/renovation drawings on the basis of the draft designs and supervise the works to ensure that the architectural and structural works are in full conformity with the approved detailed construction design and drawings in consultation with the concerned authorities of the Employer and as permitted by the existing site conditions;
- 3.4 Inspect contractors' fabrication site during the phase of construction to ensure quality, workmanship and design are in accordance with approved specifications, drawings and BOQ;
- 3.5 Provide qualified/suitable site engineer(s), who should work on behalf of the Employer to supervise the construction/renovation contractor's day-to-day construction work in order to ensure that the

- quality and workmanship of the construction meet the agreed upon standard specification and timelines;
- 3.6 Ensure that the construction/renovation contractor keeps the site neat and clean as far as possible;
- 3.7 Do the final quality check with the Employer during the take-over of the completed building;
- 3.8 Prepare a final report;
- 3.9 Identify any deviation from and/or non-adherence to the agreed upon standards, drawings, specifications, timelines as identified in the construction contract, immediately bring these deviations and/or adherence in writing to the attention of the construction contractor and the Employer for remedial action.

Financial Control:

- 3.10 Obtain prior written approval from the Employer in case extra items or works necessitated by the site condition and upon approval, inform the contractor of the same in writing;
- 3.11 Check verify all running bills in accordance with the agreed upon quotes and budgets and certify all the payments in accordance with the contract milestone as well as the final bill from the contractor taking into account all the deductions to be made each time in each bill. Make all the necessary correspondences in relation to the construction on behalf of employer and inform the employer accordingly;

Administrative Control:

- 3.12 Make all the necessary correspondences such as mobilization order, entry permission etc. in relation to the construction on behalf of Employer and inform the employer accordingly;
- 3.13 Participate in meetings as and when required and remind the employer and the construction/renovation contractor for follow-up on the agreed matter. Report to the employer in writing regarding any instances of the non-adherence to the bill of quantities and specification by the contractor's personnel;
- 3.14 Refrain the construction/renovation contractor from using child labour;
- 3.15 Make sure that debris and unnecessary items shall be removed from the site within 24-hours;

Time Period:

The entire construction/renovation project is targeted to be completed in 12 weeks from the date of commencement of the works. In the event if the contract for construction of fire escape is not completed within the stipulated time, the contract may be amended, at the discretions of the Employer, to capture the additional period required to complete the construction works.

5. Deliverables

The consultant firm is expected to produce the following results:

- a) All the standards, specifications and drawings, timelines systematically checked for quality, timeliness, cost-effectiveness, efficiency and consistency. Report #1;
- b) Bid evaluation support provided to the assessment of the technical proposal of the ITB;
- c) Construction supervision services provided for the quality control of the construction material, workmanship as well as implementation of the construction schedule;
- d) All bills have been checked in detail for correctness in quantity and quality and certified for payment. Weekly highlight reports #2;
- e) As built drawing of the completed works submitted to the Employer before final payments to the consultant. Ad-hoc reports #3;
- f) List of all deviations and remedial actions identified and taken during the construction period. Part of weekly highlight reports #2;
- g) A final report conforming that all the works are in full compliance with the approved specifications, drawings, price and time schedule. Final report #4

6. Work Procedures

- 6.2 The Consultant should get an advance written approval from the Employer for any change in design, extra work or any other changes that necessitate the increase in the quantity or the contract price. However, the consultant should work independently as far as the works are well within the consultant's jurisdiction as mentioned in the contract document between the employer and construction/renovation contractor;
- 6.2 The Consultant must ensure that the construction is completed within the time frame stipulated in the construction/renovation contract exactly as per the approved specifications, drawings and BOQ;

- 6.3 If the project is delayed due to the unforeseen events such as civil disturbances, riots, strikes, war etc., which are beyond the control of the Employer, consultant firm or the construction/renovation contractor, the Employer may stop the work and neither the Consultant nor the Contractor will be held responsible for such delay. However, the Consultant must inform the Employer of such occurrence within 24 hours;

7. Consultant's Personnel

- 7.1 The staff, who will be deployed by the consultancy firm for this quality assurance work, must be sound both physically and mentally as well as should be qualified and experienced to undertake the duty assigned to him/her;
- 7.2 The Employer is not responsible for any injury, bodily dismemberment or even death of the consultancy firm employee/s, which might take place during the time of project execution;
- 7.3 The consultancy firm shall assume the full responsibility for his employees at all times and under no circumstances shall the Employer be held responsible for the act of consultancy firm's employees.

8. Termination of Contract:

This consultancy contract will be automatically terminated upon maturity of the contract date;

However, the contract may be terminated by either party in accordance with the termination clauses mentioned in the UNDP General Conditions of Contract, which will be part of the contract to be signed with engineering firm.

9. Qualification and Experience:

9.1. Consulting Firm:

<i>Criteria</i>	<i>Minimum Requirement</i>
Years of Establishment as Engineering Firm. Must have the valid registration certificate	10 years
Years of experience in Construction Supervision and Quality Control work	7 years
Projects handled in the past with Similar Work scope and complexities	3 similar projects within the last 2 years
Number of Contracts and Contract Value supervised in the past 3 years	Minimum 2 contracts valuing between USD800,000 to USD1 million

9.2. Staff:

<i>Type of Staff</i>	<i>Education and Experience</i>
A. Relevant to the UNDP Project	
Project Manager	Master's in civil engineering. At least 10 years of

(to be supporting from the consulting firm's head office)	project management experience, including the supervision of technical staff and managing client relations
Site Engineer to be deployed to UNDP Construction Site	Master's in civil engineering or bachelor's degree in Civil Engineering with 10 years of experience. At least 7 years of proven track record of working as Site Engineer supervising the contractors work, quality control, checking and certifying payments.
B. Staff Possessed by the Consulting Engineering Firm (not to be delayed to UNDP but may need to provide support to the Site Engineer)	
Managing Director	Master's degree in engineering or Business Administration. At least 10 years of experience managing staff and resources and client relations.
Electrical Engineer	Minimum Bachelor's Degree in Electrical Engineering with 5 years work experience
Mechanical Engineer	Minimum bachelor's degree in mechanical engineering with 5 years of work experience
Overseer	Overseer certificate with minimum 3 years of relevant experience in construction industry

10. Payment Procedures:

UNDP will make the payment to the consulting engineering firm upon delivery of the results/milestone as outlined below:

Milestones	Payment Percentage (%)
1.All the standards, specifications and drawings, timelines systematically checked for quality, timeliness, cost-effectiveness, efficiency and consistency. Report #1;	15%
2.Bid evaluation support provided to the assessment of the technical proposal of the ITB;	15%
3.All bills have been checked in detail for correctness in quantity and quality and certified for payment. Weekly highlight reports #2; First Running Bill = 10% Second Running Bill = 10% Final Bill = 10%	30%
4.As built drawing of the completed works submitted to the Employer before final payments to the consultant. Ad-hoc reports #3;	15%
5.List of all deviations and remedial actions identified and taken during the construction period. Part of weekly highlight reports #2;	15%
[To be paid together with milestone 6]	
6.A final report conforming that all the works are in full compliance with the approved specifications, drawings, price and time schedule. Final report #4	10%

7.Construction supervision services provided for the quality control of the construction material, workmanship as well as implementation of the construction schedule;	Ongoing until contractor completes the construction works and hands over the project to the UNDP
TOTAL	100%

11. UNDP and Consultant’s Responsibilities:

UNDP will provide the already available bill of quantity, specifications and drawing to the Site Engineer and introduce him/her to the construction company’s sr. management. ID card will be issued to the site engineer for the day to day access to the UNDP sites and offices.

The consulting engineering firm and Site Engineer shall provide the services in accordance with the terms, conditions and clauses of this TOR and the contract to be signed.
