



## REQUEST FOR PROPOSAL (RFP)

Date: October 19, 2016  
Reference: 2016/PROC-UNDP-MMR/63

Dear Sir / Madam:

We kindly request you to submit your Proposal for **Integrated Assessment of Socio-economic and Environmental Impacts of Mining in Mandalay Region, in Myanmar** details of which are in Annex 4 of this RFP. **Closing date for submission of proposals will be 5 pm on Friday, 4 November 2016.**

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

- For hard copy proposals, please send your Proposals in sealed envelopes (separate for Technical Proposal and Financial Proposal to **Registry of the United Nations Development Programme, No. 6 Natmank Road, Tamwe Township, Yangon, PO Box. 650, 11211 Yangon** clearly indicating Reference: **2016/PROC-UNDP-MMR/063** on envelop as early as possible before the deadline of **4<sup>th</sup> November 2016**;
- For electronic submission, please send only the duly completed Proposal Documents with above-mentioned RFP No. **2016/PROC-UNDP-MMR/063** to [bids.mm@undp.org](mailto:bids.mm@undp.org) (Please attach password protected Technical Proposal and Financial Components separately; send the password for technical proposal within 24 hours after the deadline for submission of proposal. Password for financial proposal will be requested from only bidder/s whose technical bids are qualified);
- UNDP takes no responsibility for effective delivery of the electronic document.
- Please note, if your file was successfully sent to [bids.mm@undp.org](mailto:bids.mm@undp.org) you should receive the message subjected 'Success! Your proposal was sent to the secured e-mail'. If upon submission you do not receive the confirmation message, please contact [kay.khine@undp.org](mailto:kay.khine@undp.org) for clarifications.
- Please make sure that the maximum file size of the attachments does not exceed 5 MB. If attachments exceed maximum file size allowed, please send in separate emails with sequential numbering in subject line.

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

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

Services proposed shall be reviewed and evaluated based on completeness and compliance of the Proposal and responsiveness with the requirements of the RFP and all other annexes providing details of UNDP requirements. The Proposal that complies with all of the requirements, meets all the evaluation criteria and offers the best value for money shall be selected and awarded the contract. Any offer that does not meet the requirements shall be rejected.

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

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

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

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

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

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

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

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

Thank you and we look forward to receiving your Proposal.

Sincerely yours,



Nasantuya Chuluun,  
Operations Manager

## Description of Requirements

Context of the Requirement	Integrated Assessment of Socio-economic and Environmental Impacts of Mining in Mandalay Region, in Myanmar
Implementing Partner of UNDP	N/A
Brief Description of the Required Services	<p>Carry out an assessment to provide an overview of the direct, indirect and cumulative environmental, social and economic impacts (both positive and negative) of current mining investment projects in 2 selected townships of Mandalay region, in a participatory manner with multi-stakeholders, including from government, civil society and the private sector.</p> <p>Please see more details in the Terms of Reference – Annex 4</p>
List and Description of Expected Outputs to be Delivered	<p>The contracted institution will be responsible for the following core features of the assignment:</p> <ul style="list-style-type: none"> <li>- Inception workshop and inception report</li> <li>- Field visit research</li> <li>- Draft Integrated Assessment Report</li> <li>- Validation workshop of findings</li> <li>- Revised final report and executive summary incorporating relevant feedback</li> </ul>
Person to Supervise the Work/Performance of the Service Provider	National Project Coordinator (Environmental Governance) and Poverty-Environment Initiative (PEI) Myanmar Coordinator (Natural Resource Management Output, UNDP Myanmar Country Office)
Frequency of Reporting	As necessary
Progress Reporting Requirements	<p>Selected institution will report directly to the National Project Coordinator (Environmental Governance) and Poverty-Environment Initiative (PEI) Myanmar Coordinator (Natural Resource Management Output, UNDP Myanmar Country Office) and submit the deliverables at each milestone.</p> <p>Please see more details in the Terms of Reference – Annex 4</p>
Location of work	<input checked="" type="checkbox"/> Mandalay Region, Myanmar <input checked="" type="checkbox"/> At Contractor's Location
Expected duration of work	4 months
Target start date	28 November, 2016
Latest completion date	24 March, 2017
Travels Expected	Please see Terms of Reference – Annex 4
Special Security Requirements	<input checked="" type="checkbox"/> N/A
Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)	<input checked="" type="checkbox"/> Office space during the field work period <input checked="" type="checkbox"/> Land Transportation during the field work period

Implementation Schedule indicating breakdown and timing of activities/sub-activities	<input checked="" type="checkbox"/> Required		
Names and curriculum vitae of individuals who will be involved in completing the services	<input checked="" type="checkbox"/> Required		
Currency of Proposal	<input checked="" type="checkbox"/> United States Dollars <input checked="" type="checkbox"/> Local Currency for Local Firm/Company		
Value Added Tax on Price Proposal	<input checked="" type="checkbox"/> Must be inclusive of VAT and other applicable indirect taxes		
Validity Period of Proposals ( <i>Counting for the last day of submission of quotes</i> )	<input checked="" type="checkbox"/> 90 days  In exceptional circumstances, UNDP may request the Proposer to extend the validity of the Proposal beyond what has been initially indicated in this RFP. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Proposal.		
Partial Quotes	<input checked="" type="checkbox"/> Not permitted		
Payment Terms	<b>Activities/Deliverables</b>	<b>Expected completion date</b>	<b>Percentage of total contract amount</b>
	Inception Workshop & Report	Within 2 weeks of signing the contract	15%
	Field visit & draft Integrated Assessment report	Within 14 weeks of signing the contract	30%
	Validation Workshop & final Integrated Assessment report	Within 17 weeks of signing the contract	55%
	Condition for payment release: within thirty (30) days from the date of meeting the following conditions: a) UNDP's written acceptance (i.e. not mere receipt) of the quality milestone/ outputs; and b) Receipt of invoice from the Service Provider		
Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment	National Project Coordinator (Environmental Governance) with technical review by UNDP-UNEP Poverty-Environment Initiative (PEI) Asia Pacific team (Bangkok Hub) if requested		
Type of Contract to be Signed	<input checked="" type="checkbox"/> Institutional Contract		

Criteria for Contract Award	<input checked="" type="checkbox"/> Highest Combined Score (based on the 70% technical offer and 30% price weight distribution) <input checked="" type="checkbox"/> Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criteria and cannot be deleted regardless of the nature of services required. Non acceptance of the GTC may be grounds for the rejection of the Proposal.
Criteria for the Assessment of Proposal	<p><b><u>Technical Proposal (70%)</u></b></p> <input checked="" type="checkbox"/> Expertise of the Firm 40% <input checked="" type="checkbox"/> Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan 40% <input checked="" type="checkbox"/> Management Structure and Qualification of Key Personnel 20% <p><b><u>Financial Proposal (30%)</u></b>  To be computed as a ratio of the Proposal's offer to the lowest price among the proposals received by UNDP.</p>
UNDP will award the contract to:	<input checked="" type="checkbox"/> Only one Service Provider
Annexes to this RFP	<input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2) <input checked="" type="checkbox"/> General Terms and Conditions / Special Conditions (Annex 3) <input checked="" type="checkbox"/> Detailed TOR (Annex-4)
Contact Person for Inquiries (Written inquiries only)	Kay Khine Procurement Unit Subject: 2016/PROC-UNDP-MMR/063 Email: <a href="mailto:bids.mm@undp.org">bids.mm@undp.org</a>  Any delay in UNDP's response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.

## FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL<sup>1</sup>

*(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery<sup>2</sup>)*

[insert: Location]

[insert: Date]

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

Dear Sir/Madam:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the RFP dated [specify date] , and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions:

### A. Qualifications of the Service Provider

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

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

### B. Proposed Methodology for the Completion of Services

*The Service Provider must describe how it will address/deliver the demands of the RFP; providing a detailed description of the essential performance characteristics, reporting conditions and quality assurance mechanisms that will be put in place, while demonstrating that the proposed methodology will be appropriate to the local conditions and context of the work.*

*This includes:*

- *Suggested survey and interview questions*
- *Methodology for selecting areas to be visited*
- *How water or soil will be selected for testing*
- *Chemicals to be tested for*

<sup>1</sup> This serves as a guide to the Service Provider in preparing the Proposal.

<sup>2</sup> Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes

- Suggested strategies for contacting different stakeholders
- How to ensure representativeness of surveys for the different areas and stakeholders
- Strategy for data analysis
- Suggested workplan with responsibilities of team members and timetable
- Training strategy
- Inception Workshop draft plan
- Validation Workshop draft plan

**C. Qualifications of Key Personnel**

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

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

**D. Cost Breakdown per Deliverable\***

	<b>Deliverables</b> <i>[list them as referred to in the RFP]</i>	<b>Percentage of Total Price</b> <i>(Weight for payment)</i>	<b>Price</b> <i>(Lump Sum, All Inclusive)</i>
1	Deliverable 1		
2	Deliverable 2		
3	....		
	<b>Total</b>	100%	

*\*This shall be the basis of the payment tranches*

**E. Cost Breakdown by Cost Component [This is only an Example]:**

<b>Description of Activity</b>	<b>Remuneration per Unit of Time</b>	<b>Total Period of Engagement</b>	<b>No. of Personnel</b>	<b>Total Rate</b>
<b>I. Personnel Services</b>				
1. Services from Home Office				
a. Expertise 1				
b. Expertise 2				
2. Services from Field Offices				
a. Expertise 1				
b. Expertise 2				
3. Services from Overseas				
a. Expertise 1				
b. Expertise 2				
<b>II. Out of Pocket Expenses</b>				
1. Travel Costs				
2. Daily Allowance				
3. Communications				
4. Reproduction				
5. Equipment Lease				
6. Others				
<b>III. Other Related Costs</b>				

*[Name and Signature of the Service Provider's  
Authorized Person]  
[Designation]*

***General Terms and Conditions for Services*****22.2 LEGAL STATUS:**

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

**2.0 SOURCE OF INSTRUCTIONS:**

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

**3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:**

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

**4.0 ASSIGNMENT:**

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

**5.0 SUB-CONTRACTING:**

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

**6.0 OFFICIALS NOT TO BENEFIT:**

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

**7.0 INDEMNIFICATION:**

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials, agents, servants and employees from and against all suits, claims,



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

## **8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:**

- 8.1** The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- 8.2** The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- 8.3** The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- 8.4** Except for the workmen's compensation insurance, the insurance policies under this Article shall:
  - 8.4.1** Name UNDP as additional insured;
  - 8.4.2** Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the UNDP;
  - 8.4.3** Provide that the UNDP shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
  - 8.5** The Contractor shall, upon request, provide the UNDP with satisfactory evidence of the insurance required under this Article.

## **9.0 ENCUMBRANCES/LIENS:**

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

## **10.0 TITLE TO EQUIPMENT:**

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

## **11.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

- 11.1** Except as is otherwise expressly provided in writing in the Contract, the UNDP shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP.
- 11.2** To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- 11.3** At the request of the UNDP; the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the UNDP in compliance with the requirements of the applicable law and of the Contract.
- 11.4** Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

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

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

## **13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:**

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

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

- 13.1.1** use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,
  - 13.1.2** use the Discloser's Information solely for the purpose for which it was disclosed.
- 13.2** Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 13, the Recipient may disclose Information to:
  - 13.2.1** any other party with the Discloser's prior written consent; and,
  - 13.2.2** the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:
    - 13.2.2.1** a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,
    - 13.2.2.2** any entity over which the Party exercises effective managerial control; or,
    - 13.2.2.3** for the UNDP, an affiliated Fund such as UNCDF, UNIFEM and UNV.
- 13.3** The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- 13.4** The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General.
- 13.5** The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 13.6** These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.
- 14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**
  - 14.1** In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the

UNDP, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the UNDP of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the UNDP shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

**14.2** If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the UNDP shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

**14.3** Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

**14.4** The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which the UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract..

## **15.0 TERMINATION**

**15.1** Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.

**15.2** UNDP reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case UNDP shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

**15.3** In the event of any termination by UNDP under this Article, no payment shall be due from UNDP to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.

**15.4** Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the UNDP may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UNDP of the occurrence of any of the above events.

## **16.0 SETTLEMENT OF DISPUTES**

**16.1 Amicable Settlement:** The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

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

## **17.0 PRIVILEGES AND IMMUNITIES:**

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

## **18.0 TAX EXEMPTION**

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

**18.2** Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has

consulted with the UNDP before the payment thereof and the UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

#### **19.0 CHILD LABOUR**

- 19.1** The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.
- 19.2** Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, at no cost to UNDP.

#### **20.0 MINES:**

- 20.1** The Contractor represents and warrants that neither it nor any of its suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.
- 20.2** Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNDP.

#### **21.0 OBSERVANCE OF THE LAW:**

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

#### **22.0 SEXUAL EXPLOITATION:**

- 22.1** The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its employees or any other persons who may be engaged by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all appropriate measures to prohibit its employees or other persons engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. The Contractor acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach

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

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

**23.0 AUTHORITY TO MODIFY:**

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

## TERMS OF REFERENCE

### **Integrated Assessment of Socio-economic and Environmental Impacts of Mining in Mandalay Region, in Myanmar**

#### **A. Background**

UNDP Myanmar has been implementing UNDP Country Programme for 2013-2017 with the aim of promoting local governance, growth and sustainable development with the emphasis on rights-based, gender sensitive, inclusive and equity. The Environmental Governance and Disaster Resilience Component of the UNDP Country Programme focuses on strengthening capacities at local, regional and national levels to manage and utilize natural resources in a sustainable way, and to enhance resilience and adaptive capacity to long-term climate change including variability impacts and to reduce the associated risk of natural disasters.

The Joint UNDP-UNEP Poverty-Environment Initiative (PEI) is a global programme that assists countries to integrate environmental issues of poor women and men into national and sub-national development planning, budgeting and monitoring and evaluation systems. In Asia-Pacific, PEI is working in Bangladesh, Bhutan, Indonesia, Lao PDR, Mongolia, Myanmar, Nepal and the Philippines.

The Poverty-Environment Initiative (PEI) Myanmar is a project within UNDP Myanmar's Environmental Governance and Disaster Resilience Component. In consultation with the Department of Mines of the Ministry of Natural Resources and Environmental Conservation, PEI Myanmar has identified mining development as one of the key drivers that can affect the social and environmental conditions of poor women and men in Myanmar. PEI Myanmar will work with the Department of Mines, Ministry of Natural Resources and Environmental Conservation (MONREC) to carry out an assessment of mine sites in 2 townships in Mandalay in order to understand the cumulative environmental, social and economic impacts of mining activities in an integrated way.

Strengthening the management of environmental and social impacts in the existing mining sector would contribute to Myanmar's preparedness for any investment that may occur in the future and improve the status of current domestic mining projects. Understanding how mining actually impacts the local economy and the development of a region or state requires assessing impacts on employment, infrastructure and revenue inflows, but also how the environment and people living near mining activities are impacted.

If the government wants to ensure that mining has a greater positive than negative impact, then mining must become more environmentally friendly. Formalization of mining activities can also increase its economic benefits. By its very nature, mining sector has an unavoidable environmental impact. The degree to which the environment is rehabilitated after it is degraded, and waste and pollution impacts are mitigated, depends on how projects are managed. The same is true of impacts on communities living near mine sites, whose access to land, forest and water resources or shared infrastructure can all be affected. Fully understanding the degree of environmental and social impact requires having a baseline knowledge of social and environmental quality before, during, and after a project.



Although environmental impacts from mining are widely reported, a systematic baseline of their scope and incidence, for example, the toxicity of water bodies and soil due to mining, has not been established and maintained by the Department of Mines or Environment Conservation Department through regular monitoring and testing at mine sites. Reported environmental impacts range from the increasing use of mercury, cyanide and other chemicals, soil, water and air pollution, deforestation, sedimentation of rivers due to dredging, improper tailings management and a range of negative health impacts directly related to exposure to mining activities.

Socio-economic impacts are also widely reported through mainstream media and NGO reports. They include: land conflicts, concerns about equitable employment opportunities and labor standards, impacts on community livelihoods and on women and children, health & safety on and near mine sites, and shared infrastructure between mines and villages such as roads, electricity and water pipelines. The loss of government revenue from unregulated extraction and trade is also a serious concern. There has been no systematic analysis of the impacts of these issues and a baseline has also not been established.

#### Site selection: Mandalay

In consultation with the Dept. of Mines, PEI Myanmar has selected Mandalay region as its target region given its high level of mining activities and its strong poverty-environment nexus (i.e. poor people's dependence on the environment and natural resources and impacts of the environmental degradation on poor people's livelihoods and health) as well as the opportunity to engage multi-stakeholders in this issue.

The assessment will visit formal mine sites, both large and small scale, covering commodities such as gold, limestone and copper.

According to the 2014 Myanmar Population and Housing Census, Mandalay Region has a population of 6.16 million, which represents about 12% of the national population. Of that 6.16 million, about 4 million (65%) live in rural areas. Mandalay is the second most densely populated of the states/regions, at 200 per km<sup>2</sup>. Mandalay has 30 townships: 5 are considered 100% urban and 12 have a rural population of 90% or more. The national Poverty Profile from the 2009-2010 Integrated Households and Living Conditions Survey indicates that Mandalay is one of the four major contributing states/regions to both national food poverty (16%) and national poverty incidence (15%). Nationally, poverty incidence is twice as high in rural areas as urban areas.

According to the 2014 Census report on Occupation and Industry, 43,294 people (aged 10 years and over) in Mandalay report working in 'Mining and Quarrying,' 34,737 men and 8,557 women. Mandalay division has the highest number of formal mining permits issued by the Department of Mines. Of the 543 mining permits, 46 are for large scale production.

The establishment of a multi-stakeholder EITI subnational coordination unit in Mandalay in 2015, launch of the first EITI report in January 2016 and willingness to use the participatory approach that was already piloted for joint monitoring with civil society, private sector and Department of Mines with support from the local NGO ALARM for participatory monitoring in Sagaing, have set the stage for the Department of Mines to continue its participatory efforts to apply Myanmar's laws in order to ensure that the mining industry contributes to Myanmar's economic development in a more sustainable way.

#### **B. Objective**

PEI will assist the Ministry of Natural Resources and Environmental Conservation (Department of Mines and Environment Conservation Department) to undertake an integrated assessment of environmental and socio-economic impacts of mining in 2 townships of Mandalay Division, Myanmar in a participatory manner engaging multi-stakeholders to be identified.

PEI will work to coordinate with government, civil society and private sector to identify 1) representatives from each stakeholder group to take part in a multi-stakeholder taskforce providing oversight of the assessment process and; 2) key participants from each stakeholder group in Mandalay region to take part in the assessment process.

PEI will also recruit a Myanmar National Consultant to lead the stakeholder participation process and coordinate research in the field, who will actively collaborate with the institutional team selected to carry out this assessment.

The technical objectives of this integrated assessment are to:

- Provide an overview of the direct, indirect and cumulative impacts (both positive and negative) of the current and planned mining investment projects in 2 selected townships of Mandalay region.
- Three kinds of impacts will be assessed:
  - o Economic: Quantitative and qualitative information on revenue generated from mining activities and the number and type of jobs created, whether directly from mining activities or from services or other economic activities supporting mining
  - o Environmental: Qualitative and quantitative information on how the environment is being affected by mining activities, in order to establish a simple baseline that can be maintained by the Department of Mines and Environmental Conservation Department and identify the most critical acid/metals contribution to soil and water that need to be addressed.
  - o Social: Qualitative and quantitative information on most critical issues negatively affecting mine workers and communities in order to develop multi-stakeholder solutions to address them.
- In an inception workshop in Mandalay, to be organized by PEI, present proposed methodologies and agree them with the multi-stakeholder task force and key participants; carry out scenario building exercises to determine stakeholders' opinion of the most desirable management system to prevent, mitigate and manage negative environmental and social impacts from mining; produce an inception report explaining the agreed methodology for the assessment and desired environmental and social impact management system.
- Carry out research for the assessment through 1) desk-based review of literature and relevant documents and; 2) systematic field visits to mining areas in the designated 2 townships applying agreed methodologies (e.g. interviews, questionnaires, surveys, field testing, etc.) for the purpose of gathering quantitative and qualitative data on environmental, social and economic impacts in the scope listed above; and in order to make recommendations for how the desired environmental and social impact management system can be implemented in practice.
- Compile and analyse the research findings and design scenarios that explain the likely impacts from mining projects on revenue generation and job creation, the environment and health, over the short, medium and long-term (examples of different types of scenarios: business-as-usual, low-growth, moderate growth and high growth).
- Analyse information collected from affected stakeholders during the assessment and propose measures to implement the desired environmental and social impact management system, in a way that is also understandable and usable by policy-makers, planners and decision-makers.
- Recommend specific measures that can be taken by central and sub-national authorities beyond Mandalay to consider the impacts of mining and natural resource development in their medium-term and long-term development strategy and planning systems.
- Combine all research findings in a draft integrated assessment report.
- In a validation workshop, to be organized by PEI, present the initial findings and recommendations to stakeholders.

- Incorporate stakeholder feedback from the validation workshop and finalise the integrated assessment report.

PEI strongly promotes development of long-term in-country capacity of using integrated assessment tools. In this regard, with the support of the PEI Coordinator and National Consultant, the selected institution should also aim to achieve the following objectives:

- Assess needs and provide opportunities for key stakeholders (which can include government departments, civil society organisations and private sector) to gain on-the-job training and experience of integrated assessments throughout different stages of the assessment process; if appropriate link to government regulated mandatory assessments such as those around consultation, monitoring and reporting listed in the EIA Procedures 2015
- Provide short, tailored training on the techniques and processes used in the integrated assessment for the government, private sector and civil society stakeholders to be identified.

### C. Scope of Work

This assessment will result in a report of an integrated assessment of impacts of mining in Mandalay region that will be published jointly by the Ministry of Natural Resources and Environmental Conservation of Myanmar and the UNDP-UNEP PEI. The report will also propose recommendations to manage the assessed impacts.

### D. Key activities/Deliverables

The institutional contract is expected to start on 28 November 2016 with the following proposed deadlines for deliverables:

DELIVERABLE	DUE DATE
Inception Workshop & Report - Discussing and agreeing methodologies with multi-stakeholder taskforce and key participants - Scenario building exercises to determine the stakeholders' most desirable environmental and social impact management system - Report explaining agreed plan and selected methodologies	Within 2 weeks after signing the contract
Field visits to 2 townships in Mandalay, in Myanmar - Field testing, surveys, interviews, etc. - On-site training on methods used in the assessment with identified stakeholders from government, private sector and civil society	Within 14 weeks after signing the contract
Draft integrated assessment report, including: - Executive Summary - Methodology - Relevant documents reviewed - Findings of the research - Recommendations from the research	
Validation Workshop - Presenting and reviewing the findings with multi-stakeholder taskforce and key participants	Within 15 weeks after signing the contract
Final integrated assessment report and executive summary - Incorporating feedback from the validation workshop	Within 17 weeks after signing the contract

DELIVERABLE	DUE DATE

## E. Timeframe

The contract will be issued to cover 28 November 2016 to 20 March 2017 (56 working days). The timeframe for key tasks is expected to be as follows:

- 1. Home-based work:** 5 days (November/December 2016)
  - Preparation for mission and presentation of assessment plan and methodologies
  - Review of background documents
  - Briefings via skype with PEI Coordinator and National Consultant as necessary
- 2. First Mission to Mandalay:** 3 days (December 2016)
  - Inception workshop: Presentation & discussion of proposed methodologies; identification of desired environmental and social impact management system
  - Identification of need to recruit additional researchers (to be followed up by PEI Coordinator and National Consultant)
- 3. Home-based work:** 2 days (December 2016)
  - Inception report
  - Briefings via skype with PEI Coordinator and National Consultant as necessary
- 4. Second Mission to Mandalay:** 24 days (January/February 2017)
  - Field visits: field testing, surveys, questionnaires, interviews, etc.
- 5. Home-based work:** 15 days (February 2017)
  - First draft integrated assessment report
  - Briefings via skype with PEI Coordinator and National Consultant as necessary
- 6. Third Mission to Mandalay:** 2 working days (February/March 2017)
  - Validation workshop: Presentation and discussion of initial findings with stakeholders
- 7. Home-based work:** 5 working days
  - Revision of integrated assessment report based on stakeholder feedback
  - Briefings via skype with PEI Coordinator and National Consultant
  - Submission of final integrated assessment report (5 days)

## F. Institutional Arrangements

The selected institution will be responsible for:

- Ensuring completion of all the deliverables outlined above: inception workshop and report, assessment field visits, draft integrated assessment report, validation workshop presentation of findings, final integrated assessment report.

## Coordination & Research Support

- The PEI Coordinator and National Consultant will be responsible for arranging and managing stakeholder participation, travel logistics and details, assembling required materials and recruiting additional local researchers as necessary. The National Consultant will support the selected institution in facilitating meetings, carrying out the assessment research in the field, and providing substantive input to the research findings. The PEI Coordinator will provide feedback, advice and other support as necessary.
- Technical feedback will be provided as necessary from the UNDP-UNEP PEI Asia Pacific team.

### **Multi-stakeholder Taskforce**

- Provide oversight, advice and guidance to the assessment
- In collaboration with the selected institution, through the inception workshop process, it will set the agenda for the integrated assessment and agree on the scope of research and selected methodologies; it will oversee and enable the process of the integrated assessment, particularly if any challenges are encountered in the course of assessment in the field; finally, it will review the assessment report findings and commit to taking policy actions.

### **UNDP Management Arrangements**

- The institution will report to the National Project Coordinator (Environmental Governance) and PEI Myanmar Coordinator (Natural Resource Management Output, UNDP Myanmar Country Office) as necessary. They will be accountable to UNDP on the timeliness and quality of the deliverables.
- UNDP will coordinate feedback on deliverables, which will take a minimum of seven working days.
- The institution is expected to work closely and collaboratively as necessary with UNDP staff in Yangon and Mandalay for the duration of this assignment.
- UNDP will secure government (and other counterpart) cooperation for this assignment, including visas and travel authorization, and will assist in the facilitation of introduction letters and/or requests for meetings upon request with stakeholders and beneficiaries.
- The institution team members will be entitled to apply for reimbursement of costs associated with necessary work-related in-country travel in accordance with UNDP's travel policy.
- UNDP will provide administrative and logistical support with travel and transport arrangements, visas, and processes necessary for successful completion of the assignment, and arrange the consultants' in-country work-related travel.

### **G. Location of work and travel**

The integrated assessment will involve home-based work and mission travel to Mandalay, Myanmar for the purposes of the assessment.

Duty station: home-based, with maximum of three missions to Mandalay, Myanmar.

Missions: UNDP Myanmar will cover travel costs, as per UN rules and regulations, for two representatives from the selected institutions during the inception workshop and assessment in the field, and for the team leader from the selected institution during the validation workshop. The institution is requested to include costs related to the three trips in its Financial Proposal.

### **H. Required expertise and experience**

#### **Qualifications of the institution:**

- A leading academic/research institute specializing in mining;
- Track record of high quality research in areas related to sustainable development and mining;

#### **Qualifications of the research team leader:**

**Education:**

- Advanced university degree in natural resource management, social or natural sciences, environmental studies, economics, development studies, or other relevant area.

**Experience:**

- Minimum 10 years of relevant work experience.
- Minimum 7 years of experience in leading research teams on topics related to sustainable development and mining.
- Track record of conducting policy and research analyses related to sustainable development and mining.
- Technical knowledge of environmental, social and economic impacts of mining sector, particularly in developing country contexts;
- Technical knowledge in cross-cutting areas relevant for assessing environmental, social and economic impacts of mining in an integrated way, including effects on women and children.
- Track record of working with multi-stakeholders, including civil society, government officials and private sector in developing countries; experience in Myanmar or Southeast Asia an asset.
- Ability to work and communicate cross-culturally.
- Strong interpersonal skills and cultural sensitivity.
- Strong English language skills (both written and spoken).

**Qualifications of the research team members:**

**Education:**

- Master's degree or above in natural resource management, social or natural sciences, environmental studies, economics, development studies, or other relevant area.

**Experience:**

- Minimum 4 years of experience in conducting research on topics related to sustainable development and mining.
- Technical specialization in environmental, social or economic impacts of mining.
- Technical knowledge in cross-cutting areas relevant for the assessment.
- Ability to work and communicate cross-culturally.
- Strong interpersonal skills and cultural sensitivity.
- Strong English language skills (both written and spoken).

**H. Terms of Payment**

The institution is requested to submit both a Technical and a Financial Proposal for the provision of services. Please note that the contract is a fixed output-based price regardless of extension. Cost components include professional fee, costs related to project implementation, two trips to Mandalay, Myanmar for two members of the research team for the inception workshop and field visit, and one trip to Mandalay, Myanmar for the research team leader for the validation workshop.