



REQUEST FOR PROPOSAL (RFP)

Letter of Invitation

January 5, 2017

UNDP/AFG/RFP/2016/0000001153

Subject: Conduct Study on Value Chain Analysis of Gemstones and One Other Commodity (Gold or Iron) in Afghanistan

Dear Sir / Madam:

The United Nations Development Programme (UNDP) Afghanistan Country Office hereby invites you to submit a Proposal to this Request for Proposal (RFP) for the above-referenced subject.

This RFQ includes the following documents:

- Letter of Invitation
- Annex 1 - RFP Data Sheet
- Annex 2 – Terms of Reference
- Annex 3 - Forms for Submitting Proposal (Technical and Financial)
- Annex 4 - General Terms and Conditions for Services
- E-tendering Instructions Manual for Bidders
- FAQ for Bidders

Your offer comprising of all required documents should be submitted in accordance with Annex 1 through the UNDP ATLAS E-Tendering system, which can be accessed at <https://etendering.partneragencies.org>.

No hard copy or email submissions will be accepted by UNDP:

The step by step instructions for registration of bidders and quotation/proposal submission through the UNDP ATLAS E-Tendering system is available in the instructions manual for the bidders, attached with this RFP. Should you require any training on the UNDP ATLAS E-Tendering system or face with any difficulties when registering your company or submitting your bid, please send an email to the E-Tendering Help Desk at procurement.af@undp.org or call +93728999764 during office hours to request for help.


The proposers are advised to use Internet Explorer (Version 10 or above) browser to avoid any compatibility issues with the E-Tendering system.

Please refer to E-Tendering system for closing date of this RFP.

Kindly go through this invitation letter and other documents attached here to this RFP. Should you have any questions or require any clarification, please feel free to send an email to the procurement officer at procurement.af@undp.org.

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

Yours sincerely,

for 
Head of Procurement
January 5, 2017

Data Sheet

DS No.	Data	Specific Instructions / Requirements
1	Project Title :	UNDP National Human Development Report Project
2	Title of Services/Work:	Conduct Study on Value Chain Analysis of Gemstones and One Other Commodity (Gold or Iron) in Afghanistan
3	Country / Region of Work Location:	Afghanistan
4	Language of the Proposal:	<input checked="" type="checkbox"/> English
5	Conditions for Submitting Proposals for Parts or sub-parts of the TOR	<input checked="" type="checkbox"/> Not allowed
6	Conditions for Submitting Alternative Proposals	<input checked="" type="checkbox"/> Shall not be considered
7	A pre-proposal conference will be held on:	Will not be held
8	Period of Proposal Validity commencing on the submission date	<input checked="" type="checkbox"/> 60 days
9	Proposal Security	<input checked="" type="checkbox"/> Not Required
10	Acceptable forms of Proposal Security	<input checked="" type="checkbox"/> Not Applicable
11	Validity of Proposal Security	<input checked="" type="checkbox"/> Not Applicable
12	Advanced Payment upon signing of contract	<input checked="" type="checkbox"/> Not allowed
13	Liquidated Damages	<input checked="" type="checkbox"/> Will be imposed under the following conditions: Percentage of contract price per day of delay: 0.22% Max. no. of days of delay :45 days Next course of action : UNDP may terminate the contract and/or PO

14	Performance Security	<input checked="" type="checkbox"/> Not Required
15	Preferred Currency of Proposal and Method for Currency conversion	<input checked="" type="checkbox"/> United States Dollars (US\$) <i>(for companies registered outside Afghanistan)</i> <input checked="" type="checkbox"/> Local Currency (AFN) <i>(for companies registered under Afghanistan Government Authority)</i> For evaluation purposes, the bids submitted in other currencies will be converted to US\$ using the UN Operational Exchange Rate. <i>Reference date for determining UN Operational Exchange: will be the closing date for Proposal Submission.</i>
16	Deadline for submitting requests for clarifications/questions	15 January 2017
17	Contact Details for submitting clarifications/questions ¹	E-mail address dedicated for this purpose: Procurement.af@undp.org Note : The Subject Line Email Should UNDP/AFG/RFP/2016/0000001153
18	Manner of Disseminating Supplemental Information to the RFP and responses/clarifications to queries	<input checked="" type="checkbox"/> Uploaded in the system. Once uploaded, Prospective Proposers (i.e. Proposers that have accepted the bid invitation in the system) will be notified via email that changes have occurred. It is the responsibility of the Proposers to view the respective changes and clarifications in the system
21	Deadline of Submission	Date and Time: As specified in the system (note that time zone indicated in the system is New York Time zone). PLEASE NOTE:- 1. Date and time visible on the main screen of event (on E-Tendering portal) will be final and prevail over any other closing time indicated elsewhere, in case they are different. Please also note that the bid closing time shown in the PDF file generated by the system is not accurate due to a technical glitch that we will resolve soon. The correct bid closing time is as indicated in the E-Tendering portal and system will not accept any bid after that time. It is the responsibility of the bidder to make sure bids are submitted within this deadline.

¹ 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.

		<p>UNDP will not accept any bid that is not submitted directly in the system.</p> <p>2. Try to submit your bid a day prior or well before the closing time. Do not wait until last minute. If you face any issue submitting your bid at the last minute, UNDP may not be able to assist.</p>
22	Allowable Manner of Submitting Proposals	<p><input checked="" type="checkbox"/> Online bidding in E-Tendering module.</p> <p>Your offer, comprising of all required documents shall be submitted thorough the UNDP ATLAS E-Tendering system. The step by step to be followed for bid</p>
23	Conditions and Procedures for electronic submission and opening, if allowed	<p><input checked="" type="checkbox"/> Official Address for e-submission: https://etendering.partneragencies.org</p> <p><input checked="" type="checkbox"/> Format : PDF files only</p> <p><input checked="" type="checkbox"/> Max. File Size per transmission: [8MB]</p> <p><input checked="" type="checkbox"/> Max. No. of transmission : [not limited]</p> <p><input checked="" type="checkbox"/> No. of copies to be transmitted : [one][</p> <p><input checked="" type="checkbox"/> Virus Scanning Software to be Used prior to transmission.</p> <p><input checked="" type="checkbox"/> Time Zone to be Recognized: Bid closing date is according to New York Time Zone in E-Tendering System, so please convert it Kabul Time zone and submit your bid accordingly.</p>
24	Date, time and venue for opening of Proposals	Not a public bid opening
25	Evaluation method to be used in selecting the most responsive Proposal	<p><input checked="" type="checkbox"/> Combined Scoring Method, using the 70%-30% distribution for technical and financial proposals, respectively, where the minimum passing score of technical proposal is 70%</p>
26	Required Documents that must be Submitted to Establish Qualification of Proposers (In "Certified True Copy" form only)	<p><input checked="" type="checkbox"/> Company Profile, which should <u>not</u> exceed fifteen (15) pages, including printed brochures and product catalogues relevant to the goods/services being procured</p> <p><input checked="" type="checkbox"/> Certificate of Registration of the business, including Articles of Incorporation, or equivalent document if Bidder is not a corporation</p> <p><input checked="" type="checkbox"/> Latest Audited Financial Statement (Income Statement and Balance Sheet) or copy of bank statement for the past two (2) years to indicate the annual average turnover is minimum USD 100,000.</p> <p><input checked="" type="checkbox"/> List of projects performed for the last Five (5) years with similar nature and complexity, including client's name,</p>

		<p>contact details, contract value, location, and status of completion.</p> <p><input checked="" type="checkbox"/> Structure of the proposed team, including the names, position in the team and CVs of following Key personnel in line with the requirement of the TOR</p> <ul style="list-style-type: none"> • Team Leader (1 CV) • Team of Experts (minimum X CV) <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>
27	Other documents that may be Submitted to Establish Eligibility	<input checked="" type="checkbox"/> Detailed Work schedule (required duration max. 20 weeks)
29	Latest Expected date for commencement of Contract	<i>February 15, 2017</i>
30	Expected duration of contract (Target Commencement Date and Completion Date)	This assignment is for a total of 20 weeks
31	UNDP will award the contract to:	<input checked="" type="checkbox"/> One Proposer only
32	Criteria for the Award of Contract and Evaluation of Proposals	<p><u>Technical Proposal</u></p> <p>(Technical proposal of the proposer obtaining minimum 70% score will be considered technically qualified offer)</p> <p><input checked="" type="checkbox"/> Expertise of the Firm – 30 Points</p> <p><input checked="" type="checkbox"/> Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan - 40 Points</p> <p><input checked="" type="checkbox"/> Management Structure and Qualification of Key Personnel - 30 Points</p> <p><u>Financial Proposal</u></p> <p>The Financial Proposals of the technically qualified offers will be opened for evaluation for comparison and review. The overall evaluation score will be based on a combination of the technical score and the financial offer, where technical score and financial score will be weighted 70% to 30% respectively.</p>
33	Post-Qualification Actions	<input checked="" type="checkbox"/> Verification of accuracy, correctness and authenticity of the information provided by the bidder on the legal, technical and financial documents submitted;

		<input checked="" type="checkbox"/> Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found by the evaluation team; <input checked="" type="checkbox"/> Inquiry and reference checking with Government entities with jurisdiction on the bidder, or any other entity that may have done business with the bidder; <input checked="" type="checkbox"/> Inquiry and reference checking with other previous clients on the quality of performance on ongoing or previous contracts completed; <input checked="" type="checkbox"/> Physical inspection of the bidder's plant, factory, branches or other places where business transpires, with or without notice to the bidder; <input checked="" type="checkbox"/> Testing and sampling of completed goods similar to the requirements of UNDP, where available; and
34	Conditions for Determining Contract Effectivity	<input checked="" type="checkbox"/> Upon signing of UNDP's Professional Services Contract

TERMS OF REFERENCE (TOR)

Conduct Study on Value Chain Analysis of Gemstones and One Other Commodity (Gold or Iron) in Afghanistan

A. Background

UNDP Global Mission Statement

UNDP is the UN's global development network, an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. We are on the ground in 166 countries, working with national counterparts on their own solutions to global and national development challenges.

UNDP Afghanistan Mission Statement

UNDP supports stabilization, state-building, governance and development priorities in Afghanistan. UNDP support, in partnership with the Government, the United Nations system, the donor community and other development stakeholders, has contributed to institutional development efforts leading to positive impact on the lives of Afghan citizens. Over the years UNDP support has spanned such milestone efforts as the adoption of the Constitution; Presidential, Parliamentary and Provincial Council elections; institutional development through capacity-building to the legislative, the judicial and executive arms of the state, and key ministries, Government agencies and commissions at the national and subnational levels.

UNDP Programmes in Afghanistan have benefited from the very active support of donors. UNDP Afghanistan is committed to the highest standards of transparency and accountability and works in close coordination with the United Nations Assistance Mission in Afghanistan and the UN system as a whole to maximize the impact of its development efforts on the ground.

Human Development in Afghanistan

Human development is about people, about expanding their choices to live full, creative lives with freedom and dignity. Economic growth is very important, but it is means, not ends. Fundamental to expanding human choices is building human capabilities: the range of things that people can do and what they can be. The most basic capabilities for human development are living a long and healthy life, being educated, having a decent standard of living and enjoying political and civil freedoms to participate in the community.

For more than two decades, national human development reports have been helping to advance the human development conceptual framework and apply it to the most pressing development challenges of the countries. Now published in over 135 countries, these reports, grounded in thorough analytic research, have become dynamic advocacy tools. They are helping to generate lively debates around the policies and actions needed to accelerate human development and achieve international development goals such as MDGs and the SDGs.

UNDP Afghanistan has prepared three NHDRs, and two of them have been published. It seeks to undertake the next Human Development Report on harnessing the extractives for human development. The Report will examine the potential of the extractive sector and look into how it could contribute to the human development in the country. The main purpose of this report is to provide evidence-based policy options so that economic growth could help reduce vulnerabilities and poverty, strengthen the resilience of the licit economy, reduce the illicit economy in its multiple dimensions, and thus promote human development. The production of the report could also contribute to

developing national capacities to gather and analyses data relevant to human development, and widen and deepen the concept and approaches of human development.

The NHDR preparation follows an inclusive and consultative process to create ownership of the report among various stakeholders including government and civil society, and to ensure quality of the report drawing on data and analysis from credible sources. The project includes separate activities especially for local communication and advocacy. These activities highlight the community-based approach by including awareness raising activities to increase open discussions concerning extractive industry and human development in targeted communities. The majority of the communication and advocacy materials and events will be produced in local languages and the implementation of the communication and advocacy plan will be proceeded in a manner that ensures the participation for both men and women, young and old, and the marginalized groups.

Besides the communication and advocacy activities targeting local communities, effective engagement of the governmental representatives will be promoted throughout the report preparation and follow-up.

B. The objective of the consultancy

The main objectives of the assignment are to conduct value chain analyses of gemstones and One other Commodity (Gold or Iron), to write a background/ paper with the value chain analyses, and write chapter 4 of the National Human Development Report (Tracing value chains to uncover the potential of extractive industries). (See the *Afghanistan NHDR Concept Note* @ <http://bit.ly/2eQOjvy> and chapter outlines).

C. Scope of Services

The value chain analyses of the gemstone and One Other Commodity Sectors (Gold or Iron) will cover the following:

- Operating context
- Profile, mapping and visualization of the value chains
- Market analysis (including external markets)
- Business analysis
- Revenue collection (taxation)
- Income generation and employment, including employment of women
- Conflict and social impacts
- Land use and environmental aspects at key stages of the value chain.

The value chain analyses will be conducted through site visits, key informant interviews and focus group discussions. The study will focus on gemstones (lapis, emeralds, ruby and jade) and One Other Commodity (Gold or Iron). The venue of sites for these gemstones are:

- Lapis Mine in Kiran -wa-minjan in Badakshan province
- Emerald mine in Panjshir
- Ruby Mine in Jegdalak, Kabul
- Jade mine in Kunar and Goshta part of Nangarhar
- Gold mine in Takhar province
- Iron mine in Bamiyan province

The assignment also includes writing a background paper/ report of the study, with recommendations for strengthening and upgrading value chains to connect them better with export or final markets, enhancing the fiscal revenue potential, improving environmental sustainability and quality of products, improving job opportunities and income potential especially for women, and reducing the conflict potential.

Finally, the assignment includes writing the Chapter 4 of NHDR in close coordination and the Lead Author of NHDR.

D. Expected Outputs

- Deliverable 1: Inception report including description of the methodology (within 2 weeks)
- Deliverable 2: Field study report on value chains (within 8 weeks)
- Deliverable 3: Draft background paper including the above analyses as well as recommendations (within 12 weeks)
- Deliverable 4: Final background paper (within 16 weeks)
- Deliverable 5: Chapter 4 of NHDR (within 20 weeks)

E. Institutional arrangements

The Contractor shall work under the supervision of the Livelihoods and Resilience unit head and NHDR Lead Author.

F. Duration of Work

The duration of the assignment is 20 weeks starting signing of the contract.

G. Location of Work

To the extent possible, the study requires site visits to mine site(s) and visits to sites serving as connectors of value chains. We do not require a visit to the Peshawar market.

H. Qualifications of the Successful Service Provider

Positions	Qualification and experience
The institution	<ul style="list-style-type: none"> • Officially registered legal entity; • Minimum 3 years of experience in carrying out field and desktop-based studies in mining or other primary industries; • Experience in conducting value chain analysis in mineral commodities is desired; • Sound understanding of the social and economic development situation in Afghanistan is desired; • Previous work for similar development projects/programs/studies of UNDP and/or other international development actors is desired;
One team leader	<ul style="list-style-type: none"> • Advanced degree in value chains, business administration, mineral resource management or other relevant field; • Minimum 3 years of experience in supervising teams in similar assignments;

	<ul style="list-style-type: none"> • Minimum 10 years of relevant international experience in issues related to small scale mining and one of either: value chain analysis, market analysis, business development, socio-economic assessment, environmental impact analysis, gender analysis. • In-depth knowledge of small-scale mining and the potential of the sector to contribute to development; • Demonstrated experience undertaking research field work or professional work in mineral commodities and writing research reports; • Sound knowledge and understanding of the development context in Afghanistan, specifically with regard to small scale mining. • Excellent writing and communication skills in English;
Team of experts	<ul style="list-style-type: none"> • University degree in business administration, international trade, natural resource management, geology, mining engineering, and/or other relevant field; • Excellent writing and communication skills in English; • Minimum 3 years of experience in similar studies. • Ability and experience to deliver quality reports within the given time • Minimum 5 years of relevant experience in one of either: value chain analysis, market analysis, business development, socio-economic assessment, environmental impact analysis, gender analysis. • Experience of working in post-conflict, fragile environments is desired Strong analytical capacities and strong ability to communicate and summarize this analysis in writing is desired.

I. Scope of Proposal Price and Schedule of Payments

- a) The contract will be awarded to the successful proposer for a fixed output-based price regardless of extension of the herein specific duration.
- b) The cost components of the Proposer must include purely professional fee, travel, living allowances, taxes, and all other relevant cost.
- c) The awarded contractor will be paid their fees based on the following schedule:
 - 40 % upon submission and acceptance of progress report for Deliverable 2 (please refer to section D above)
 - 30% upon submission and acceptance of Deliverable 4 incorporating comments by stakeholders involved in the NHDR preparation (please refer to section D above)
 - 30% upon submission and acceptance of Deliverable 5 (please refer to section D above)

FORMS FOR SUBMITTING PROPOSAL

TECHNICAL PROPOSAL

(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery²)

[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 – 30 points

Description	Obtainable Scores
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;	10
b) Business Licenses – Valid Registration Papers	3
c) Latest Audited Financial Statement (Income Statement and Balance Sheet) or copy of bank statement for the past one (1) year to indicate the annual average turnover;	5
d) Track Record– list of at least 2 previous clients for similar services as those required by UNDP, indicating description of contract scope, contract duration, contract value, contact references;	5
e) 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.	2
f) Experiences on value chain in Extractive Industry in other countries	5

B. Proposed Methodology for the Completion of Services – 40 points

Description	Obtainable Scores
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	40

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

<i>and context of the work.</i>	
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C. Qualifications of Key Personnel – 30 points

Description	Obtainable Scores
<i>The offeror must provide CVs of the following key personnel</i>	
1. Team Leader (1 CV) <i>a) Educational Background</i> <i>b) Relevant Work Experience</i> <i>c) Research Experience</i>	20
2. Team of Experts (Min. 2 CVs) <i>a) Educational Background</i> <i>b) Relevant Work Experience</i> <i>c) Research Experience</i>	10

FINANCIAL PROPOSAL

Financial Proposal must be submitted as a separate file encrypted with a password. None of the financial proposal data is disclosed in other documents of the submission. UNDP shall request password for opening the Financial Proposal only from the Proposers who pass the Technical Evaluation as per the criteria established and disclosed in the solicitation document. The Proposer shall assume the responsibility for not encrypting the financial proposal.

DO NOT DISCLOSE YOUR PRICE IN THE LINE ITEMS. YOU MUST PUT PRICE AS 1 IN THE SYSTEM AND PROVIDE THE FINANCIAL PROPOSAL AS ENCRYPTED FILE AS EXPLAINED ABOVE.

D. Cost Breakdown per Deliverable*

	Deliverables <i>[list them as referred to in the RFP]</i>	Percentage of Total Price <i>(Weight for payment)</i>	Price <i>(Lump Sum, All Inclusive)</i>
1	Deliverable 1		
2	Deliverable 2		
3	Deliverable 3		
4	Deliverable 4		
	Total	100%	

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

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

Description of Activity	Remuneration per Unit of Time	Total Period of Engagement	No. of Personnel	Total Rate
I. Personnel Services				
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				
II. Out of Pocket Expenses				
1. Travel Costs				
2. Daily Allowance				
3. Communications				
4. Reproduction				
5. Equipment Lease				
6. Others				
III. Other Related Costs				

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

General Terms and Conditions for Services

1.0 LEGAL STATUS:

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

2.0 SOURCE OF INSTRUCTIONS:

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

3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:

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

4.0 ASSIGNMENT:

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

5.0 SUB-CONTRACTING:

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

6.0 OFFICIALS NOT TO BENEFIT:

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

7.0 INDEMNIFICATION:

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This

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

8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:

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

9.0 ENCUMBRANCES/LIENS:

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

10.0 TITLE TO EQUIPMENT:

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

11.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

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

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

- 11.2** To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- 11.3** At the request of the UNDP; the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the UNDP in compliance with the requirements of the applicable law and of the Contract.
- 11.4** Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

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

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

13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:

Information and data that is considered proprietary by 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.