

INVITATION TO BID

**THE CONSTRUCTION OF AN INCINERATOR HOUSING
COMPOUND IN
LUSAKA, ZAMBIA**

ITB/Ref/GF06-2016



*Empowered lives.
Resilient nations.*

United Nations Development Programme

August, 2016

Section 1. Letter of Invitation

UNDP Zambia
August 3, 2016

UNDP/ZAMBIA NO. ITB/GF06-2016

Subject: THE CONSTRUCTION OF AN INCINERATOR HOUSING COMPOUND IN LUSAKA, ZAMBIA

Deadline for Submission of Bids: 30TH August, 2016 at 12:00 Noon (Zambian time)

Dear Sir/Madam,

The United Nations Development Programme (UNDP) Zambia invites you to submit a bid for the Construction of Incinerator infrastructure and associated external works at Zambia Medicines Regulatory Authority (ZAMRA), Lusaka, Zambia.

All bids are subject to the Instructions to Bidders and such other provisions, specifications and instructions as are attached or incorporated herein by reference (hereinafter collectively called " Invitation to Bid" or "ITB"). Solicitation documents hereunder include:

This ITB includes the following documents:

- Section 1 – This Letter of Invitation
- Section 2 – Instructions to Bidders (including Data Sheet)
- Section 3 – Schedule of Requirements and Technical Specifications
- Section 4 – Bid Submission Form
- Section 5 – Documents Establishing the Eligibility and Qualifications of the Bidder
- Section 6 – Technical Bid Form
- Section 7 – Price Schedule Form
- Section 8 – Form for Bid Security
- Section 9 – Form for Performance Security
- Section 10 –Form for Advanced Payment Guarantee *[disregard, if not required as per Data Sheet]*
- Section 11 – Contract to be Signed, including General Terms and Conditions
- Annexes: Including relevant drawings, geotechnical surveys, and other relevant documentation

A pre-bid conference will take place to facilitate bidders about the proposed construction works and to familiarize with the UNDP procurement process (See Bid data Sheet No. 8):-

- **Site Visit on 9th August, 2016 at 9AM at the proposed site: Zambia Medicines Regulatory Authority (ZAMRA) Lot 2350/M along Kenneth Kaunda International Airport Road;**
- **Question & Answer session: 9th August, 2016 at 10AM (ZAMRA offices)**

Bidders are advised to attend the pre-bid site visit and conference (on their own cost and responsibility). Arrangements have been made for site visit to be held as per above schedule containing date, time and location. Bidders will be required to sign an attendance form. Any clarification or changes to the bid solicitation resulting from the site visit will be included as an amendment to the bid solicitation.

The pre-bid meeting minutes, and any further enquiries received on or before the deadline stated in the ITB/GF06/2016, will be documented and posted on the designated UNDP website. No inquiries will be accepted after 5 working days prior to the deadline for submission of bids stated in the ITB.

You are kindly requested to submit a communication to UNDP on the following e-mail addresses Dick.Kampamba@undp.org, Chiowya.Wong-Klarin@undp.org advising whether your company intends to

submit a BID. If that is not the case, UNDP would appreciate your indicating the reason, for our records

Should you require any clarification, kindly communicate with the contact person identified in the attached Data Sheet as the focal point for queries on this ITB.

Your offer, comprising of a **Technical Bid and Price Schedule, together in a sealed envelope**, should be submitted either by hand/post or email to the following address:

**United Nations Development Programme,
UN House, 9350 Alick Nkhata Rd, P.O. Box 31966, Lusaka, Zambia
Email: procurement.zm@undp.org
Subject: ITB/GF06/2016**

Deadline for Submission of Bids: 30th August, 2016 at 12:00 Noon (Zambian time)

This letter is not to be construed in any way as an offer to contract with your company.

UNDP looks forward to receiving your Bid and thanks you in advance for your interest in UNDP procurement opportunities

Yours sincerely,

Martim Faria e Maya
UNDP Zambia
Country Director

Section 2: Instruction to Bidders

Definitions

- a) *“Bid”* refers to the Bidder’s response to the Invitation to Bid, including the Bid Submission Form, Technical Bid and Price Schedule and all other documentation attached thereto as required by the ITB.
- b) *“Bidder”* refers to any legal entity that may submit, or has submitted, a Bid for the supply of goods and provision of related services requested by UNDP.
- c) *“Contract”* refers to the legal instrument that will be signed by and between the UNDP and the successful Bidder, all the attached documents thereto, including the General Terms and Conditions (GTC) and the Appendices.
- d) *“Country”* refers to the country indicated in the Data Sheet.
- e) *“Data Sheet”* refers to such part of the Instructions to Bidders used to reflect conditions of the tendering process that are specific for the requirements of the ITB.
- f) *“Day”* refers to calendar day.
- g) *“Goods”* refer to any tangible product, commodity, article, material, wares, equipment, assets or merchandise that UNDP requires under this ITB.
- h) *“Government”* refers to the Government of the country where the goods and related services provided/rendered specified under the Contract will be delivered or undertaken.
- i) *“Instructions to Bidders”* refers to the complete set of documents which provides Bidders with all information needed and procedures to be followed in the course of preparing their Bid
- j) *“ITB”* refers to the Invitation to Bid consisting of instructions and references prepared by UNDP for purposes of selecting the best supplier or service provider to fulfil the requirement indicated in the Schedule of Requirements and Technical Specifications.
- k) *“LOI”* (Section 1 of the ITB) refers to the Letter of Invitation sent by UNDP to Bidders.
- l) *“Material Deviation”* refers to any contents or characteristics of the bid that is significantly different from an essential aspect or requirement of the ITB, and (i) substantially alters the scope and quality of the requirements; (ii) limits the rights of UNDP and/or the obligations of the offeror; and (iii) adversely impacts the fairness and principles of the procurement process, such as those that compromise the competitive position of other offerors.
- m) *“Schedule of Requirements and Technical Specifications”* refers to the document included in this ITB as Section 3 which lists the goods required by UNDP, their specifications, the related services, activities, tasks to be performed, and other information pertinent to UNDP’s receipt and acceptance of the goods.

- n) “*Services*” refers to the entire scope of tasks related or ancillary to the completion or delivery of the goods required by UNDP under the ITB.
- o) “*Supplemental Information to the ITB*” refers to a written communication issued by UNDP to prospective Bidders containing clarifications, responses to queries received from prospective Bidders, or changes to be made in the ITB, at any time after the release of the ITB but before the deadline for the submission of Bid.

A. GENERAL

1. UNDP hereby solicits Bids as a response to this Invitation to Bid (ITB). Bidders must strictly adhere to all the requirements of this ITB. No changes, substitutions or other alterations to the rules and provisions stipulated in this ITB may be made or assumed unless it is instructed or approved in writing by UNDP in the form of Supplemental Information to the ITB.
2. Submission of a Bid shall be deemed as an acknowledgement by the Bidder that all obligations stipulated by this ITB will be met and, unless specified otherwise, the Bidder has read, understood and agreed to all the instructions in this ITB.
3. Any Bid submitted will be regarded as an offer by the Bidder and does not constitute or imply the acceptance of any Bid by UNDP. UNDP is under no obligation to award a contract to any Bidder as a result of this ITB.
4. UNDP implements a policy of zero tolerance on proscribed practices, including fraud, corruption, collusion, unethical practices, and obstruction. UNDP is committed to preventing, identifying and addressing all acts of fraud and corrupt practices against UNDP as well as third parties involved in UNDP activities. (See [http://www.undp.org/about/transparencydocs/UNDP Anti Fraud Policy English FINAL_june 2011.pdf](http://www.undp.org/about/transparencydocs/UNDP_Anti_Fraud_Policy_English_FINAL_june_2011.pdf) and [http://www.undp.org/content/undp/en/home/operations/procurement/procurement protests/](http://www.undp.org/content/undp/en/home/operations/procurement/procurement_protests/) for full description of the policies)
5. In responding to this ITB, UNDP requires all Bidders to conduct themselves in a professional, objective and impartial manner, and they must at all times hold UNDP's interests paramount. Bidders must strictly avoid conflicts with other assignments or their own interests, and act without consideration for future work. All Bidders found to have a conflict of interest shall be disqualified. Without limitation on the generality of the above, Bidders, and any of their affiliates, shall be considered to have a conflict of interest with one or more parties in this solicitation process, if they:
 - 5.1 Are, or have been associated in the past, with a firm or any of its affiliates which have been engaged UNDP to provide services for the preparation of the design, Schedule of Requirements and Technical Specifications, cost analysis/estimation, and other documents to be used for the procurement of the goods and related services in this selection process;
 - 5.2 Were involved in the preparation and/or design of the program/project related to the goods and related services requested under this ITB; or

- 5.3 Are found to be in conflict for any other reason, as may be established by, or at the discretion of, UNDP.

In the event of any uncertainty in the interpretation of what is potentially a conflict of interest, Bidders must disclose the condition to UNDP and seek UNDP's confirmation on whether or not such conflict exists.

6. Similarly, the following must be disclosed in the Bid:

- 6.1 Bidders who are owners, part-owners, officers, directors, controlling shareholders, or key personnel who are family of UNDP staff involved in the procurement functions and/or the Government of the country or any Implementing Partner receiving the goods and related services under this ITB; and
- 6.4 Others that could potentially lead to actual or perceived conflict of interest, collusion or unfair competition practices.

Failure of such disclosure may result in the rejection of the Bid.

7. The eligibility of Bidders that are wholly or partly owned by the Government shall be subject to UNDP's further evaluation and review of various factors such as being registered as an independent entity, the extent of Government ownership/share, receipt of subsidies, mandate, access to information in relation to this ITB, and others that may lead to undue advantage against other Bidders, and the eventual rejection of the Bid.
8. All Bidders must adhere to the UNDP Supplier Code of Conduct, which may be found at this link: <http://web.ng.undp.org/procurement/undp-supplier-code-of-conduct.pdf>

B. CONTENTS OF BID

9. Sections of Bid

Bidders are required to complete, sign and submit the following documents:

- 9.1 Bid Submission Cover Letter Form (see ITB Section 4);
- 9.2 Documents Establishing the Eligibility and Qualifications of the Bidder (see ITB Section 5);
- 9.3 Technical Bid (see prescribed form in ITB Section 6);
- 9.4 Price Schedule (see prescribed form in ITB Section 7);
- 9.5 Bid Security, if applicable (if required and as stated in the DS nos. 9-11, see prescribed Form in ITB Section 8);
- 9.6 Any attachments and/or appendices to the Bid (including all those specified under the **Data Sheet**)

10. Clarification of Bid

- 10.1 Bidders may request clarification of any of the ITB documents no later than the number of days indicated in the **Data Sheet** (DS no. 16) prior to the Bid submission date. Any request for clarification must be sent in writing via courier or through electronic means to the UNDP address indicated in the **Data Sheet** (DS no. 17).

UNDP will respond in writing, transmitted by electronic means and will transmit copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Bidders who have provided confirmation of their intention to submit a Bid.

- 10.2 UNDP shall endeavor to provide such responses to clarifications in an expeditious manner, but any delay in such response shall not cause an obligation on the part of UNDP to extend the submission date of the Bid, unless UNDP deems that such an extension is justified and necessary.

11. Amendment of Bid

- 11.1 At any time prior to the deadline for submission of Bid, UNDP may for any reason, such as in response to a clarification requested by a Bidder, modify the ITB in the form of a Supplemental Information to the ITB. All prospective Bidders will be notified in writing of all changes/amendments and additional instructions through Supplemental Information to the ITB and through the method specified in the **Data Sheet** (DS No. 18).
- 11.2 In order to afford prospective Bidders reasonable time to consider the amendments in preparing their Bid, UNDP may, at its discretion, extend the deadline for submission of Bid, if the nature of the amendment to the ITB justifies such an extension.

C. PREPARATION OF BID

12. Cost

The Bidder shall bear any and all costs related to the preparation and/or submission of the Bid, regardless of whether its Bid was selected or not. UNDP shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.

13. Language

The Bid, as well as any and all related correspondence exchanged by the Bidder and UNDP, shall be written in the language (s) specified in the **Data Sheet** (DS No. 4). Any printed literature furnished by the Bidder written in a language other than the language indicated in the **Data Sheet**, must be accompanied by a translation in the preferred language indicated in the **Data Sheet**. For purposes of interpretation of the Bid, and in the event of discrepancy or inconsistency in meaning, the version translated into the preferred language shall govern. Upon conclusion of a contract, the language of the contract shall govern the relationship between the contractor and UNDP.

14. Bid Submission Form

The Bidder shall submit the Bid Submission Form using the form provided in Section 4 of this ITB.

15. Technical Bid Format and Content

Unless otherwise stated in the **Data Sheet** (DS no. 28), the Bidder shall structure the Technical Bid as follows:

- 15.1 Expertise of Firm/Organization – this section should provide details regarding management structure of the organization, organizational capability/resources, and experience of organization/firm, the list of projects/contracts (both completed and on-going, both domestic and international) which are related or similar in nature to the requirements of the ITB, manufacturing capacity of plant if Bidder is a manufacturer, authorization from the manufacturer of the goods if Bidder is not a manufacturer, and proof of financial stability and adequacy of resources to complete the delivery of goods and provision of related services required by the ITB (see ITB Clause 18 and DS No. 26 for further details). The same shall apply to any other entity participating in the ITB as a Joint Venture or Consortium.
- 15.2 Technical Specifications and Implementation Plan – this section should demonstrate the Bidder's response to the Schedule of Requirements and Technical Specifications by identifying the specific components proposed; how each of the requirements shall be met point by point; providing a detailed specification and description of the goods required, plans and drawings where needed; the essential performance characteristics, identifying the works/portions of the work that will be subcontracted; a list of the major subcontractors, and demonstrating how the bid meets or exceeds the requirements, while ensuring appropriateness of the bid to the local conditions and the rest of the project operating environment during the entire life of the goods provided. Details of technical bid must be laid out and supported by an Implementation Timetable, including Transportation and Delivery Schedule where needed, that is within the duration of the contract as specified in the **Data Sheet** (DS noS. 29 and 30).

Bidders must be fully aware that the goods and related services that UNDP require may be transferred, immediately or eventually, by UNDP to the Government partners, or to an entity nominated by the latter, in accordance with UNDP's policies and procedures. All bidders are therefore required to submit the following in their bids:

- a) A statement of whether any import or export licences are required in respect of the goods to be purchased or services to be rendered, including any restrictions in the country of origin, use or dual use nature of the goods or services, including any disposition to end users;
 - b) Confirmation that the Bidder has obtained license of this nature in the past, and have an expectation of obtaining all the necessary licenses, should their bid be rendered the most responsive; and
 - c) Complete documentation, information and declaration of any goods classified or may be classified as "Dangerous Goods".
- 15.3 Management Structure and Key Personnel – This section should include the comprehensive curriculum vitae (CVs) of key personnel that will be assigned to support the implementation of the technical bid, clearly defining their roles and responsibilities. CVs should establish competence and demonstrate qualifications in areas relevant to the requirements of this ITB.

In complying with this section, the Bidder assures and confirms to UNDP that the personnel being nominated are available to fulfil the demands of the Contract during its stated full term. If any of the key personnel later becomes unavailable, except for unavoidable reasons such as death or medical incapacity, among other possibilities, UNDP reserves the right to render the Bid non-responsive. Any deliberate substitution of personnel arising from unavoidable reasons, including delay in the implementation of the project of programme through no fault of the Bidder, shall be made only with UNDP's acceptance of the justification for substitution, and UNDP's approval of the qualification of the replacement who shall be either of equal or superior credentials as the one being replaced.

15.4 Where the **Data Sheet** requires the submission of the Bid Security, the Bid Security shall be included along with the Technical Bid. The Bid Security may be forfeited by UNDP, and reject the Bid, in the event of any or any combination of the following conditions:

- a) If the Bidder withdraws its offer during the period of the Bid Validity specified in the **Data Sheet** (DS no. 11), or;
- b) If the Bid Security amount is found to be less than what is required by UNDP as indicated in the **Data Sheet** (DS no. 9), or;
- c) In the case the successful Bidder fails:
 - i. to sign the Contract after UNDP has awarded it;
 - ii. to comply with UNDP's variation of requirement, as per ITB Clause 35; or
 - iii. to furnish Performance Security, insurances, or other documents that UNDP may require as a condition to rendering effective the contract that may be awarded to the Bidder.

16. Price Schedule

The Price Schedule shall be prepared using the attached standard form (Section 7). It shall list all major cost components associated with the goods and related services, and the detailed breakdown of such costs. All goods and services described in the Technical Bid must be priced separately on a one-to-one correspondence. Any output and activities described in the Technical Bid but not priced in the Price Schedule, shall be assumed to be included in the prices of the items or activities, as well as in the final total price of the bid.

17. Currencies

All prices shall be quoted in the currency indicated in the **Data Sheet** (DS no. 15). However, where Bids are quoted in different currencies, for the purposes of comparison of all Bid:

- 17.1 UNDP will convert the currency quoted in the Bid into the UNDP preferred currency, in accordance with the prevailing UN operational rate of exchange on the last day of submission of Bid; and
- 17.2 In the event that the Bid found to be the most responsive to the ITB requirement is

quoted in another currency different from the preferred currency as per **Data Sheet** (DS no. 15), then UNDP shall reserve the right to award the contract in the currency of UNDP's preference, using the conversion method specified above.

18. Documents Establishing the Eligibility and Qualifications of the Bidder

18.1 The Bidder shall furnish documentary evidence of its status as an eligible and qualified vendor, using the forms provided under Section 5, Bidder Information Forms. In order to award a contract to a Bidder, its qualifications must be documented to UNDP's satisfactions. These include, but are not limited to the following:

- a) That, in the case of a Bidder offering to supply goods under the Contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' manufacturer or producer to supply the goods in the country of final destination;
- b) That the Bidder has the financial, technical, and production capability necessary to perform the Contract; and
- c) That, to the best of the Bidder's knowledge, it is not included in the UN 1267 List or the UN Ineligibility List, nor in any and all of UNDP's list of suspended and removed vendors.

18.2 Bids submitted by two (2) or more Bidders shall all be rejected by UNDP if they are found to have any of the following:

- a) they have at least one controlling partner, director or shareholder in common; or
- b) any one of them receive or have received any direct or indirect subsidy from the other/s; or
- c) they have the same legal representative for purposes of this ITB; or
- d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about, or influence on the Bid of, another Bidder regarding this ITB process;
- e) they are subcontractors to each other's bid, or a subcontractor to one bid also submits another Bid under its name as lead Bidder; or
- f) an expert proposed to be in the bid of one Bidder participates in more than one Bid received for this ITB process. This condition does not apply to subcontractors being included in more than one Bid.

19. Joint Venture, Consortium or Association

If the Bidder is a group of legal entities that will form or have formed a joint venture, consortium or association at the time of the submission of the Bid, they shall confirm in their Bid that : (i) they have designated one party to act as a lead entity, duly vested with authority to legally bind the members of the joint venture jointly and severally, and this shall be duly evidenced by a duly notarized Agreement among the legal entities, which shall be submitted along with the Bid; and (ii) if they are awarded the contract, the contract shall be entered into, by and between UNDP and the designated lead entity, who shall be acting for and on behalf of all entities that comprise the joint venture.

After the bid has been submitted to UNDP, the lead entity identified to represent the joint

venture shall not be altered without the prior written consent of UNDP. Furthermore, neither the lead entity nor the member entities of the joint venture can:

- a) Submit another Bid, either in its own capacity; nor
- b) As a lead entity or a member entity for another joint venture submitting another Bid.

The description of the organization of the joint venture/consortium/association must clearly define the expected role of each of the entity in the joint venture in delivering the requirements of the ITB, both in the bid and in the Joint Venture Agreement. All entities that comprise the joint venture shall be subject to the eligibility and qualification assessment by UNDP.

Where a joint venture is presenting its track record and experience in a similar undertaking as those required in the ITB, it should present such information in the following manner:

- a) Those that were undertaken together by the joint venture; and
- b) Those that were undertaken by the individual entities of the joint venture expected to be involved in the performance of the services defined in the ITB.

Previous contracts completed by individual experts working privately but who are permanently or were temporarily associated with any of the member firms cannot be claimed as the experience of the joint venture or those of its members, but should only be claimed by the individual experts themselves in their presentation of their individual credentials.

If the Bid of a joint venture is determined by UNDP as the most responsive Bid that offers the best value for money, UNDP shall award the contract to the joint venture, in the name of its designated lead entity, who shall sign the contract for and on behalf of all the member entities.

20. Alternative Bid

Unless otherwise specified in the **Data Sheet** (DS nos. 5 and 6), alternative bid shall not be considered. Where the conditions for its acceptance are met, or justifications are clearly established, UNDP reserves the right to award a contract based on an alternative bid.

21. Validity Period

21.1 Bid shall remain valid for the period specified in the **Data Sheet** (DS no. 8), commencing on the submission deadline date also indicated in the **Data Sheet** (DS no. 21). A Bid valid for a shorter period shall be immediately rejected by UNDP and rendered non-responsive.

21.2 In exceptional circumstances, prior to the expiration of the Bid validity period, UNDP may request Bidders to extend the period of validity of their Bid. The request and the responses shall be made in writing, and shall be considered integral to the Bid.

22. Bidder's Conference

When appropriate, a Bidder's conference will be conducted at the date, time and location specified in the **Data Sheet** (DS no. 7). All Bidders are encouraged to attend. Non-attendance, however, shall not result in disqualification of an interested Bidder. Minutes of the Bidder's conference will be either posted on the UNDP website, or disseminated to the individual firms who have registered or expressed interest with the contract, whether or not they attended the conference. No verbal statement made during the conference shall modify the terms and conditions of the ITB unless such statement is specifically written in the Minutes of the Conference, or issued/posted as an amendment in the form of a Supplemental Information to the ITB.

D. SUBMISSION AND OPENING OF BID

23. Submission

23.1 The Technical Bid and the Price Schedule **must be submitted together and sealed together in one and the same envelope**, delivered either personally, by courier, or by electronic method of transmission. If submission will not be done by electronic means, the Technical Bid and Price Schedule must be sealed together in an envelope whose external side must :

- a) Bear the name of the Bidder;
- b) Be addressed to UNDP as specified in the **Data Sheet** (DS no.20); and
- c) Bear a warning not to open before the time and date for Bid opening as specified in the **Data Sheet** (DS no. 24).

If the envelope is not sealed nor labeled as required, the Bidder shall assume the responsibility for the misplacement or premature opening of Bid due to improper sealing and labeling by the Bidder.

23.2 Bidders must submit their Bid in the manner specified in the **Data Sheet** (DS nos. 22 and 23). When the Bid is expected to be in transit for more than 24 hours, the Bidder must ensure that sufficient lead time has been provided in order to comply with UNDP's deadline for submission. UNDP shall indicate for its record that the official date and time of receiving the Bid is the actual date and time when the said Bid has physically arrived at the UNDP premises indicated in the **Data Sheet** (DS no. 20).

23.3 Bidders submitting Bid by mail or by hand shall enclose the original and each copy of the Bid, in separate sealed envelopes, duly marking each of the envelopes as "Original Bid" and the others as "Copy of Bid". The two envelopes, consisting of original and copies, shall then be sealed in an outer envelope. The number of copies required shall be as specified in the **Data Sheet** (DS no. 19). In the event of any discrepancy between the contents of the "Original Bid" and the "Copy of Bid", the contents of the original shall govern. The original version of the Bid shall be signed or initialed by the Bidder or person(s) duly authorized to commit the Bidder on every page. The authorization shall be communicated through a document evidencing such authorization issued by the highest official of the firm, or a Power of Attorney, accompanying the Bid.

23.4 Bidders must be aware that the mere act of submission of a Bid, in and of itself,

implies that the Bidder accepts the General Contract Terms and Conditions of UNDP as attached hereto as Section 11.

24. Deadline for Submission of Bid and Late Bids

Bid must be received by UNDP at the address and no later than the date and time specified in the **Data Sheet** (DS no. 20 and 21).

UNDP shall not consider any Bid that arrives after the deadline for submission of Bid. Any Bid received by UNDP after the deadline for submission of Bid shall be declared late, rejected, and returned unopened to the Bidder.

25. Withdrawal, Substitution, and Modification of Bid

25.1 Bidders are expected to have sole responsibility for taking steps to carefully examine in detail the full consistency of its Bid to the requirements of the ITB, keeping in mind that material deficiencies in providing information requested by UNDP, or lack clarity in the description of goods and related services to be provided, may result in the rejection of the Bid. The Bidder shall assume any responsibility regarding erroneous interpretations or conclusions made by the Bidder in the course of understanding the ITB out of the set of information furnished by UNDP.

25.2 A Bidder may withdraw, substitute or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 23, duly signed by an authorized representative, and shall include a copy of the authorization (or a Power of Attorney). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be received by UNDP prior to the deadline for submission and submitted in accordance with ITB Clause 23 (except that withdrawal notices do not require copies). The respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION".

25.3 Bid requested to be withdrawn shall be returned unopened to the Bidders.

25.4 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bid and the expiration of the period of Bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

26. Bid Opening

UNDP will open the Bid in the presence of an ad-hoc committee formed by UNDP of at least two (2) members. If electronic submission is permitted, any specific electronic Bid opening procedures shall be as specified in the **Data Sheet** (DS no. 23).

The Bidders' names, modifications, withdrawals, the condition of the envelope labels/seals, the number of folders/files and all other such other details as UNDP may consider appropriate, will be announced at the opening. No Bid shall be rejected at the opening stage, except for late submission, for which the Bid shall be returned unopened to the Bidder.

27. Confidentiality

Information relating to the examination, evaluation, and comparison of Bid, and the recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process, even after publication of the contract award.

Any effort by a Bidder to influence UNDP in the examination, evaluation and comparison of the Bid or contract award decisions may, at UNDP's decision, result in the rejection of its Bid.

In the event that a Bidder is unsuccessful, the Bidder may seek a meeting with UNDP for a debriefing. The purpose of the debriefing is discussing the strengths and weaknesses of the Bidder's submission, in order to assist the Bidder in improving the bid presented to UNDP. The content of other bid and how they compare to the Bidder's submission shall not be discussed.

E. EVALUATION OF BID

28. Preliminary Examination of Bid

UNDP shall examine the Bid to determine whether they are complete with respect to minimum documentary requirements, whether the documents have been properly signed, whether or not the Bidder is in the UN Security Council 1267/1989 Committee's list of terrorists and terrorist financiers, and in UNDP's list of suspended and removed vendors, and whether the Bid are generally in order, among other indicators that may be used at this stage. UNDP may reject any Bid at this stage.

29. Evaluation of Bid

29.1 UNDP shall examine the Bid to confirm that all terms and conditions under the UNDP General Terms and Conditions and Special Conditions have been accepted by the Bidder without any deviation or reservation.

29.2 The evaluation team shall review and evaluate the Bids on the basis of their responsiveness to the Schedule of Requirements and Technical Specifications and other documentation provided, applying the procedure indicated in the **Data Sheet** (DS No. 25). Absolutely no changes may be made by UNDP in the criteria after all Bids have been received.

29.1 UNDP reserves the right to undertake a post-qualification exercise, aimed at determining, to its satisfaction the validity of the information provided by the Bidder. Such post-qualification shall be fully documented and, among those that may be listed in the **Data Sheet** (DS No.33), may include, but need not be limited to, all or any combination of the following :

- a) Verification of accuracy, correctness and authenticity of the information provided by the bidder on the legal, technical and financial documents submitted;
- b) Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found by the evaluation team;

- c) Inquiry and reference checking with Government entities with jurisdiction on the bidder, or any other entity that may have done business with the bidder;
- d) Inquiry and reference checking with other previous clients on the quality of performance on on-going or previous contracts completed;
- e) Physical inspection of the bidder's plant, factory, branches or other places where business transpires, with or without notice to the bidder;
- f) Testing and sampling of completed goods similar to the requirements of UNDP, where available; and
- g) Other means that UNDP may deem appropriate, at any stage within the selection process, prior to awarding the contract.

30. Clarification of Bid

To assist in the examination, evaluation and comparison of bids, UNDP may, at its discretion, ask any Bidder to clarify its Bid.

UNDP's request for clarification and the Bidder's response shall be in writing. Notwithstanding the written communication, no change in the prices or substance of the Bid shall be sought, offered, or permitted, except to provide clarification, and confirm the correction of any arithmetic errors discovered by UNDP in the evaluation of the Bid, in accordance with ITB Clause 35.

Any unsolicited clarification submitted by a Bidder in respect to its Bid, which is not a response to a request by UNDP, shall not be considered during the review and evaluation of the Bid.

31. Responsiveness of Bid

UNDP's determination of a Bid's responsiveness will be based on the contents of the Bid itself.

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

If a Bid is not substantially responsive, it shall be rejected by UNDP and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

32. Nonconformities, Reparable Errors and Omissions

32.3 Provided that a Bid is substantially responsive, UNDP may waive any non-conformities or omissions in the Bid that, in the opinion of UNDP, do not constitute a material deviation.

32.4 Provided that a Bid is substantially responsive, UNDP may request the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

32.5 Provided that the Bid is substantially responsive, UNDP shall correct arithmetical errors as follows:

- a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of UNDP there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
- b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to the above.

32.6 If the Bidder does not accept the correction of errors made by UNDP, its Bid shall be rejected.

F. AWARD OF CONTRACT

33. Right to Accept, Reject, or Render Non-Responsive Any or All Bid

33.1 UNDP reserves the right to accept or reject any Bid, to render any or all of the Bids as non-responsive, and to reject all Bids at any time prior to award of contract, without incurring any liability, or obligation to inform the affected Bidder(s) of the grounds for UNDP's action. Furthermore, UNDP is not obligated to award the contract to the lowest price offer.

33.2 UNDP shall also verify, and immediately reject their respective Bid, if the Bidders are found to appear in the UN's Consolidated List of Individuals and Entities with Association to Terrorist Organizations, in the List of Vendors Suspended or Removed from the UN Secretariat Procurement Division Vendor Roster, the UN Ineligibility List, and other such lists that as may be established or recognized by UNDP policy on Vendor Sanctions. (See http://www.undp.org/content/undp/en/home/operations/procurement/procurement_protest/)

34. Award Criteria

Prior to expiration of the period of Bid validity, UNDP shall award the contract to the qualified and eligible Bidder that is found to be responsive to the requirements of the Schedule of Requirements and Technical Specification, and has offered the lowest price (See DS No. 32).

35. Right to Vary Requirements at the Time of Award

At the time of award of Contract, UNDP reserves the right to vary the quantity of the goods and/or related services, 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.

36. Contract Signature

Within fifteen (15) days from the date of receipt of the Contract, the successful Bidder shall sign and date the Contract and return it to UNDP.

Failure of the successful Bidder to comply with the requirement of ITB Section F.3 and this provision shall constitute sufficient grounds for the annulment of the award, and forfeiture of the Bid Security if any, and on which event, UNDP may award the Contract to the Bidder with the second highest rated Bid, or call for new Bid.

37. Performance Security

A performance security, if required, shall be provided in the amount and form provided in Section 9 and by the deadline indicated in the **Data Sheet** (DS no. 14), as applicable. Where a Performance Security will be required, the submission of the said document, and the confirmation of its acceptance by UNDP, shall be a condition for the effectivity of the Contract that will be signed by and between the successful Bidder and UNDP.

38. Bank Guarantee for Advanced Payment

Except when the interests of UNDP so require, it is the UNDP's preference to make no advanced payment(s) on contracts (i.e., payments without having received any outputs). In the event that the Bidder requires an advanced payment upon contract signature, and if such request is duly accepted by UNDP, and the said advanced payment exceeds 20% of the total Bid price, or exceed the amount of USD 30,000, UNDP shall require the Bidder to submit a Bank Guarantee in the same amount as the advanced payment. A bank guarantee for advanced payment shall be furnished in the form provided in Section 10.

39. Vendor Protest

UNDP's vendor protest procedure provides an opportunity for appeal to those persons or firms not awarded a purchase order or contract through a competitive procurement process. In the event that a Bidder believes that it was not treated fairly, the following link provides further details regarding UNDP vendor protest procedures:

<http://www.undp.org/procurement/protest.shtml>

Instructions to Bidders

DATA SHEET¹

The following data for the supply of goods and related services shall complement / supplement the provisions in the Instruction to Bidders. In the case of a conflict between the Instruction to Bidders and the Data Sheet, the provisions in the Data Sheet shall prevail.

| DS No. | Cross Ref. to Instruction | Data | Specific Instructions / Requirements |
|--------|---------------------------|--|---|
| 1 | | Project Title: | The Construction of an Incinerator Housing Compound in Lusaka, Zambia |
| 2 | | Title of Goods/Services/Work Required: | The Construction of Incinerator infrastructure and associated external works at Zambia Medicines Regulatory Authority (ZAMRA), Lusaka, Zambia |
| 3 | | Country: | Republic of Zambia |
| 4 | Clause 9 | Minimum Qualifying Criteria | <ul style="list-style-type: none"> - Each offer submitted in response to this ITB shall contain the following information / documentation for UNDP to determine its fulfilment of the eligibility criteria. Applicants are required to complete and submit information / documentation as required in Section 5 included in this ITB. - Certificate of Registration of the business, including Articles of Incorporation, or equivalent document if bidder is not a corporation. In case of association / consortium / joint venture all parties to the association are required to submit the corresponding certificate of Registration - Tax Registration/Payment Certificate issued by the Internal Revenue Authority evidencing that the bidder is updated with its tax payment obligations, or Certificate of Tax exemption, if any such privilege is enjoyed by the bidder. In case of association / consortium / joint venture all parties to the association are required to submit the corresponding tax registration - Confirmation of non-inclusion of the bidder (or any of the parties in case of association / consortium / joint venture) in any of the UNDP / |

¹ All DS number entries in the Data Sheet are cited as references in the Instructions to Bidders. All DS Nos. corresponding to a Data must not be modified. Only information on the 3rd column may be modified by the user. If the information does not apply, the 3rd column must state "n/a" but must not be deleted.

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| | | | <p>UN ineligibility lists</p> <ul style="list-style-type: none"> - If the offer is submitted by an association / consortium / joint venture, it shall include a document signed by all parties to the association confirming the establishment of such association / consortium / joint venture and clearly determining what is the party appointed as the Lead Party - Bidders and all parties constituting the Applicant shall not have a conflict of interest. Bidders shall be considered to have a conflict of interest if they are involved as a consultant in the preparation of the design or technical specifications of the works that are subject of this prequalification - A minimum documented 5 years of general experience in civil works, in the role of contractor, major subcontractor and/or management contractor. In cases of Association / consortium / joint venture, the lead party shall fulfil this minimum requirement Participation as contractor, management contractor and/or major subcontractor in at least 2 contracts within the last 5 years that have been successfully and substantially (80% or more) completed and that include works of similar nature - At least one of the contracts shall demonstrate earlier experience in Zambia. Similarity will be assessed by verifying earlier experience in one or more of the following areas: <ul style="list-style-type: none"> - Earthmoving works, - Bulk excavation - Plumbing works, - Water reticulation - Storm water drainage - Sewer reticulation - Road works - Layer works - Electrical works - In cases of Association / Consortium / Joint venture, at least one of the parties shall document fulfilment of the minimum relevant experience in above area. - Bidders are required to submit statement of Satisfactory Performance from 3 relevant Clients. - Submission of documentary evidence, in the way of signed CVs, demonstrating that the Bidder has the following minimum key personnel |
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| | | | <ul style="list-style-type: none"> ✓ A Team leader with minimum 5 years of experience in the management civil construction works. ✓ One or more structural engineers, each with a minimum 5 years of experience in the design and construction of horizontal works ✓ One or more electrical engineers, each with a minimum 5 years of experience. <p>- Confirmation that the Bidder has the ability to mobilize the required equipment to be on-site within 30 days after issuance of a contract award. Applicants are required to complete a list of main construction and related equipment that has been used by the Applicant over the last 2 years and/or evidence of access to it through agreed rental/leasing arrangements</p> <p>- Confirmation that the Bidder has a local registered representative in Zambia that will be permanently available in Lusaka during the duration of any works contracted resulting from this Bid and who will act as the main operational focal point for daily contact between the Employer and Contractor. This requirement only applies to bidders that are not national legal entities / companies of Zambia</p> <p>- Submission of audited balance sheets¹ for the last two years to demonstrate:</p> <ul style="list-style-type: none"> ✓ the current soundness of the applicant's financial position and its prospective long term profitability, including; ✓ Capacity to have a minimum cash flow amount of U\$300,000. In cases of association / consortium / joint venture, the lead party shall fulfil this minimum requirement. |
| 5 | C.13 | Language of the Bid: | English |
| 6 | C.20 | Conditions for Submitting Bid for Parts or sub-parts of the Total Requirements | Not allowed |
| 7 | C.20 | Conditions for Submitting Alternative Bid | Shall NOT be considered. |
| 8 | C.22 | A pre-Bid conference will be held on: | <p>The pre-proposal conference will consist of the following activities:</p> <ul style="list-style-type: none"> • <u>Site Visit on 9th August, 2016 at 9AM</u> at the proposed site: Zambia Medicines Regulatory Authority (ZAMRA) Lot 2350/M along Kenneth Kaunda International Airport Road; |

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| | | | <p>• Q&A session: 9th August, 2016 at 10AM (ZAMRA offices)</p> <p>The UNDP focal point for the arrangement is: dick.kampamba@undp.org; Chiowya.Wong-Klarin@undp.org</p> <p>Important: Any proposer who wishes to participate in the site visit and/or pre-proposers information meeting shall notify the above indicated focal points, with a MINIMUM 48 hour notice. The notification shall also include the name of the appointed representative/s who will be attending the site-visit representing the proposer. Each proposer may be represented by a maximum of 2 representatives. Each representative must carry and produce a suitable identification card / ID.</p> <p>UNDP will prepare and disseminate minutes of the pre-bid conference / information meeting.</p> |
| 8.1 | | Site visit / inspection | It is the responsibility of the bidder prior to commencement of the construction, to view the site in terms of access, building dimensions, civil / electrical interfaces, offloading and assembly areas. Neither UNDP nor ZAMRA will be responsible for, or pay any expenses or losses, which the bidder may incur in the delivery of goods, equipment, and components to the client's site. All access routes and areas allocated for assembly must be approved by the project manager before the commencement of the delivery/s to the client's site. |
| 9 | C.21.1 | Period of Bid Validity commencing on the submission date | <input checked="" type="checkbox"/> 120 days |
| 10 | B.9.5 C.15.4 b) | Bid Security | A Bid Security of <u>USD5000</u> (US dollars Five Thousand) is required. It must be included along with Offeror's Technical Bid. Bidders that opt to submitting their offers electronically shall include a copy of the bid security with their electronic bid. The original bid security shall be received at the address stated under this tender document latest a week after the deadline for submission of bids in response to this ITB. |
| 11 | B.9.5 | Acceptable forms of Bid Security ² | Bank Guarantee (See Section 8 for template) Any Bank-issued Check / Cashier's Check / Certified Check |
| 12 | B.9.5 C.15.4 a) | Validity of Bid Security | 120 days from the last day of Bid submission Bid Security of unsuccessful Bidders shall be returned. |

² Surety bonds or other instruments issued by non-bank Financial Institutions are least preferred by UNDP. Unless stated otherwise, they shall be considered unacceptable to UNDP.

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| 13 | | Advanced Payment upon signing of contract | A maximum 10% advance payment will be authorized to facilitate early mobilization, start up and/or minimum design related costs. As per UNDP policies, in principle, advance payments shall be backed up by a corresponding bank guarantee or certified cheque. |
| 14 | | Liquidated Damages | Will be imposed at 0.5% of purchase order value per week of delayed delivery. The percentage will be applied against total value of each delayed delivery. |
| 15 | F.37 | Performance Security | A performance security amounting to 10% of the total contract awarded value will be required . The performance security will be submitted only by the awarded bidder and it shall be produced within 7 days of receipt of the letter of Intent. The performance security shall be denominated in the currency of the contract and shall only be in bank guarantee (See Section 9 for template) or cashier's cheque or certified cheque. The performance security shall remain valid for a period including the supply, commissioning and warranty offered for any equipment included in the final contract. |
| 16 | C.17 C.17.2 | Preferred Currency of Bid and Method for Currency conversion | United States Dollars (US\$). <i>Reference date for determining UN Operational Exchange Rate : Bid Opening date</i> |
| 17 | B.10.1 | Deadline for submitting requests for clarifications/ questions | 5 working days before the bid submission date. |
| 18 | B.10.1 | Contact Details for submitting clarifications/questions ³ | Focal Person in UNDP dedicated for this purpose: Chiowya Wong-Klarin@undp.org; Dick.Kampamba@undp.org |
| 19 | B.11.1 | Manner of Disseminating Supplemental Information to the ITB and responses/clarifications to queries | Direct communication to prospective Bidders by email or fax, and Posting on the website ⁴ http://procurement-notice.undp.org/view |
| 20 | D.23.3 | No. of copies of Bid that must be submitted | Original: One Copies : One (hard copy and/or soft copy in USB) In the event of any discrepancies the "original proposal" submitted in hard copy shall govern |

³ This contact person and address is officially designated by UNDP. If inquiries are sent to other person/s or address/es, even if they are UNDP staff, UNDP shall have no obligation to respond nor can UNDP confirm that the query was officially received.

⁴ Posting on the website shall be supplemented by directly transmitting the communication to the prospective offerors.

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| 21 | D.23.1 b) D.23.2 D.24 | Bid submission address | UN House, 9350 Alick Nkhata Rd, P.O. Box 31966, Lusaka, Zambia. UN registry Office Email: procurement.zm@undp.org |
| 22 | C.21.1 D.24 | Deadline of Bid Submission | Date and Time : August 30, 2016 12:00 AM |
| 23 | D.23.2 | Manner of Submitting Bid | <input checked="" type="checkbox"/> Courier/Hand Delivery <input checked="" type="checkbox"/> Electronic submission of Bid ⁵ |
| 24 | D.23.2 D.26 | Conditions and Procedures for electronic submission and opening, if allowed | Official Address for e-submission: <i>Procurement.zm@undp.org</i> <input checked="" type="checkbox"/> Format : PDF files only <input checked="" type="checkbox"/> Max. File Size per transmission: 4.5MB Note that there is no restriction to number of files to be transmitted. Offers can be divided in several files provided they are each smaller than 4.5 Mb and that they are all received in the above stated email address before the stipulated deadline. <input checked="" type="checkbox"/> Mandatory subject of email: The Construction of An Incinerator Housing Compound <input checked="" type="checkbox"/> Time Zone to be Recognized: <i>Zambia Local time</i> |
| 25 | D.23.1 c) | Date, time and venue for opening of Bid | Date and Time: August 30, 2016 3:00 PM Venue: Address: UN House, 9350 Alick Nkhata Rd, , Lusaka, Zambia, In the UNDP Conference Room. Any bidder that intends to participate in the public bid opening shall notify Chiowya.Wong-Klarin@undp.org at least 24 hours in advance. |
| 26 | | Evaluation method to be used in selecting the most responsive Bid | <input checked="" type="checkbox"/> Non-Discretionary “Pass/Fail” Criteria on the Technical Requirements; and <input checked="" type="checkbox"/> Lowest price offer of technically qualified/responsive Bid |
| 27 | C.15.1 | Required Documents that must be Submitted to Establish Qualification of Bidders (In “Certified True Copy” form only) | <input checked="" type="checkbox"/> Company Profile, which should not exceed fifteen (15) pages, including printed brochures and product catalogues relevant to the goods/services being procured (refer to section 5, point 7.) <input checked="" type="checkbox"/> Quality Certificate (e.g., ISO, etc.) and/or other similar certificates, accreditations, awards and citations received by the Bidder, if any (refer to section 5, point 8) <input checked="" type="checkbox"/> Environmental Compliance Certificates, Accreditations, Markings/Labels, and other evidences of the Bidder’s practices which |

⁵ If this will be allowed, security features (e.g., encryption, authentication, digital signatures, etc.) are strictly required and must be enforced to ensure confidentiality and integrity of contents.

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| | | | <p>contributes to the ecological sustainability and reduction of adverse environmental impact (e.g., use of non-toxic substances, recycled raw materials, energy-efficient equipment, reduced carbon emission, etc.), either in its business practices or in the goods it manufactures (refer to section 5, point 9)</p> <p><input checked="" type="checkbox"/> Bid submission form: Fully completed and duly authorized (see Section 4).</p> <p><input checked="" type="checkbox"/> Bidder information form: Fully completed and duly authorized (see Section 5).</p> <p><input checked="" type="checkbox"/> Technical bid form: Fully completed and duly authorized (see Section 6).</p> <p><input checked="" type="checkbox"/> Price and Delivery Schedule form: Fully completed and duly authorized (see Section 7).</p> <p><input checked="" type="checkbox"/> Patent registration certificates, if any, of technologies submitted in the bid if patented by the bidder.</p> <p><input checked="" type="checkbox"/> Project safety, health and environment plan, in order to ensure adherence of all works carried out to accepted minimum health and safety standards, such as SA Occupational Health and Safety Act 85 of 1993 and/or similar, ILO guidelines on safety & health in a construction site, etc.</p> <p><input checked="" type="checkbox"/> Written power of attorney, authorizing the signatory of the bid to commit the Bidder;</p> <p><input checked="" type="checkbox"/> Latest Audited Financial Statement (Income Statement and Balance Sheet) including Auditor's Report for the past <i>[indicate number of years of reference]</i></p> <p><input checked="" type="checkbox"/> Statement of Satisfactory Performance from the Top 3 Clients in terms of Contract Value the past 3 years.</p> <p><input checked="" type="checkbox"/> List of Bank References (Name of Bank, Location, Contact Person and Contact Details)</p> <p><input checked="" type="checkbox"/> All information regarding any past and current litigation during the last five (5) years, in which the bidder is involved, indicating the parties concerned, the subject of the litigation, the amounts involved, and the final resolution if already concluded.</p> |
| 28 | | Other documents that may be Submitted to Establish Eligibility | 1) Proposed team composition and structure, per the minimum stated in the Bid Data Sheet (BDS) |

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| | | | <p>with recent CVs and the corresponding time-effort to be allocated for each milestone, expressed in number of working days;</p> <p>2) Detailed implementation work plan and time schedule. Bidders are required to submit a proposed implementation work program from contract signature to project completion and handover. The work plan shall cover the full scope of the BOQ included in this ITB. Bulk earthworks, electrical bulk supply, bulk water supply, storm water drainage, sewerage and any other civil works, etc. The work plan must show detailed list of tasks, duration, and allocated resources per task.</p> <p>3) The work plan shall show the works schedule and at the same time show bidder's ability to finish the works within 5 calendar months from the contract start date.</p> <p>4) Maximum percentage of the contract value which may be subcontracted is fixed at 30% of contract value. However, it is expected that the bidder will take up full responsibility for electrical works defined in the ITB, based on its own experience and without resourcing to subcontracting</p> <p>5) Where the contractor is proposing to subcontract more than 10% of the total value of the contract, the following details should be submitted by the contractor in the bid submission:</p> <ol style="list-style-type: none"> BOQ item number to be subcontracted Value of item to be subcontracted Name of subcontractor(s) Full qualifications and resources details for the proposed subcontractor(s) for evaluation purposes. <p>6) Additional information may be requested by UNDP to verify the technical and administrative capacity of the subcontractor(s) to undertake the works. UNDP reserves the right to accept or reject proposed subcontractor(s) based on their qualifications.</p> |
| 29 | C.15 | Structure of the Technical Bid and List of Documents to be Submitted | <i>See point 26 and 27. Bidders are required to take note of the requirements stipulated under SECTION 3: SCHEDULE OF REQUIREMENTS & TECHNICAL SPECIFICATIONS-excel BOQ template</i> |
| 30 | C.15.2 | Latest Expected date for commencement of Contract | 3 rd October 2016 |
| 31 | C.15.2 | Maximum Expected duration of contract | 2 (Two) Months from date of contract award |
| 32 | | UNDP will award the contract to: | <input checked="" type="checkbox"/> One Bidder only |

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| 33 | F.34 | Criteria for the Award and Evaluation of Bid | <p>Award Criteria</p> <ul style="list-style-type: none"> -Compliance with the minimum set of eligibility and qualification requirements stated in Section Instructions to Bidders, Bid Data Sheet in this ITB. -Non-discretionary “Pass” or “Fail” rating on the detailed contents of the Schedule of Requirements and Technical Specifications -Lowest offered cost -Confirmation that Maximum percentage of supply/work that will be sub-contracted: 30% of contract value, except for the pre-engineered steel buildings works (the whole item, regardless of the percentage, can be subcontracted); -Acceptability of the Delivery Schedule; -Appropriateness of the Implementation work plan and Timetable to Project Schedule; -Full compliance of qualification of the team assigned to the contract. |
| 34 | E.29 | Post qualification Actions | <ul style="list-style-type: none"> ☑ Verification of accuracy, correctness and authenticity of the information provided by the bidder on the legal, technical and financial documents submitted; ☑ Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found by the evaluation team; ☑ Inquiry and reference checking with Government entities with jurisdiction on the bidder, or any other entity that may have done business with the bidder; ☑ Inquiry and reference checking with other previous clients on the quality of performance on ongoing or previous contracts completed; ☑ Physical inspection of the bidder’s plant, factory, branches or other places where business transpires, with or without notice to the bidder; ☑ Testing and sampling of completed goods similar to the requirements of UNDP, where available |
| 35 | | Conditions for Determining Contract Effectivity | ☑UNDP’s receipt of Performance Bond and Contractor’s signature of the civil works contract. |
| 36 | | Other Information Related to the ITB ⁶ | <i>Not Applicable</i> |

⁶ Where the information is available in the web, a URL for the information may simply be provided.

Section 3a: Schedule of Requirements and Technical Specifications

Please see attached excel file Bill of Quantities: **BOQ_NKZ-1604-UNDP** for The Construction of Incinerator infrastructure and associated external works at Zambia Medicines Regulatory Authority (ZAMRA), Lusaka, Zambia

Section 3b: Related Services

Further to the Schedule of Requirements in the preceding Table, Bidders are requested to take note of the following additional requirements, conditions, and related services pertaining to the fulfillment of the requirements:

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| Delivery Term INCOTERMS 2010 | All prices for materials and equipment included in this ITB shall be understood as DAP, ZAMRA site LUSAKA, off-loaded |
| Exact Address of Delivery/Installation Location | Zambia Medicines Regulatory Authority (ZAMRA), Lot 2350/M , Kenneth Kaunda International Airport Road, Lusaka, Zambia |
| Customs, if needed, clearing shall be done by: | UNDP will be responsible for tax, customs and duties exemption only |
| Warranty/Guarantee | The successful Contractor must provide a warranty period of 365 days following issuance of the Certificate of Substantial completion of works, which will run concurrently with the Defects Liability period. The warranty will exclude malicious damage or end user damage to works by third parties. |
| Liability Insurance | The liability insurance referred to in Clause 23 of the General Conditions shall be taken out by the Contractor for an amount of 300% of the price of the Contract per occurrence, with number of occurrences unlimited. The liability insurance shall be submitted by the Contractor within seven (7) days of receipt of the letter of Intent, and before contract signature and start of works, and shall be valid until end of defects liability period (i.e. twelve months after the intended completion date). Insurance policies (All risks insurance, public liability insurance - third parties & Workers' compensation insurance) should be issued by the successful bidder subject to the general conditions, terms and conditions of the contract, and as per/ in compliance with the applicable Zambian Law and international standards in this regard. |
| Defects Liability | Any damage resulted from defect in execution by the Contractor on the executed works during the defects liability period should be repaired by the contractor and at his own expense and during a week after receiving a notice in writing from the Employer; and if the contractor does not repair these damages during the above specified period, then UNDP does these repairs at the expense of the contractor, which shall be deducted from due sums against the Maintenance Guarantee. |
| Taxes | This contract is exempted from VAT and all other taxes; as such taxes will not be paid under this contract. |
| Payment Terms | UNDP shall issue payments to the contractor according to an |

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| | <p>agreed payment modality based on progress of the works specified in Section III of the Terms of Reference (Section 3).</p> <ol style="list-style-type: none"> In the case of requesting an advance payment by the Contractor; the UNDP shall pay the Contractor an advance payment up to 10% of the contract value upon signature of the contract between UNDP and the Contractor and submission of the following documents by the Contractor: <ul style="list-style-type: none"> ✓ An irrevocable bank guarantee for the same value of the advance payment valid for the period of 30 days after the intended completion date of the project works. ✓ The required Performance Security as stipulated in this contract. The amount of the advance payment if paid to the contractor shall be subject to a deduction of a 10% (Ten percent) of the amount accepted for payment until the cumulative amount of the deductions so effected shall equal the amount of the advance payment when 80% of the works are completed. Should the cumulative amount of the deductions so made be lower than the amount of the advance payment after the date of completion of 80% the Works, UNDP may deduct the amount equal to the difference between the advance payment and the cumulative deductions from the payments due after completion or may recover such amount from the bank guarantee On each payment, UNDP shall withhold a per centum of the invoice amount, up to a maximum of 10% of the total price of the Contract for due performance of execution. Half of this amount (5%) shall be returned to the Contractor within Forty (40) days upon the substantial completion and taking-over of the Works, and the remaining (5%) will be retained until the contractor furnishes the Maintenance Bank Guarantee which to be issued in the amount of 5% (five-percent) of contract value, and to be valid until the end of the one year defects liability period. The said remaining (5%) of the contract value shall be returned to the contractor within Forty (40) days as of the date of receipt of the Maintenance Bank Guarantee. Deliverables and payment schedule will be discussed during the contract preparation. |
| Safety, Health & Welfare Plan | <p>Upon contract award, the contractor should provide, as part of his contractual commitments, a detailed Safety, Health & Welfare plan, being part of the overall program of works, subject to the Engineer approval. Contractor to bear all the costs associated with implementation of the said Safety, Health & Welfare plan.</p> <p>The said Safety, Health & Welfare plan shall be based on the following Safety manual, "Safety, health and welfare on construction sites/A Training Manual - International Labour Office Geneva (1999 version)" – Section 14 of the ITB</p> <p>The above mentioned Safety manual shall be an integral part of the tender and contract documents and the contractor is obligated to fully comply with the guidelines and instructions contained in the said manual, all to the satisfaction of the UNDP Engineer.</p> |

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| | <p>Important: The contractor shall also implement fully the applicable Safety measures contained in the approved Safety plan during mobilization stage before actual work starts.</p> |
| Special Requirements | <p>1) Miscellaneous</p> <p>a) Time Schedule: The contractor is required to submit a time schedule for the all activities and deliverables of the project as outlined in the Terms of Reference and the sequence of work activities using MS-Project software. This time schedule should be reviewed and approved by the engineer before the initiation of work activities. The contractor has to update it and do all modifications deemed necessary to work activities as per the instructions of the engineer. The contractor shall carry out quantity verification to be executed before the start-up of work activities. Written approval on the scope of works shall be obtained prior to implementation process.</p> <p>b) Schedule of material supply No delays are accepted due to delay in or insufficient material supply for works in the local market. Hence a schedule for material supply is required before starting up activities. The time schedule of works should include the dates and quantities of material supply as well as the equipment supply to assure proper planning of work activities.</p> <p>c) Work plan The contractor has to submit a written work plan that illustrates the methodology to be followed in implementation of the work activities.</p> <p>d) Samples and catalogues: The contractor has to submit all samples and /or catalogues for all materials to be used on the project to verify their compliance with the technical specifications as follows: *The samples will be handed along with the request of material approval as per the schedule of material supply such that one week is allowed to obtain approval before order of material supply is placed. *The samples and catalogues should show the data of technical specification. In case there is no possibility to obtain a sample, the catalogue might be accepted after the engineer approval.</p> <p>e) Cash – Flow: The contractor has to submit a cumulative cash flow chart (S-curve) expected during implementation. Updates should be carried out on regular basis to adapt the actual expenditure on the project.</p> <p>f) Monthly reports and photographs. The contractor has to submit monthly reports in three copies reflecting the actual progress of works in percentage, executed work activities, obstacles and difficulties faced and photos showing such progress.</p> |

| | |
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| | <p>g) Contract documents: All tender documents stipulated in the ITB should be preferably submitted, signed and stamped. It is deemed that all mentioned in the technical specification (General and Specific), drawings, bill of quantities, pre-bid meeting notes and/or any addendum thereof are included in the unit prices of the items and no extra charges will be paid in that respect.</p> <p>2) WORKMANSHIP: The contractor has to engage competent workers to achieve the workmanship stated in the tender documents. It is expected that best local practices be utilized in case no specific workmanship is identified.</p> <p>3) DRAWINGS:</p> <ul style="list-style-type: none"> a) The contractor has to abide to any additional detail or general drawings issued by the engineer and will be considered as part of the contract. b) The contractor will develop shop drawings for all work activities and submit for approval. No activity can be started unless engineer approves relevant shop drawing. c) The contractor should submit three copies of the shop drawings a week ahead of required approval. In case of changes required, the contractor will resubmit the drawings with changes and obtain approval before execution of works. <p>4) As-Built Drawings: The contractor is responsible to submit as-built drawings before the preliminary handing over in two hard copies A3 size and three CD's. They should show all details (architectural, structural, mechanical, and electrical along with services routes, trenches, manholes, and levels ...etc)</p> <p>5) Discrepancies and mistakes in tender documents:</p> <ul style="list-style-type: none"> a) In case there is discrepancy in the tender documents, the Engineer will verify the correct specification of any item in the tendering stage. b) In case there is missing information in the contract documents or discrepancy or review and approval of the engineer, improper description of details of the items, it doesn't relieve the contractor from carrying out the item in the most correct manner as if identified and properly described in the original tender documents. c) The contractor has to inform the engineer in case of omissions, discrepancies or mistakes in the tender documents in the tendering stage and price according to the engineer's answer. <p>INSPECTION OF SITE: The contractor is deemed to have visited and investigated the site and identified all site conditions in terms of ground nature, accessibility to site, availability of services like water & electricity and all factors affecting execution of work activities before submitting his offer. All such factors are deemed to be taken into consideration while pricing.</p> |
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| | |
|--|--|
| | <p>SUB-CONTRACTORS: Sub- contractors are dealt with according to General Conditions of Contract. The main contractor should submit to the Engineer the certified agreement between him and the subcontractor prior to commencement of the work.</p> <p>EQUIVALENCE AND ENGINEER'S INSTRUCTION: Wherever equivalence and Engineers' instruction are mentioned within the contract documents, they are interpreted to be dealt with and /or executed according to the consent of the engineer.</p> <p>6) SITE MEETINGS: Periodical site meetings will be carried out and the contractor or duly authorized delegate should attend the meetings.</p> <p>7) TESTING: The contractor at his own expenses shall provide any test as requested by the Engineer for any materials supplied, installed, or stored in the site according to the stipulated tests in the general specifications. The contractor has to secure devices and equipment that are necessary to test sanitary and electrical works as requested by the Engineer.</p> <p>8) SPECIFICATIONS: Specifications are the approved international and/or Zambian Specifications or as indicated in the TOR. In case there is no clear or missing specification for items, it is deemed that the contractor has based his prices on high quality materials and best practice in implementation.</p> <p>9) TAKE OFF QUANTITIES AND PRICING:</p> <ul style="list-style-type: none"> a) Description of items The tender documents are complementary and self-explanatory and what is deemed necessary in one is deemed necessary in all. Accordingly, the item specification is not limited to item description in the bill of quantity but rather to the tender documents as a whole. b) Deliverables and pricing: c) Bidders are expected to submit a total lump sum all inclusive offer for each of the required deliverables included in Section 3 of this ITB. Costing for each deliverable shall be based on the information provided in this ITB and such costing shall be reflected in the corresponding financial proposal included in Section 7 of this ITB. <ul style="list-style-type: none"> i) The costing shouldn't include VAT. All payments will be processed according to Zero VAT invoices all according to PA rules and regulations in that respect. The contractor has to include all expenses that might occur in his overhead expenses and no claims will be accepted regarding this issue. ii) Price shall include fees of testing according to specification and engineer's instruction. UNDP has the right to change the testing laboratory from time to time. |
|--|--|

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|--|---|
| | <p>iii) The contractor has to submit valid income and VAT tax clearance issued by the Ministry of finance along with the tender.</p> <p>10) PROJECT SIGN BOARDS: The contractor has to supply and install two project sign boards. They will be made up of painted steel sheet 200cmX300cm including galvanized steel pipes 3" in diameter to hold the sign and fixed in place by concrete footings 50 cm x50 cm x60 cm (or equivalent) before the start-up of work activities. All information and logos that have to be included on the board will be provided by the engineer during the mobilization period.</p> <p>11) Assistance To The Engineer a The Contractor shall give such assistance and supply such labour as may be required by the Engineer in connection with the contract when required. b Such labour to be hired and employed by the Contractor, but shall operate and perform their duties under the direction of the Engineer.</p> <p>12) Temporary installations during implementation All temporary installations needed to facilitate the implementation and completion of the project works will be carried out by the contractor at his own expense. Such temporary installations shall be removed by the contractor after completion of the project works. In case of any delays by the contractor in establishing the temporary installations or any part thereof and in the removal of these installations or any part thereof, the Engineer shall have a right to establish these temporary installations and to remove them at the end of the project at the expense of the contractor. Such expenses, if happened, will be reduced from the amounts payable to the contractor without any objection to the action or the cost.</p> <p>13) Warehouses The contractor shall establish stores and warehouses to store all the building materials, especially cement and ensure the conditions necessary for the protection of stored materials from damage caused by exposure to external conditions.</p> |
|--|---|

Section 4: Bid Submission Form⁷

(This should be written in the Letterhead of the Bidder. Except for indicated fields, no changes may be made in this template.)

Insert: Location
Insert: Date

To: [insert: Name and Address of UNDP focal point]

Dear Sir/Madam:

We, the undersigned, hereby offer to supply the goods and related services required for [insert: title of goods and services required as per ITB] in accordance with your Invitation to Bid dated Insert: bid date. We are hereby submitting our Bid, which includes the Technical Bid and Price Schedule.

We hereby declare that:

- a) All the information and statements made in this Bid are true and we accept that any misrepresentation contained in it may lead to our disqualification;
- b) We are currently not on the removed or suspended vendor list of the UN or other such lists of other UN agencies, nor are we associated with, any company or individual appearing on the 1267/1989 list of the UN Security Council;
- c) We have no outstanding bankruptcy or pending litigation or any legal action that could impair our operation as a going concern; and
- d) We do not employ, nor anticipate employing, any person who is or was recently employed by the UN or UNDP.

We confirm that we have read, understood and hereby fully accept the Schedule of Requirements and Technical Specifications describing the duties and responsibilities required of us in this ITB, and the General Terms and Conditions of UNDP's Standard Contract for this ITB.

We agree to abide by this Bid for [insert: period of validity as indicated in Data Sheet].

We undertake, if our Bid is accepted, to initiate the supply of goods and provision of related services not later than the date indicated in the Data Sheet.

We fully understand and recognize that UNDP is not bound to accept this Bid, that we shall bear all costs associated with its preparation and submission, and that UNDP will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the evaluation.

⁷ No deletion or modification may be made in this form. Any such deletion or modification may lead to the rejection of the Bid.

We remain,

Yours sincerely,

Authorized Signature [*In full and initials*]: _____

Name and Title of Signatory: _____

Name of Firm: _____

Contact Details: _____

[Please mark this letter with your corporate seal, if available]

Section 5: Documents Establishing the Eligibility and Qualifications of the Bidder

Bidder Information Form⁸

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

ITB No.: *[insert number of bidding process]*

Page _____ of _____ pages

| | | |
|--|---------------------------------|---------------------------------------|
| 1. Bidder's Legal Name <i>[insert Bidder's legal name]</i> | | |
| 2. In case of Joint Venture (JV), legal name of each party: <i>[insert legal name of each party in JV]</i> | | |
| 3. Actual or intended Country/ies of Registration/Operation: <i>[insert actual or intended Country of Registration]</i> | | |
| 4. Year of Registration in its Location: <i>[insert Bidder's year of registration]</i> | | |
| 5. Countries of Operation | 6. No. of staff in each Country | 7. Years of Operation in each Country |
| 8. Legal Address/es in Country/ies of Registration/Operation: <i>[insert Bidder's legal address in country of registration]</i> | | |
| 9. Value and Description of Top three (3) Biggest Contract for the past five (5) years | | |
| 10. Latest Credit Rating (Score and Source, if any) | | |
| 11. Brief description of litigation history (disputes, arbitration, claims, etc.), indicating current status and outcomes, if already resolved. | | |
| 12. Bidder's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i> | | |
| 13. Are you in the UNPD List 1267.1989 or UN Ineligibility List? <input type="checkbox"/> YES or <input type="checkbox"/> NO | | |
| 14. Attached are copies of original documents of: <input type="checkbox"/> All eligibility document requirements listed in the Data Sheet <input type="checkbox"/> If Joint Venture/Consortium – copy of the Memorandum of Understanding/Agreement or Letter of Intent to form a JV/Consortium, or Registration of JV/Consortium, if registered <input type="checkbox"/> If case of Government corporation or Government-owned/controlled entity, documents establishing legal and financial autonomy and compliance with commercial law. | | |

⁸ The Bidder shall fill in this Form in accordance with the instructions. Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted.

Joint Venture Partner Information Form (if Registered)⁹

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

ITB No.: *[insert number of bidding process]*

Page _____ of _____ pages

| | | |
|--|---------------------------------|---------------------------------------|
| 1. Bidder's Legal Name: <i>[insert Bidder's legal name]</i> | | |
| 2. JV's Party legal name: <i>[insert JV's Party legal name]</i> | | |
| 3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i> | | |
| 4. Year of Registration: <i>[insert Party's year of registration]</i> | | |
| 5. Countries of Operation | 6. No. of staff in each Country | 7. Years of Operation in each Country |
| 8. Legal Address/es in Country/ies of Registration/Operation: <i>[insert Party's legal address in country of registration]</i> | | |
| 9. Value and Description of Top three (3) Biggest Contract for the past five (5) years | | |
| 10. Latest Credit Rating (if any): Click here to enter text. | | |
| 1. Brief description of litigation history (disputes, arbitration, claims, etc.), indicating current status and outcomes, if already resolved. Click here to enter text. | | |
| 13. JV's Party Authorized Representative Information Name: <i>[insert name of JV's Party authorized representative]</i> Address: <i>[insert address of JV's Party authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i> Email Address: <i>[insert email address of JV's Party authorized representative]</i> | | |
| 14. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> All eligibility document requirements listed in the Data Sheet <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 2. <input type="checkbox"/> In case of government owned entity, documents establishing legal and financial autonomy and compliance with commercial law. | | |

⁹ The Bidder shall fill in this Form in accordance with the instructions. Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted.

Section 6: Technical Bid Form¹⁰

INSERT TITLE OF THE ITB

| | |
|---|--|
| Name of Bidding Organization / Firm: | |
| Country of Registration: | |
| Name of Contact Person for this Bid: | |
| Address: | |
| Phone / Fax: | |
| Email: | |

SECTION 1: EXPERTISE OF FIRM/ ORGANISATION

This section should fully explain the Bidder's resources in terms of personnel and facilities necessary for the performance of this requirement.

1.1 Brief Description of Bidder as an Entity: Provide a brief description of the organization / firm submitting the Bid, its legal mandates/authorized business activities, the year and country of incorporation, and approximate annual budget, etc. Include reference to reputation, or any history of litigation and arbitration in which the organisation / firm has been involved that could adversely affect or impact the delivery of goods and/or performance of related services, indicating the status/result of such litigation/arbitration.

1.2. Financial Capacity: Based on the latest Audited Financial Statement (Income Statement and Balance Sheet) describe the financial capacity (liquidity, stand-by credit lines, etc.) of the bidder to engage into the contract. Include any indication of credit rating, industry rating, etc.

1.3. Track Record and Experiences: Provide the following information regarding corporate experience within at least the last five (5) years which are related or relevant to those required for this Contract.

| Name of project | Client | Contract Value | Period of activity | Types of activities undertaken | Status or Date Completed | References Contact Details (Name, Phone, Email) |
|-----------------|--------|----------------|--------------------|--------------------------------|--------------------------|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

¹⁰ Technical Bids not submitted in this format may be rejected.

SECTION 2 - SCOPE OF SUPPLY, TECHNICAL SPECIFICATIONS, AND RELATED SERVICES

This section should demonstrate the Bidder's responsiveness to the specification by identifying the specific components proposed, addressing the requirements, as specified, point by point; providing a detailed description of the essential performance characteristics proposed; and demonstrating how the proposed bid meets or exceeds the specifications.

2.1. Scope of Supply: Please provide a detailed description of the goods to be supplied, indicating clearly how they comply with the technical specifications required by the ITB (see below table); describe how the organisation/firm will supply the goods and any related services, keeping in mind the appropriateness to local conditions and project environment.

| Item No. | Description/ Specification of Goods | Source/ Manufacturer | Country of Origin | Qty | Quality Certificate/ Export Licences, etc. (indicate all that applies and if attached) |
|-----------------|--|-----------------------------|--------------------------|------------|---|
| | | | | | |
| | | | | | |

A supporting document with full details may be annexed to this section

2.2. Technical Quality Assurance Mechanisms: The bid shall also include details of the Bidder's internal technical and quality assurance review mechanisms, all the appropriate quality certificates, export licenses and other documents attesting to the superiority of the quality of the goods and technologies to be supplied.

2.3. Reporting and Monitoring: Please provide a brief description of the mechanisms proposed for this project for reporting to the UNDP and partners, including a reporting schedule.

2.4. Subcontracting: Explain whether any work would be subcontracted, to whom, how much percentage of the work, the rationale for such, and the roles of the proposed sub-contractors. Special attention should be given to providing a clear picture of the role of each entity and how everyone will function as a team.

2.5. Risks / Mitigation Measures: Please describe the potential risks for the implementation of this project that may impact achievement and timely completion of expected results as well as their quality. Describe measures that will be put in place to mitigate these risks.

2.6 Implementation Timelines: The Bidder shall submit a Gantt Chart or Project Schedule indicating the detailed sequence of activities that will be undertaken and their corresponding timing.

2.7. Partnerships (Optional): Explain any partnerships with local, international or other organizations that are planned for the implementation of the project. Special attention should be given to providing a clear picture of the role of each entity and how everyone will function as a team. Letters of commitment from partners and an indication of whether some or all have successfully worked together on other previous projects is encouraged.

2.8. Anti-Corruption Strategy (Optional): Define the anti-corruption strategy that will be applied in this project to prevent the misuse of funds. Describe the financial controls that will be put in place.

2.9 Statement of Full Disclosure: This is intended to disclose any potential conflict in accordance with the definition of "conflict" under Section 4 of this document, if any.

2.10 Other: Any other comments or information regarding the bid and its implementation.

SECTION 3: PERSONNEL

3.1 Management Structure: Describe the overall management approach toward planning and implementing the contract. Include an organization chart for the management of the contract, if awarded.

3.2 Staff Time Allocation: Provide a spreadsheet will be included to show the activities of each personnel involved in the implementation of the contract. Where the expertise of the personnel is critical to the success of the contract, UNDP will not allow substitution of personnel whose qualifications had been reviewed and accepted during the bid evaluation. (If substitution of such a personnel is unavoidable, substitution or replacement will be subject to the approval of UNDP. No increase in costs will be considered as a result of any substitution).

3.3 Qualifications of Key Personnel. Provide the CVs for key personnel (Team Leader, Managerial and general staff) that will be provided to support the implementation of this project. CVs should demonstrate qualifications in area of expertise relevant to the Contract. Please use the format below:

| | | |
|---|--|--|
| Name: | | |
| Role in Contract Implementation: | | |
| Nationality: | | |
| Contact information: | | |
| Countries of Relevant Work Experience: | | |
| Language Skills: | | |
| Education and other Qualifications: | | |
| Summary of Experience: <i>Highlight experience in the region and on similar projects.</i> | | |
| Relevant Experience (From most recent): | | |
| Period: From – To | Name of activity/ Project/ funding organisation, if applicable: | Job Title and Activities undertaken/Description of actual role performed: |
| <i>e.g. June 2010-January 2011</i> | | |
| <i>Etc.</i> | | |
| <i>Etc.</i> | | |
| References (minimum of 3): | <i>Name</i> <i>Designation</i> <i>Organization</i> <i>Contact Information – Address; Phone; Email; etc.</i> | |
| Declaration: | | |
| I confirm my intention to serve in the stated position and present availability to serve for the term of the proposed contract. I also understand that any wilful misstatement described above may lead to my disqualification, before or during my engagement. | | |
| <hr/> | | |
| Signature of the Nominated Team Leader/Member | | Date Signed |

Section 7: Price Schedule Form¹¹

The Bidder is required to prepare the Price Schedule as indicated in the Instruction to Bidders.

The Price Schedule must provide a detailed cost breakdown of all goods and related services to be provided, from unit price to lot prices. Separate figures must be provided for each functional grouping or category, if any.

Any estimates for cost-reimbursable items, such as travel of experts and out-of-pocket expenses, should be listed separately.

The format shown on the following pages is suggested for use as a guide in preparing the Price Schedule. The format includes specific expenditures, which may or may not be required or applicable but are indicated to serve as examples.

A. Cost Breakdown per Deliverable Items*

| No. | Deliverables <i>[list them as referred to in the ITB]</i> | Expected Date of Delivery/Completion | Percentage of Total Price | Price (Lump Sum, All Inclusive) |
|-----|--|--------------------------------------|---|------------------------------------|
| 1 | Deliverable 1 | | [Percentage (weight) of each deliverable over the total price for the payment purposes, as per ITB) | |
| 2 | Deliverable 2 | | | |
| 3 | | | | |
| | Total | | 100% | |

* This shall be the basis of payment tranches

B. Cost Breakdown by Cost Component:

The Bidders are requested to provide the cost breakdown for the above given prices for each deliverable based on the following format. UNDP shall use the cost breakdown for the price reasonability assessment purposes as well as the calculation of price in the event that both parties have agreed for additional set of goods and/or related services.

¹¹ No deletion or modification may be made in this form. Any such deletion or modification may lead to the rejection of the Bid.

| Deliverables and Sub-Components | (a) Quantity | Country of Origin | (b) Unit Price | (c)=(a)x(b) Total Cost of Goods | Brief Descriptio n of Related Services | (d) Cost of Related Services | (c) + (d) Total Price |
|---------------------------------|-----------------|-------------------------|----------------------|---------------------------------------|--|--|---------------------------------|
| I. Deliverable 1 | | | | | | | |
| Sub-Component 1 | | | | | | | |
| Sub-Component 2 | | | | | | | |
| Sub-Component 3 | | | | | | | |
| II. Deliverable 2 | | | | | | | |
| Sub-Component 1 | | | | | | | |
| Sub-Component 2 | | | | | | | |
| Sub-Component 3 | | | | | | | |
| | | | | | | | |
| III. Other Related Costs | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| GRAND TOTAL PRICE | | | | | | | |

Section 8: FORM FOR BID SECURITY

(This must be finalized using the official letterhead of the Issuing Bank. Except for indicated fields, no changes may be made in this template.)

To: UNDP
[Insert contact information as provided in Data Sheet]

WHEREAS *[name and address of Contractor]* (hereinafter called “the Bidder”) has submitted a Bid to UNDP dated [Click here to enter a date.](#) , to deliver goods and execute related services for *[indicate ITB title]* (hereinafter called “the Bid”):

AND WHEREAS it has been stipulated by you that the Bidder shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security in the event that the Bidder:

- a) Fails to sign the Contract after UNDP has awarded it;
- b) Withdraws its Bid after the date of the opening of the Bid;
- c) Fails to comply with UNDP’s variation of requirement, as per ITB Section F.3; or
- d) Fails to furnish Performance Security, insurances, or other documents that UNDP may require as a condition to rendering the contract effective.

AND WHEREAS we have agreed to give the Bidder such this Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Bidder, up to a total of *[amount of guarantee]* *[in words and numbers]*, such sum being payable in the types and proportions of currencies in which the Price Bid is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of guarantee as aforesaid]* without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

This guarantee shall be valid until 30 days after the date of validity of the bids.

SIGNATURE AND SEAL OF THE GUARANTOR BANK

Date

Name of Bank

Address

Section 9: FORM FOR PERFORMANCE SECURITY¹²

(This must be finalized using the official letterhead of the Issuing Bank. Except for indicated fields, no changes may be made in this template.)

To: UNDP
[Insert contact information as provided in Data Sheet]

WHEREAS *[name and address of Contractor]* (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. Click to enter dated Click to enter , to deliver the goods and execute related services *Click here to enter text.* (hereinafter called "the Contract"):

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract:

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of guarantee] [in words and numbers]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of guarantee as aforesaid]* without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

This guarantee shall be valid until a date 30 days from the date of issue by UNDP of a certificate of satisfactory performance and full completion of services by the Contractor.

SIGNATURE AND SEAL OF THE GUARANTOR BANK

Date

Name of Bank

Address

¹² If the RFP requires the submission of a Performance Security, which shall be made a condition to the signing and effectivity of the contract, the Performance Security that the Bidder's Bank will issue shall use the contents of this template

Section 10: Form for Advanced Payment Guarantee¹³

(This must be finalized using the official letterhead of the Issuing Bank. Except for indicated fields, no changes may be made in this template.)

_____ [Bank's Name, and Address of Issuing Branch or Office]
Beneficiary: _____ [Name and Address of UNDP]
Date: _____ ++++++
ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that [name of Company] (hereinafter called "the Contractor") has entered into Contract No. [reference number of the contract] dated [insert: date] with you, for the provision of [brief description of ITB requirements] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of [amount in words] ([amount in figures]) is to be made against an advance payment guarantee.

At the request of the Contractor, we [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in words] ([amount in figures])¹⁴ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor has used the advance payment for purposes other than toward providing the goods and related services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number _____ at [name and address of Bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultants have made full repayment of the amount of the advance payment, or on the ___ day of _____, 2___, 20___ whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

[signature(s)]

¹³ This Guarantee shall be required if the Contractor will require advanced payment of more than 20% of the contract amount, or if the absolute amount of the advanced payment required will exceed the amount of USD 30,000, or its equivalent if the price offer is not in USD, using the exchange rate stated in the Data Sheet. The Contractor's Bank must issue the Guarantee using the contents of this template.

¹⁴ The Guarantor Bank shall insert an amount representing the amount of the advanced payment and denominated either in the currency/ies of the advanced payment as specified in the Contract.

Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.

GENERAL CONDITIONS OF CONTRACT

CONTRACTS FOR THE PROVISION OF GOODS AND SERVICES



Empowered lives.
Resilient nations.

1. **LEGAL STATUS OF THE PARTIES:** The United Nations Development Programme (“UNDP”) and the

Contractor shall also each be referred to as a “Party” hereunder, and:

- 1.1 Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.
- 1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* UNDP, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

2. **RESPONSIBILITY FOR EMPLOYEES:** To the extent that the Contract involves the provision of any services to UNDP by the Contractor’s officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor’s “personnel”), the following provisions shall apply:

- 2.1 The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.
- 2.2 Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of UNDP, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.
- 2.3 At the option of and in the sole discretion of UNDP:
 - 2.3.1 the qualifications of personnel proposed by the Contractor (e.g., a curriculum vitae) may be reviewed by UNDP prior to such personnel’s performing any obligations under the Contract;
 - 2.3.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of UNDP prior to such personnel’s performing any obligations under the Contract; and,

- 2.3.3 in cases in which, pursuant to Article 2.3.1 or 2.3.2, above, UNDP has reviewed the qualifications of such Contractor's personnel, UNDP may reasonably refuse to accept any such personnel.
- 2.4 Requirements specified in the Contract regarding the number or qualifications of the Contractor's personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:
- 2.4.1 UNDP may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel, and such request shall not be unreasonably refused by the Contractor.
- 2.4.2 Any of the Contractor's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of UNDP, which shall not be unreasonably withheld.
- 2.4.3 The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.
- 2.4.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.
- 2.4.5 Any request by UNDP for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and UNDP shall not bear any liability in respect of such withdrawn or replaced personnel.
- 2.4.6 If a request for the withdrawal or replacement of the Contractor's personnel is *not* based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with UNDP officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.
- 2.5 Nothing in Articles 2.2, 2.3 and 2.4, above, shall be construed to create any obligations on the part of UNDP with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.
- 2.6 The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of UNDP shall:
- 2.6.1 undergo or comply with security screening requirements made known to the Contractor by UNDP, including but not limited to, a review of any criminal history;

- 2.6.2 when within UNDP premises or on UNDP property, display such identification as may be approved and furnished by UNDP security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to UNDP for cancellation.
- 2.7 Within one working day after learning that any of Contractor's personnel who have access to any UNDP premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform UNDP about the particulars of the charges then known and shall continue to inform UNDP concerning all substantial developments regarding the disposition of such charges.
- 2.8 All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within UNDP premises or on UNDP property shall be confined to areas authorized or approved by UNDP. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UNDP premises or on UNDP property without appropriate authorization from UNDP.
3. **ASSIGNMENT:**
- 3.1 Except as provided in Article 3.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNDP. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UNDP. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of UNDP. Any such unauthorized delegation, or attempt to do so, shall not be binding on UNDP.
- 3.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations, *provided that*:
- 3.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and*,
- 3.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; *and*,
- 3.2.3 the Contractor promptly notifies UNDP about such assignment or transfer at the earliest opportunity; *and*,
- 3.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to UNDP following the assignment or transfer.
4. **SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of UNDP. UNDP shall be entitled,
- in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that UNDP reasonably considers is not qualified to perform obligations under the Contract. UNDP shall have the right to require any subcontractor's

removal from UNDP premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

5. **PURCHASE OF GOODS:** To the extent that the Contract involves any purchase of goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to any purchases of goods under the Contract:

5.1 **DELIVERY OF GOODS:** The Contractor shall hand over or make available the goods, and UNDP shall receive the goods, at the place for the delivery of the goods and within the time for delivery of the goods specified in the Contract. The Contractor shall provide to UNDP such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until physical delivery of the goods to UNDP in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by UNDP.

5.2 **INSPECTION OF THE GOODS:** If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify UNDP when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, UNDP or its designated inspection agents may also inspect the goods upon delivery in order to confirm that the goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to UNDP or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

5.3 **PACKAGING OF THE GOODS:** The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by UNDP as well as such other information as is necessary for the correct handling and safe delivery of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.

5.4 **TRANSPORTATION & FREIGHT:** Unless otherwise specified in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for

payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that UNDP receives all necessary transport documents in a timely manner so as to enable UNDP to take delivery of the goods in accordance with the requirements of the Contract.

- 5.5 **WARRANTIES:** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of UNDP stated in or arising under the Contract, the Contractor warrants and represents that:

- 5.5.1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;
- 5.5.2 If the Contractor is not the original manufacturer of the goods, the Contractor shall provide UNDP with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;
- 5.5.3 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;
- 5.5.4 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;
- 5.5.5 The goods are new and unused;
- 5.5.6 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the goods by UNDP in accordance with the Contract;
- 5.5.7 During any period in which the Contractor's warranties are effective, upon notice by UNDP that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse UNDP for the purchase price paid for the defective goods; and,
- 5.5.8 The Contractor shall remain responsive to the needs of UNDP for any services that may be required in connection with any of the Contractor's warranties under the Contract.

- 5.6 **ACCEPTANCE OF GOODS:** Under no circumstances shall UNDP be required to accept any goods that do not conform to the specifications or requirements of the Contract. UNDP may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall UNDP be obligated to accept any goods unless and until UNDP has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that UNDP shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until

UNDP in fact provides such written acceptance. In no case shall payment by UNDP in and of itself constitute acceptance of the goods.

- 5.7 **REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to UNDP under the Contract, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, UNDP, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from UNDP of such rejection or refusal to accept the goods, the Contractor shall, in sole option of UNDP:

- 5.7.1 provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by UNDP; *or*,
- 5.7.2 repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; *or*,
- 5.7.3 replace the goods with goods of equal or better quality; *and*,
- 5.7.4 pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to UNDP.

- 5.8 In the event that UNDP elects to return any of the goods for the reasons specified in Article 5.7, above, UNDP may procure the goods from another source. In addition to any other rights or remedies available to UNDP under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and UNDP shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account.

- 5.9 **TITLE:** The Contractor warrants and represents that the goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the goods shall pass from the Contractor to UNDP upon delivery of the goods and their acceptance by UNDP in accordance with the requirements of the Contract.

- 5.10 **EXPORT LICENSING:** The Contractor shall be responsible for obtaining any export license required with respect to the goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to UNDP under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of UNDP, UNDP shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with UNDP to enable UNDP to take appropriate measures to resolve the matter.

6. **INDEMNIFICATION:**

- 6.1 The Contractor shall indemnify, defend, and hold and save harmless, UNDP, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against

UNDP, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

- 6.1.1 allegations or claims that the possession of or use by UNDP of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to UNDP under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or*,
 - 6.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.
- 6.2 The indemnity set forth in Article 6.1.1, above, shall not apply to:
- 6.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by UNDP directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; *or*
 - 6.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof furnished under the Contract if UNDP or another party acting under the direction of UNDP made such changes.
- 6.3 In addition to the indemnity obligations set forth in this Article 6, the Contractor shall be obligated, at its sole expense, to defend UNDP and its officials, agents and employees, pursuant to this Article 6, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.
- 6.4 UNDP shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of UNDP or any matter relating thereto, for which only UNDP itself is authorized to assert and maintain. UNDP shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.
- 6.5 In the event the use by UNDP of any goods, property or services provided or licensed to UNDP by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

- 6.5.1 procure for UNDP the unrestricted right to continue using such goods or services provided to UNDP;
- 6.5.2 replace or modify the goods or services provided to UNDP, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; *or*,
- 6.5.3 refund to UNDP the full price paid by UNDP for the right to have or use such goods, property or services, or part thereof.

7. INSURANCE AND LIABILITY:

- 7.1 The Contractor shall pay UNDP promptly for all loss, destruction, or damage to the property of UNDP caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.
- 7.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:
 - 7.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
 - 7.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;
 - 7.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; *and*,
 - 7.2.4 such other insurance as may be agreed upon in writing between UNDP and the Contractor.
- 7.3 The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.
- 7.4 The Contractor acknowledges and agrees that UNDP accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.
- 7.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNDP, in its sole discretion, for

purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:

- 7.5.1 name UNDP as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
 - 7.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against UNDP;
 - 7.5.3 provide that UNDP shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,
 - 7.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNDP.
- 7.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- 7.7 Except for any self-insurance program maintained by the Contractor and approved by UNDP for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to UNDP. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNDP with evidence, in the form of certificate of insurance or such other form as UNDP may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNDP reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 7.5.3, above, the Contractor shall promptly notify UNDP concerning any cancellation or material change of insurance coverage required under the Contract.
- 7.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.
8. **ENCUMBRANCES AND 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 UNDP against any monies due to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or UNDP.
9. **EQUIPMENT FURNISHED BY UNDP TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by UNDP to the Contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment shall be returned to UNDP at the conclusion of the 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, and the Contractor shall be liable to compensate UNDP for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

10. **COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

- 10.1 Except as is otherwise expressly provided in writing in the Contract, 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 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. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP.
- 10.2 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, UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to 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.
- 10.3 At the request of 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 UNDP in compliance with the requirements of the applicable law and of the Contract.
- 10.4 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 UNDP, shall be made available for use or inspection by 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.

11. **PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED**

NATIONS: The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship 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 the United Nations in connection with its business or otherwise without the written permission of UNDP.

12. **CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that is considered proprietary by either Party or 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:

12.1 The Recipient shall:

- 12.1.1 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*,
- 12.1.2 use the Discloser's Information solely for the purpose for which it was disclosed.

12.2 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 12, the Recipient may disclose Information to:

12.2.1 any other party with the Discloser's prior written consent; *and*,

12.2.2 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, 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:

12.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; *or*,

12.2.2.2 any entity over which the Party exercises effective managerial control; *or*,

12.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

12.3 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 UNDP sufficient prior notice of a request for the disclosure of Information in order to allow UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

12.4 UNDP may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

12.5 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.

12.6 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.

13. **FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:**

13.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days



following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

- 13.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, UNDP shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 14, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNDP shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.
- 13.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which 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.

14. TERMINATION:

- 14.1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 17 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.
- 14.2 UNDP may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of UNDP applicable to the performance of the Contract or the funding of UNDP applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, UNDP may terminate the Contract without having to provide any justification therefor.
- 14.3 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by UNDP, the Contractor shall, except as may be directed by UNDP in the notice of termination or otherwise in writing:
 - 14.3.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;

- 14.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
 - 14.3.3 place no further subcontracts or orders for materials, services, or facilities, except as UNDP and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
 - 14.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
 - 14.3.5 transfer title and deliver to UNDP the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
 - 14.3.6 deliver all completed or partially completed plans, drawings, information, and other property
that, if the Contract had been completed, would be required to be furnished to UNDP thereunder;
 - 14.3.7 complete performance of the work not terminated; *and*,
 - 14.3.8 take any other action that may be necessary, or that UNDP may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which UNDP has or may be reasonably expected to acquire an interest.
- 14.4 In the event of any termination of the Contract, UNDP shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, UNDP shall not be liable to pay the Contractor except for those goods delivered and services provided to UNDP in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from UNDP or prior to the Contractor's tendering of notice of termination to UNDP.
- 14.5 UNDP may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:
- 14.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a
moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;
 - 14.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;
 - 14.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;
 - 14.5.4 a Receiver is appointed on account of the insolvency of the Contractor;
 - 14.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,
 - 14.5.6 UNDP reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

- 14.6 Except as prohibited by law, the Contractor shall be bound to compensate UNDP for all damages and costs, including, but not limited to, all costs incurred by UNDP in any legal or non-legal proceedings, as a result of any of the events specified in Article 14.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform UNDP of the occurrence of any of the events specified in Article 14.5, above, and shall provide UNDP with any information pertinent thereto.
- 14.7 The provisions of this Article 14 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.
15. **NON-WAIVER OF RIGHTS:** The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.
16. **NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, UNDP shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNDP shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.
17. **SETTLEMENT OF DISPUTES:**
- 17.1 **AMICABLE SETTLEMENT:** The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the 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 Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.
- 17.2 **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 17.1, 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. 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”) and Article 34 (“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.

18. **PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

19. **TAX EXEMPTION:**

- 19.1 Article II, 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 restrictions, 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 exemptions of UNDP from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNDP to determine a mutually acceptable procedure.
- 19.2 The Contractor authorizes UNDP to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and UNDP shall reimburse the Contractor for any such taxes, duties, or charges so authorized by UNDP and paid by the Contractor under written protest.

20. **MODIFICATIONS:**

- 20.1 Pursuant to the Financial Regulations and Rules of UNDP, only the Chief Procurement Officer of UNDP, or such other contracting authority as UNDP has made known to the Contractor in writing, 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 the Chief Procurement Officer of UNDP, or such other contracting authority as UNDP has made known to the Contractor in writing. .
- 20.2 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 20.1, above.
- 20.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any goods or services provided under the Contract shall not be valid and enforceable against UNDP nor in any way shall constitute an agreement by UNDP thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 20.1, above.

21. **AUDITS AND INVESTIGATIONS:**

- 21.1 Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or by other authorized and qualified agents of UNDP at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by UNDP other than in accordance with the terms and conditions of the Contract.
- 21.2 UNDP may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.
- 21.3 The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNDP access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

22. LIMITATION ON ACTIONS:

- 22.1 Except with respect to any indemnification obligations in Article 6, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 17.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.
 - 22.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.
23. **ESSENTIAL TERMS:** The Contractor acknowledges and agrees that each of the provisions in Articles 24 to 29 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle UNDP to terminate the Contract or any other contract with UNDP immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.
24. **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its obligations under the Contract. Should any authority external to UNDP seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify UNDP and provide all

reasonable assistance required by UNDP. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of UNDP or the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNDP.

25. **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of UNDP or the United Nations any direct or indirect benefit arising from or related

to the performance of the Contract or of any other contract with UNDP or the United Nations or the award thereof or for any other purpose intended to gain an advantage for the Contractor.

26. **OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to UNDP, as such obligations are set forth in UNDP vendor registration procedures.

27. **CHILD LABOR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) 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.

28. **MINES:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

29. **SEXUAL EXPLOITATION:**

29.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled 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 reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

29.2 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.

SPECIAL CONDITIONS

The following Special Conditions of Contract shall supplement the General Conditions of Contracts for the Provision of Goods and Services (Section 3):

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| ACCEPTANCE OF THE PURCHASE ORDER | The resulting Purchase Order may only be accepted by the Supplier's signing and returning an acknowledgement copy within the time specified. Acceptance of the Purchase Order shall effect a contract between the Parties under which the rights and obligations of the Parties shall be governed solely by the terms and conditions of the 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. |
| LIQUIDATED DAMAGES FOR NOT MEETING DELIVERY (refer to Art. 7.1) | If the Supplier fails to supply the specified goods within the time period(s) stipulated by the Purchase Order, the Purchaser shall, without prejudice to its other remedies under the contract, deduct from the Purchase Order price, as liquidated damages, a sum equivalent to 0.5 percent of the price of the complete consignment or service (Consignments and Services as specified in Section 6 Price Schedule) for each day of delay until actual delivery or completion, up to a maximum deduction of 10 percent of the Purchase Order price. Once the maximum is reached, the Purchaser may consider termination of the PO. |
| WARRANTY (ref. to Art. 7.5) | The warranty period shall be as Required in Section 3 and following acceptance of the goods by UNDP at destination. Further details on Warranty Services required are included in Section 3 |
| GOODS AND SERVICES DEFINED | <p>Goods are hereinafter deemed to include, without limitation, equipment, spare parts, commodities, raw materials, components, customized and standard software as required, intermediate products and products which the Supplier is required to supply under the Purchase Order.</p> <p>Services are to include design, installation and commissioning, training services, technical assistance and warranty services as required to supply in the Purchase Order</p> |
| FIRE AND EXTENDED COVERAGE INSURANCE (ref. to Art 9.2) | At all times prior to delivery and up to the time of commissioning, the Supplier shall effect and maintain continuous fire, hazard and extended coverage insurance upon any goods subject to this Order in an amount equal to the sound insurable value of such goods and labour incorporated therein with loss payable to the Supplier and UNDP as their interests may appear. |
| AFTER SALES SERVICE (ref. to Art 7.5.8) | The Supplier shall maintain or provide a local service organization constituted to handle requests from UNDP or its clients for technical assistance, maintenance, service, repairs and overhaul of the goods, as specified in Requirements Section 3. |
| TRADE TERMS (ref. to Art 7) | Whenever an INCOTERM is used in this Order it shall be interpreted in accordance with the INCOTERMS 2010. |
| PAYMENT | <p>UNDP shall, on fulfilment of the Delivery Terms, unless otherwise provided in the Purchase Order, make payment within 30 days of receipt of the Supplier's original invoice for the goods and copies of the shipping documents specified in the Purchase Order. Similarly, payment for Services will be due within 30 days from receipt of original Supplier's invoice accompanied by certificate of completion and acceptance of Services issued by the End User.</p> <p>Payment against the invoice referred to above will reflect any discount shown under the payment terms of the Purchase Order, provided payment is made within the period required by such payment terms.</p> <p>Unless authorized by UNDP, the Supplier shall submit one invoice in respect of the Purchase Order, and such invoice must indicate the Purchase Order's identification number.</p> <p>The prices shown in the Purchase Order may not be increased except by express written agreement of UNDP.</p> <p>Payment by UNDP does not imply acceptance of goods nor of any related work or services under this Order</p> |
| PACKAGING: | The Supplier also warrants that the goods are securely contained, packaged and marked, taking into consideration the mode(s) of shipment, in a manner so as to protect the goods during delivery to their ultimate destination. |
| LOCAL AUTHORITY BY-LAWS | All work shall comply with Local Authority By-Laws and regulations. |