



**Request for Proposal (RFP)**

Date: 07 April 2010

Dear Sir/Madam,

**Subject: RFP for the establishment of Long Term Agreements with Procurement Services Agents related to pharmaceuticals in support of the UNDP Country Offices for Global Fund for AIDS, Tuberculosis and Malaria (GFATM) Projects**

1. You are hereby invited to submit a proposal for the establishment of Long Term Agreements as per above-mentioned subject and as per enclosed Terms of Reference (TOR).

2. To enable you to submit a proposal, attached are:

- i. Instructions to Offerors ..... (Annex I)
- ii. General Conditions of Contract..... (Annex II)
- iii. Terms of Reference (TOR)..... (Annex III)
- iv. Technical Proposal Submission Form ..... (Annex IV)
- v. Financial Proposal Submission Form ..... (Annex V)
- vi. Bid Security Form..... (Annex VI)

3. Submission of offers by courier service:

Your offer comprising of technical proposal and financial proposal, in separate sealed envelopes, should reach the following address no later than 12 May 2010, by 13:00 hours Copenhagen local time.

UNDP/PSO  
Midtermolen 3,  
DK-2100 Copenhagen Ø  
Denmark  
"ATTENTION: BID OPENING UNIT"  
"SEALED BID NO: RFP 2010/1 - Pharmaceuticals"  
DEADLINE: 12 May 2010 AT 13:00 HRS COPENHAGEN LOCAL TIME  
"NOT TO BE OPENED BY REGISTRY"

4. Submission of offers to a secured email:

Your offer comprising of technical proposal and financial proposal, in emails, should reach the email address of: [LTA.Procurement2010@undp.dk](mailto:LTA.Procurement2010@undp.dk) no later than 12 May 2010, by 13:00 hours Copenhagen

local time with the Subject heading of: **RFP nr: 2010/1 for the Pharmaceuticals**. Markings on Offers remain as Para 3 above.

All offers received after the indicated time and date will be rejected.

4. A pre-bid meeting will be held at the UNDP - Procurement Support Office (PSO), Midtermolen 3, 2100, Copenhagen, Denmark on 26 April 2010 at 14:00 hours Copenhagen local time. Minutes of the pre-bid meeting will be posted on the sites where this tender is advertised as well as any other clarification of points or questions raised before the closure of submissions.

Yours sincerely,

Volker Welter  
Senior Procurement Advisor

## Instructions to Offerors

## A. INTRODUCTION

## 1. General

- (a) UNDP - Procurement Support Office (PSO) wishes to enter into non-exclusive time-bound framework contracts (Long Term Agreements – herein referred to as LTA) with Procurement Services Agents related to pharmaceuticals in support of the UNDP Country Offices for Global Fund for AIDS, Tuberculosis and Malaria (GFATM) Projects as per enclosed Terms of Reference (TOR), as required from time to time during the term of the LTA.
- (b) It will be a provision of such Agreement (s), that UNDP will not be committed to contract any minimum amount of these requirements. UNDP shall not be liable for any cost in the event that no contracts are made under any resulting LTA(s).
- (c) This LTA shall act as (i) technical and financial pre-qualification of Procurement Services Agents and (ii) global framework where the award of actual contract for a specific requirement will be the responsibility of the requesting UNDP Country Office. The requesting UNDP Country Office is responsible for establishing their requirement and shall conduct a secondary bidding exercise among the pre-qualified LTA holders in accordance with the terms and conditions of any resulting LTA(s).
- (d) The requesting UNDP Country Office is responsible for the final selection of the contract holder for the respective requirement.
- (e) The requesting UNDP Country Office shall fund the final commitment.
- (f) The requirement outlined in this Request for Proposal (RFP), represents a global and summarized requirement and provided in good faith and shall not in any way be deemed to be a commitment on the part of UNDP PSO for future contracts.
- (g) The proposed LTA shall be valid for a period of 24 months with the potential of extension for another 12 months, subject to strategic and operational requirements, good performance and absence of major failure by the LTA holders.

## 2. Cost of proposal

The Offeror shall bear all costs associated with the preparation and submission of the Proposal, the UNDP will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the solicitation.

## B. SOLICITATION DOCUMENTS

## 3. Contents of solicitation documents

Proposals will preferably offer services for the total requirement. Proposals offering only part of the requirement will be evaluated on their merits. The Offeror is expected to examine all corresponding instructions, forms, terms and specifications contained in the Solicitation Documents. Failure to comply with these documents will be at the Offeror's risk and may affect the evaluation of the Proposal.

#### 4. Clarification of solicitation documents

A prospective Offeror requiring any clarification of the Solicitation Documents may notify the procuring UNDP entity in writing. The procuring UNDP entity will respond in writing to any request for clarification of the Solicitation Documents that it receives earlier than one week prior to the deadline for the submission of Proposals. Written copies of the procuring UNDP's response (including an explanation of the query but without identifying the source of inquiry) will be published in the same manner as the present RFP. Clarification may be sought in writing to:

Name: Volker Welter

Title of position: Senior Procurement Advisor, Team Leader Special Advisory Team  
Special Advisory Team/UNDP Procurement Support Office / BOM

Email: [lta.correspondence@undp.dk](mailto:lta.correspondence@undp.dk)

#### 5. Amendments of solicitation documents

At any time prior to the deadline for submission of Proposals, the procuring UNDP entity may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Offeror, modify the Solicitation Documents by amendment.

Any amendment will be published in the same manner as the present RFP.

In order to afford prospective Offerors reasonable time in which to take the amendments into account in preparing their offers, the procuring UNDP entity may, at its discretion, extend the deadline for the submission of Proposals.

<b>C. PREPARATION OF THE PROPOSALS</b>
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#### 6. Language of the proposal

The Proposals prepared by the Offeror and all correspondence and documents relating to the Proposal exchanged by the Offeror and the procuring UNDP entity shall be written in the English language. Any printed literature furnished by the Offeror may be written in another language so long as accompanied by an English translation of its pertinent passages in which case, for purposes of interpretation of the Proposal, the English translation shall govern.

#### 7. Documents comprising the proposal

- (a) Proposal submission form; the proposal submission form in Annex IV must be completed and returned with the Proposal
- (b) Technical part of the Proposal, including documentation to demonstrate that the Offeror meets all requirements; In case a proposal will be submitted in paper copy: the Offeror shall prepare three copies of the Technical Proposal, clearly marking each "Original Technical Proposal" and "Copy of Technical Proposal" as appropriate. In the event of any discrepancy between these, the original shall govern. In case of electronic submission only, one copy will be sufficed.
- (c) Financial Proposal, completed in accordance with Clauses 8 and 9; In case a proposal will be submitted in paper copy: the Offeror shall prepare three copies of the Financial Proposal, clearly marking each "Original Financial Proposal" and "Copy of Financial Proposal" as appropriate. In the event of any discrepancy between these, the original shall govern. In case of electronic submission only, one copy will be sufficed.

## 8. The Technical Proposal Form

The Offeror shall structure the technical part of its Proposal as follows:

### (a) Expertise of organization submitting the proposal

This section should provide:

- The corporate orientation to include the year and state/country of incorporation and a brief description of the Offeror's present activities. Note: Focus on procurement services and of the type related to the Proposal.
- The organizational unit(s) that will become responsible for the contract and the general management approach towards a project of this kind; the composition of the team handling the work as well as the short CV's of the key staff handling the future LTA contract (maximum 5).
- The Offeror's should comment on its experience in similar projects and identify the person(s) representing the Offeror's in any future dealing with the UNDP procurement unit
- The Offeror's resources in terms of facilities necessary for the performance of this requirement. It should describe the Offeror's current capabilities/facilities and any plans for their expansion relevant for the evaluation of this offer.

### (b) Technical Compliancy

This section should demonstrate the Offeror's compliancy to the **technical requirements for procurement of pharmaceutical products**).

This section is divided in four parts: The first will explain the Offeror's compliance with model quality assurance systems for procurement agencies as per WHO technical report series N° 937, 2006. Quality control systems should be described in detail.

The second will explain the Offeror understanding with the current GF quality assurance policy for pharmaceuticals and his compliance with this policy while supplying the drugs of the different categories.

The third part will demonstrate the potential of the Offeror for potential response to emergency requirements as there are stocks on hand in warehouses or at manufacturers or other tools to facilitate emergency supply.

The fourth part will demonstrate the Offerors ability to allow for easy monitoring of the progress of outstanding orders by the client (PSO and the CO) as well the type of reports he will provide as well as his capacity to provide timely and regular reporting.

The technical part of the Proposal should NOT contain any pricing information whatsoever on the services offered. Pricing information shall be separated and only contained in the appropriate Price Schedules.

The total number of pages should not exceed two for the first and second sections each and one page for the third and fourth parts each. The possibility exists for attachments if deemed to be required.

## 9. The Financial Proposal Form

The Offeror shall indicate on an appropriate Financial Proposal, as outlined in Annex V in these Solicitation Documents, the handling fee for the drugs it proposes to supply under the contract.

Information which the Offeror considers proprietary, if any, should be clearly marked “proprietary” next to the relevant part of the text and it will then be treated as such.

#### **10. Proposal currencies**

All prices shall be quoted in US Dollars or any convertible currency. However, for price evaluation purposes, all currencies shall be converted to the US Dollars at the prevailing UN Rate of Exchange.

#### **11. Period of validity of proposals**

Proposals shall remain valid for ninety (90) days after the date of Proposal submission prescribed by the procuring UNDP entity, pursuant to the deadline clause. A Proposal valid for a shorter period may be rejected by the procuring UNDP entity on the grounds that it is non-responsive.

In exceptional circumstances, the procuring UNDP entity may solicit the Offeror’s consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. An Offeror granting the request will not be required nor permitted to modify its Proposal.

#### **12. Format and signing of proposals**

The Offeror shall prepare three copies of the Proposal, clearly marking each “Original Proposal” and “Copy of Proposal” as appropriate. In the event of any discrepancy between them, the original shall govern.

The three copies of the Proposal shall be typed or written in indelible ink and shall be signed by the Offeror or a person or persons duly authorised to bind the Offeror to the contract. The latter authorisation shall be indicated by written power-of-attorney accompanying the Proposal.

A Proposal shall contain no interlineations, erasures, or overwriting except, as necessary to correct errors made by the Offeror, in which case such corrections shall be initialed by the person or persons signing the Proposal.

#### **13. Payment**

The requesting UNDP Country Office shall effect payments to the awarded Contractor after acceptance by the requesting UNDP Country Office of the invoices submitted by the Contractor, upon achievement of the agreed milestones.

<b>D. SUBMISSION OF PROPOSAL</b>
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14. The Offeror may submit their proposal either by courier service or by secured email (details stated on the cover page of this tender).

- (a) For submission by courier, the Offeror shall seal the Proposal in one outer and two inner envelopes, as detailed below for courier submissions.

The outer envelope shall be:

addressed to –

UNDP/PSO  
Midtermolen 3,  
DK-2100 Copenhagen Ø  
Denmark

marked with -

“ATTENTION: BID OPENING UNIT”

“SEALED BID NO: 2010/1 – Pharmaceuticals

DEADLINE: 12 May 2010 AT 13:00 HRS COPENHAGEN LOCAL TIME

“NOT TO BE OPENED BY REGISTRY”

Both inner envelopes shall indicate the name and address of the Offeror. The first inner envelope shall contain the information specified in Clause 8 (Technical Proposal Form) above, duly marked “Original” and “Copy of Proposal”. The second inner envelope shall contain the information specified in Clause 9 (Financial Proposal Form) above duly marked “Original” and “Copy of Proposal”.

Note: if the inner envelopes are not sealed and marked as per the instructions in this clause, the procuring UNDP entity will not assume responsibility for the Proposal’s misplacement or premature opening.

- (b) For submission by secured emails, the Offeror shall send the emails to: [LTA.Procurement2010@undp.dk](mailto:LTA.Procurement2010@undp.dk) clearly indicating in the content of the email in the subject matter alongside the number of emails sent by the Offeror. As examples:

From: xxx

Sent: xx May 2010 18:42

To: [LTA.Procurement2010@undp.dk](mailto:LTA.Procurement2010@undp.dk)

Subject: SEALED BID NO: XXX - Pharmaceuticals (Technical Proposal 1/5)

From: xxx

Sent: xx May 2010 18:42

To: [LTA.Procurement2010@undp.dk](mailto:LTA.Procurement2010@undp.dk)

Subject: SEALED BID NO: 2010/1 - Pharmaceuticals (Financial Proposal 1/1)

15. Deadline for submission of proposals

Proposals must be received by the procuring UNDP entity at the address specified under Clause 14 no later than 12 May 2010 AT 13:00 HRS COPENHAGEN LOCAL TIME.

The procuring UNDP entity may, at its own discretion extend this deadline for the submission of Proposals by amending the solicitation documents in accordance with specified under Clause 5

*Amendments of Solicitation Documents*, in which case all rights and obligations of the procuring UNDP entity and Offerors previously subject to the deadline will thereafter be subject to the deadline as extended.

#### **16. Late Proposals**

Any Proposal received by the procuring UNDP entity after the deadline for submission of proposals, pursuant to Clause 15 *Deadline for the submission of proposals*, will be rejected.

#### **17. Modification and withdrawal of Proposals**

The Offeror may withdraw its Proposal after the Proposal's submission, provided that written notice of the withdrawal is received by the procuring UNDP entity prior to the deadline prescribed for submission of Proposals.

The Offeror's withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of clause *Deadline for Submission of Proposals*. The withdrawal notice may also be sent by telex or fax but followed by a signed confirmation copy.

No Proposal may be modified subsequent to the deadline for submission of proposals.

No Proposal may be withdrawn in the Interval between the deadline for submission of proposals and the expiration of the period of proposal validity specified by the Offeror on the Proposal Submission Form.

<b>E. OPENING AND EVALUATION OF PROPOSALS</b>
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#### **18. Opening of proposals**

The procuring entity will open the Proposals in the presence of a Committee formed by the Head of the procuring UNDP entity.

#### **19. Clarification of proposals**

To assist in the examination, evaluation and comparison of Proposals, the UNDP entity may at its discretion, ask the Offeror for clarification of its Proposal. The request for clarification and the response shall be in writing and no change in price or substance of the Proposal shall be sought, offered or permitted.

#### **20. Preliminary examination**

The UNDP entity will examine the Proposals to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the Proposals are generally in order.

Arithmetical errors will be rectified on the following basis: If there is a discrepancy between words and figures the amount in words will prevail.

If the Offeror does not accept the correction of errors, its Proposal will be rejected.

Prior to the detailed evaluation, the UNDP entity will determine the substantial responsiveness of each Proposal to the Request for Proposals (RFP). For purposes of these Clauses, a substantially responsive Proposal is one which conforms to all the terms and conditions of the RFP without material deviations. The UNDP entity's determination of a Proposal's responsiveness is based on the contents of the Proposal itself without recourse to extrinsic evidence.



A Proposal determined as not substantially responsive will be rejected by the UNDP entity and may not subsequently be made responsive by the Offeror by correction of the non-conformity.

## 21. Evaluation and comparison of proposals

A two-stage procedure is utilized in evaluating the proposals.

### Two-Stage Procedure

**Stage 1** - The evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness applying the evaluation criteria, sub-criteria, and point system specified. Each responsive Proposal will be given a technical score (TS). A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP, and particularly the Terms of Reference, if the Offeror fails to score 70% for items 2.1 or 2.2 respectively or if it fails to achieve the minimum technical score of 70% out of the obtainable score of 1000

Offerors, who have attained minimum 70% score in the technical evaluation, will be considered for further financial evaluation.

**Stage 2** – All offers that attained 70% and above in the technical evaluation, will have their Financial Proposals opened.

Among these Offerors a maximum of six will be selected as LTA holder on the basis of the rating of their financial proposal. The next two will be selected as a reserve LTA holder in case there is a need for replacement of one of the originally selected LTA holders.

### Technical Evaluation Criteria

Summary of Technical Proposal Evaluation Forms		Score Weight	Points Obtainable	Company / Other Entity				
				A	B	C	D	E
1.	Expertise of Firm / Organisation submitting Proposal	40%	400					
2.	Technical Compliancy	60%	600					
<b>Total</b>			<b>1000</b>					

Evaluation forms for technical proposals follow on the next two pages. The obtainable number of points specified for each evaluation criterion indicates the relative significance or weight of the item in the overall evaluation process. The Technical Proposal Evaluation Forms are:

Form 1: Expertise of Firm / Organisation Submitting Proposal

Form 2: Technical Compliancy

Note: The score weights and points obtainable in the evaluation sheet are tentative and should be changed depending on the need or major attributes of technical proposal.

### **Detail Breakdown of Technical Proposal Evaluation Forms**

Technical Proposal Evaluation Form 1		Points obtainable	Company / Other Entity				
			A	B	C	D	E
Expertise of firm / organisation submitting proposal							
1.1	Corporate orientation - the year and state/country of incorporation	25					
1.2	Corporate orientation - Litigation and Arbitration history	25					
1.3	Corporate orientation - Capability which is likely to affect implementation (i.e. loose consortium, holding company or one firm, size of the firm / organization)	50					
1.4	Corporate orientation - a brief description of the Offerors current activities	50					
1.5	Corporate orientation - The unit(s) that will become responsible for the contract, the general management approach towards the project including project financing capacity, project management controls and identify the team/person(s) representing the Offeror in any future dealing with the UNDP procurement unit (To what degree does the Offeror understand the task?, Have the important aspects of the task been addressed in sufficient detail?)	100					
1.6	Extent to which any work would be subcontracted (subcontracting carries additional risks which may affect project implementation, but properly done it offers a chance to access specialised skills.	50					
1.7	Relevance of : - Specialized Knowledge - Experience on Similar Programme / Projects - Experience on Projects in the Region Work for UNDP/ major multilateral/ or bilateral programmes	100					
Total		400					

Technical Proposal Evaluation Form 2		Points Obtainable	Company / Other Entity				
			A	B	C	D	E
Technical Compliancy							
2.1	Compliance with the model quality assurance systems for procurement agencies as defined by WHO Technical report Series No.937, 2006	150					
2.2	Compliance to the GF quality assurance requirements for pharmaceutical products	250					
2.3	Capacity to provide the same drugs as emergency supplies	50					
2.4	Potential for outside on line monitoring of the UNDP orders; strengths in reporting and monitoring of performance	150					
	Total	600					

**Notes:**

- Lines 2.1 and 2.2 are exclusion criteria: failing a minimum of 70 % of the points of each of the lines will result in the exclusion of the Offeror for the remaining evaluation.
- The Offerors will need an average of 70 % or 700 out of 1000 points to qualify for the next stage.

<b>F. AWARD OF CONTRACT</b>
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**22. Award criteria, award of contract**

The procuring UNDP entity reserves the right to accept or reject any Proposal, and to annul the solicitation process and reject all Proposals at any time prior to award of contract, without thereby incurring any liability to the affected Offeror or any obligation to inform the affected Offeror or Offerors of the grounds for the UNDP entity's action

Prior to expiration of the period of proposal validity, the procuring UNDP entity will award the contract to the qualified Offerors whose Proposals after being evaluated have passed the technical evaluation and achieved the highest and financial scores.

The procuring UNDP entity reserves the right to split an award/award and to consider localized award/awards between any Offerors in any combination, as it may deem appropriate without prior written acceptance of the Offeror(s) .

**23. Purchaser's right to vary requirements at time of award**

The requesting UNDP Country Office reserves the right at the time of making the award of contract to increase or decrease the requirement specified in the secondary bidding without any change in unit price or other terms and conditions.

**24. Signing of the LTA**

Within 15 days of receipt of the LTA, the successful Offeror shall sign and date the contract and return it to the UNDP PSO.

**25. Bid security**

The Offeror shall provide the bid security in the amount of 20 000 US \$ valid for at least 120 days Please use form in annex 6.

Failure of the Offeror to comply with this requirement shall constitute sufficient grounds for the annulment of the validity of their Proposal.

**26. Notification of award**

Prior to the expiration of the period of validity of the proposal, the UNDP will send the successful Offeror the LTA. The LTA may only be accepted by the Offeror signing and returning an acknowledgement copy of it as per Clause 24.

**26. Vendor protest**

UNDP's vendor protest procedure is intended to afford an opportunity to appeal to persons or firms not awarded a purchase order or contract in a competitive procurement process. **It is not available to non-responsive or non-timely proposers/bidders or when all proposals/bids are rejected. 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/procurement/protest.shtml>.

**GENERAL TERMS AND CONDITIONS FOR GOODS**

**1. ACCEPTANCE OF THE PURCHASE ORDER**

This Purchase Order may only be accepted by the Supplier's signing and returning an acknowledgement copy of it or by timely delivery of the goods in accordance with the terms of this Purchase Order, as herein specified. Acceptance of this Purchase Order shall result in a contract between the Parties under which the rights and obligations of the Parties shall be governed solely by the terms and conditions of this Purchase Order, including these General Conditions. No additional or inconsistent provisions proposed by the Supplier shall bind UNDP unless agreed to in writing by a duly authorized official of UNDP.

**2. Payment**

- 2.1 UNDP shall, on fulfillment of the Delivery Terms, unless otherwise provided in this Purchase Order, make payment within 30 days of receipt of the Supplier's invoice for the goods and reception of the goods specified in this Purchase Order.
- 2.2 Payment against the invoice referred to above will reflect any discount shown under the payment terms of this Purchase Order, provided payment is made within the period required by such payment terms.
- 2.3 Unless authorized by UNDP, the Supplier shall submit one invoice in respect of this Purchase Order, and such invoice must indicate the Purchase Order's identification number. Payments for partial deliveries can only be made after authorization by PSO and/or special provisions in the contract.
- 2.4 Late delivery will result in the application of penalties

**3. TAX EXEMPTION**

- 3.1 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 utilities 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 UNDP's exemption from such taxes, duties or charges, the Supplier shall immediately consult with UNDP to determine a mutually acceptable procedure.
- 3.2 Accordingly, the Supplier authorizes UNDP to deduct from the Supplier's invoice any amount representing such taxes, duties or charges, unless the Supplier has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically authorized the Supplier to pay such taxes, duties or charges under protest. In that event, the Supplier shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

**4. RISK OF LOSS**

Risk of loss, damage to or destruction of the goods shall be governed in accordance with CIF Incoterms 2000, unless otherwise agreed upon by the Parties on the front side of this Purchase Order.

**5. EXPORT LICENCES**

Notwithstanding any INCOTERM 2000 used in this Purchase Order, the Supplier shall obtain any export licences required for the goods.

**6. FITNESS OF GOODS/PACKAGING**

The Supplier warrants that the goods, including packaging, conform to the specifications for the goods ordered under this Purchase Order and are fit for the purposes for which such goods are ordinarily used and for purposes expressly made known to the Supplier by UNDP, and are free from defects in workmanship and materials. The Supplier also warrants that the goods are contained or packaged adequately to protect the goods.

**7. INSPECTION**

7.1 UNDP shall have a reasonable time after delivery of the goods to inspect them and to reject and refuse acceptance of goods not conforming to this Purchase Order; payment for goods pursuant to this Purchase Order shall not be deemed an acceptance of the goods.

7.2 Inspection prior to shipment does not relieve the Supplier from any of its contractual obligations.

**8. INTELLECTUAL PROPERTY INFRINGEMENT**

The Supplier warrants that the use or supply by UNDP of the goods sold under this Purchase Order does not infringe any patent, design, trade-name or trade-mark. In addition, the Supplier shall, pursuant to this warranty, indemnify, defend and hold UNDP and the United Nations harmless from any actions or claims brought against UNDP or the United Nations pertaining to the alleged infringement of a patent, design, trade-name or trade-mark arising in connection with the goods sold under this Purchase Order.

**9. RIGHTS OF UNDP**

In case of failure by the Supplier to fulfill its obligations under the terms and conditions of this Purchase Order, including but not limited to failure to obtain necessary export licenses, or to make delivery of all or part of the goods by the agreed delivery date or dates, UNDP may, after giving the Supplier reasonable notice to perform and without prejudice to any other rights or remedies, exercise one or more of the following rights:

- (a) Procure all or part of the goods from other sources, in which event UNDP may hold the Supplier responsible for any excess cost occasioned thereby.
- (b) Refuse to accept delivery of all or part of the goods.
- (c) Cancel this Purchase Order without any liability for termination charges or any other liability of any kind of UNDP.

**10. LATE DELIVERY**

Without limiting any other rights or obligations of the parties hereunder, if the Supplier will be unable to deliver the goods by the delivery date(s) stipulated in this Purchase Order, the Supplier shall (i) immediately consult with UNDP to determine the most expeditious means for delivering the goods and (ii) use an expedited means of delivery, at the Supplier's cost (unless the delay is due to Force Majeure), if reasonably so requested by UNDP.

Notwithstanding the above, late delivery will trigger penalties of an amount of 1 % per day of the value of the items delayed if not otherwise agreed upon in the contract.

**11. ASSIGNMENT AND INSOLVENCY**

11.1 The Supplier shall not, except after obtaining the written consent of UNDP, assign, transfer, pledge or make other disposition of this Purchase Order, or any part thereof, or any of the Supplier's rights or obligations under this Purchase Order.

11.2 Should the Supplier become insolvent or should control of the Supplier change by virtue of insolvency, UNDP may, without prejudice to any other rights or remedies, immediately terminate this Purchase Order by giving the Supplier written notice of termination.

**12. USE OF UNDP OR UNITED NATIONS NAME OR EMBLEM**

The Supplier shall not use the name, emblem or official seal of UNDP or the United Nations for any purpose.

**13. PROHIBITION ON ADVERTISING**

The Supplier shall not advertise or otherwise make public that it is furnishing goods or services to UNDP without specific permission of UNDP in each instance.

**14. CHILD LABOUR**

The Supplier represents and warrants that neither it nor any of its affiliates 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.

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

**15. MINES**

The Supplier represents and warrants that neither it nor any of its affiliates 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.

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

**16. 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, or relating to this Purchase Order 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**

Unless, any such dispute, controversy or claim between the Parties arising out of or relating to this Purchase Order or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this Section within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, including its provisions on applicable law. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

**17. PRIVILEGES AND IMMUNITIES**

Nothing in or related to these General Terms and Conditions or this Purchase Order shall be deemed a waiver of any of the privileges and immunities of the United Nations, including its subsidiary organs.

**18. SEXUAL EXPLOITATION:**

- 18.1 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.
- 18.2 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.

**19. 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.

**20. AUTHORITY TO MODIFY:**

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possess the authority to agree on behalf of UNDP to any modification of or change in this Agreement, 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 Agreement signed by the Contractor and jointly by the UNDP Authorized Official.

## Terms of Reference (TOR)

### 1. Background

Since its creation in 2002, the Global Fund has become the main source of finance for programs to fight AIDS, Tuberculosis and Malaria, with approved funding of US\$ 11.4 billion for more than 550 programs in 136 countries. It provides a quarter of all international financing for AIDS globally, two-thirds for tuberculosis and three quarters for malaria

In late 2002, UNDP began its partnership with the Global Fund. Since its inception, the UNDP-GFATM partnership has grown significantly from managing a single USD 6.7 million GFATM grant in Haiti in 2002 to currently being Principal Recipient (PR) in 26 countries managing 70 active grants totaling approximately USD \$1.2 billion (as of 23 Dec 2009) in:

- |  |                           |
|--|---------------------------|
| • Angola                                     | • Maldives                |
| • Belarus                                    | • Mauritania              |
| • Bolivia                                    | • Montenegro              |
| • Bosnia                                     | • Nepal                   |
| • Central African Republic                   | • Niger                   |
| • Chad                                       | • São Tomé and Príncipe   |
| • Cuba                                       | • Sudan – North and South |
| • The Democratic Republic of the Congo (DRC) | • Syria                   |
| • El Salvador                                | • Tajikistan              |
| • Equatorial Guinea                          | • Togo                    |
| • Iran                                       | • West Bank and Gaza      |
| • Iraq                                       | • Yemen                   |
| • Liberia                                    | • Zimbabwe                |

In its role as PR, UNDP is responsible for the financial and programmatic management of the grant, as well as the procurement and supply chain management of health and non-health products. In all cases, the implementation of the grants must be done in accordance with UNDP policies and procedures as well as the policies and guidelines of the GFATM.

Out of the above mentioned grant amount, approximately 60 – 70% of the volume constitute procurement of goods and services.

### 2. Purpose of the RFP

Refer Annex 1 A. 1.

### 3. Scope of Work

UNDP is seeking private or public sector organisation/institution to act as Procurement Service Agents for pharmaceuticals in support of the UNDP Country Offices for Global Fund for AIDS, Tuberculosis and Malaria (GFATM) Project. This responsibility requires the following services:

- Procurement of medicines, insurance and freight
- Total compliancy to the GFATM's Revised Quality Assurance Policy effective 1 July 2009 and/or its future amendments



- A system for monitoring progress on orders and regular reporting on progress with orders for country offices

#### **4. Concept of the proposed LTA**

UNDP works under the principle of delegation of authority to Country Offices and/or decentralised operation. As such, each Country Office is in charge of its own operation including that for procurement.

UNDP PSO aims to strengthen PSM activities and to mitigate risk to UNDP by establishing framework LTAs. Consequently, the award of any actual contract for a specific requirement will be the responsibility of the requesting UNDP Country Office.

In order to support UNDP's Financial Regulations and Rules especially pertaining to Best Value for Money and Fairness, Integrity, Transparency – the requesting UNDP Country Office shall conduct a secondary bidding exercise among the pre-qualified LTA holders in accordance with the terms and conditions of any resulting LTA(s). It is envisaged that a maximum of 6 pre-qualified LTA holders shall be selected consequent to this RFP. Out of these Country Offices are expected to issue secondary tender exercises to at least three (3) when possible. Consequently, the award of the Purchase Order shall be to the lowest bidder compliant with the conditions, *ceteris paribus*.

PSO will be involved in the evaluation of the result of these second bidding exercises and will clear the final result before the CO will place the PO.

#### **5. Monitoring**

The LTA shall be monitored by UNDP PSO based on certain Key Performance Indicators.

These key performance indicators are price, compliance with the delivery times and quality of the products supplied.

Failure to meet UNDP expectations may result in the cancelling of the LTA contract.

Typical problems that would valid for cancelation of the contract are the following:

- Failure to respond to the request for a quotation within a reasonable timeframe
- Average prices offered by the LTA holder ,exceeding by 15 % those of the awarded contractor
- Non respect of the agreed delivery times
- Quality problems with the products supplied (this includes supply from non approved sources or products that fail quality control tests)

The highest ranked selected reserve will be designed as a replacement in case a LTA contract is cancelled.

#### **6. Handling Fee**

The spirit of the LTA shall be based on Open Book Accounting principle. Consequently, the definition of handling fee is limited to charges for services rendered by the Procurement Services Agents under the LTA, on a percentage basis, over and above the actual cost of the drug's Ex works price.

The secondary bidding exercises will in general request for quotations CIF with costs of the goods, margin, insurance and

In order to recover its costs from providing the services, this RFP allows the provision of charging a minimum handling fee (a fixed amount and not governed by percentage) for minimum order value of US\$20,000 (or its equivalent in other currencies). The evaluation of the secondary bidding exercise will though be based on the total cost.

#### **7. Additional information**

Offerors need to be aware of certain restrictions in certain countries with regards to Drug Registration, Patent Rights, specific language on labels and leaflets i.e. Portuguese for usage in Angola and minimum shelf life.

**PROPOSAL SUBMISSION FORM**

Dear Sir / Madam,

Having examined the Solicitation Documents, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide, for the sum as may be ascertained in accordance with the Financial Proposal attached herewith and made part of this Proposal, for the following elements of this Request for Proposal (indicate yes or no for each of the product groups):

Product group	Proposal submitted
1. ARV drugs	(YES / NO)
2. Drugs for OI	(YES / NO)
3. Anti-malarials (prevention and treatment)	(YES / NO)
4. Other essential drugs *	(YES / NO)

- These are drugs for prevention and care for AIDS, Malaria and Tuberculosis with the exception of first and second line TB drugs.

We undertake, if our Proposal is accepted, to commence and complete delivery of all services specified in the contract within the time frame stipulated.

We agree to abide by this Proposal for a period of 90 days from the date fixed for opening of Proposals in the Request for Proposal, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

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

Dated this day /month                      of year

Signature

(In the capacity of)

Duly authorized to sign Proposal for and on behalf of

**Financial Proposal**

The Contractor is asked to prepare the Financial proposal as a separate envelope from the rest of the RFP response as indicated in Section C Clause 9 of the Instruction to Offerors.

All prices/rates quoted must be exclusive of all taxes, since the UNDP is exempt from taxes. '

Percentage of handling fee over and above the actual cost of the drug's Ex Works price: \_\_\_\_\_ %

Minimum handling fee \_\_\_\_\_ (Currency \_\_\_\_\_)

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_ (company name)

\_\_\_\_\_  
Signature/Stamp of Entity/Date

Name of representative:

Address:

Telephone/Fax:

**BID SECURITY FORM**

To: UNDP/PSO  
Midtermolen 3  
P.O. Box 2530  
DK-2100 Copenhagen Ø  
DENMARK

UNDP/PSO Invitation to Bid Reference: 2010/1

Guarantee No.:

Amount: USD [\*\*\*PSO TO ENTER AMOUNT]

Date of Expiry: [\*\*\*PSO TO ENTER DATE]

At the request of *[name and address of Offeror]*, we hereby guarantee you irrevocably for the above maximum amount to secure that they fulfil their obligations as tenderer in accordance with their bid *[reference]* covering *[description of services]*.

Your claim(s), if any, duly made and presented to us under the guarantee will be honoured on your first demand also stating that *[name of Offeror]* has not fulfilled their above tender obligations towards you.

Where we have received no such claim by the above expiry date at the latest, we stand released from our liability under this guarantee.

We will reduce the guarantee amount by any such amount, as we have had to pay in order to meet your claim(s) duly made and presented under the guarantee.

[Note: PSO does not normally return performance securities on expiry.]

Yours faithfully

SIGNATURE AND SEAL OF THE GUARANTOR

Date: .....

.....

Name of Bank: .....

Address: .....

.....