



REQUEST FOR PROPOSAL (RFP)

RFP/FJI10-006-2022

Dear Sir / Madam:

We kindly request you to submit your Proposal for **Blue Investment Fund Feasibility Study**.

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

Proposals may be submitted on or before 12 July 2022 by 5pm (Fiji Time)
etenderbox.pacific@undp.org:

United Nations Development Programme
Pacific Office in Fiji
Attention: Dale Kacivi
dale.kacivi@undp.org

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

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

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

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

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

No price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted by UNDP after it has received the Proposal. At the time of Award of Contract or

Purchase Order, UNDP reserves the right to vary (increase or decrease) the quantity of services and/or goods, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

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

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

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

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

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

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

Thank you and we look forward to receiving your Proposal.

Sincerely yours,

Dale Kacivi
Procurement Associate
6/28/2022

Description of Requirements

Context of the Requirement	<p>Fiji's Exclusive Economic Zone is 70% larger than its landmass and is ranked the 26th largest sovereign ocean space in the world. Fiji is also home to 3.5% of the world's coral reefs and over 65,000 hectares of mangroves that make up some of the many features of its rich marine biodiversity. In this regard, the Fijian Government is keen to operationalise its blue economy ambitions and sustainably leverage its ocean-based resources to support its post-pandemic recovery and economic diversification.</p> <p>The Fijian Government will be issuing Fiji's first sovereign blue bond in its 2022-2023 financial year. The issuance will focus on raising capital market finance to support projects in four priority sectors. These are 'Blue Shipping', 'Sustainable Fisheries', 'Blue Innovation Financing' and 'Sustainable Waste Management'.</p> <p>For the 'Blue Innovation Financing' component, the Fijian Government plans to set up a grant fund (Blue Innovation Fund) that financial institutions can use to make their financing terms more amenable for blue economy businesses and projects. The Government will prioritise funding towards projects that align to Fiji's blue economy ambitions ranging from fisheries, aquaculture/mariculture, renewable energy, shipping, waste management, tourism, marine protection, and more. Eligible sectors are those that fall under the Sustainable Development Bond Framework.</p> <p>The broader policy intent is to provide catalytic capital that unlocks the potential for self-sustaining blue economy initiatives through which conservation-conscious businesses, large and small, can grow and be supported by enabling facilities and infrastructure.</p> <p>The Fund is also meant to be one of the pathways towards meeting Fiji's commitment to designate thirty per cent of its EEZ as marine protected areas by 2030 (National Ocean Policy) and transition towards a net-zero economy by 2050 (Low Emissions Development Strategy).</p> <p>Fiji's finance sector is composed of six commercial banks, one development bank, provident fund, and a range of institutions providing insurance, credit, foreign exchange services. Commercial banks remain the biggest component of Fiji's finance sector (51% of the sector's total assets in 2011-2017) while the provident fund represents the second largest share (34.8%). The capital market is mostly composed of government debt instruments (58.7%), followed by the equity market (36.3%), and the unit trust market (4.8%). Fiji is also one of two countries in the Pacific that has a stock exchange. The Fiji's South Pacific Stock Exchange had a market capitalization of \$3.47 billion at the end of 2020.</p>
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	<p>The design of the Blue Innovation Fund will build on the track record of the Fijian Government in introducing a number of financing facilities to stimulate lending to priority/under-served segments/sectors.</p> <p>In an effort to promote and develop the local business industry, the Fijian Government set up an MSME Credit Guarantee Scheme. The scheme was set up in 2012 and in 2020 expanded to include micro enterprises and has a total allocation of \$9 M and administered by the Reserve Bank of Fiji. Under the scheme the Government guarantees 60 percent of the principal outstanding on defaulted MSME loans up to a limit of \$60,000 per business. The Scheme is accessible through the commercial banks, licensed credit institutions (LCIs) and the Fiji Development Bank (FDB).</p> <p>The Fijian Government has partnered with the Fiji Development Bank to provide financial stimulus in the form of equity to commercial farmers and agro-processors in improving farm mechanization, agricultural infrastructure, and agro-processing infrastructure support and equipment. The Ministry provides an incentive grant in the form of equity that would meet 20% of the total investment cost, FDB provides the other 80% financial solution.</p>
<p>Implementing Partner of UNDP</p>	<p>Ministry of Economy (MOE) & Asian Development Bank (ADB)</p>
<p>Brief Description of the Required Services</p>	<p>The primary objective of the assignment is to assess demand for such a Fund, and have the inputs needed to design a Fund that works for both the financial institutions and the customers. To that end, the consultant will assess the needs of both the demand (customers) and supply (financial institutions) side and make recommendations that will inform the design of the Fund.</p> <p>Services of this assignment will be financed through ADB and UNDP/UNCDF’s transaction technical assistance (TA) facility. A consulting firm (the Consultant) will be recruited to provide expected outputs.</p> <p>The Firm will determine the number, effort and the nature of experts required to achieve the objectives of this RFP, in accordance with their proposed approach and methodology. However, the technical evaluation will consider the qualifications and experience.</p> <p>The Firm will include in their technical proposal, work plan and financial proposal all other supporting staff necessary to achieve the objectives of the RFP in accordance with the proposed approach and methodology.</p>
<p>List and Description of Expected Outputs to be Delivered</p>	<p>1 <u>Stock take existing Government Funds set up to accelerate priority sector development</u></p> <p>The Consulting Firm will need to answer the following questions under this Activity:</p> <ul style="list-style-type: none"> 1.1 What has worked and hasn’t worked as it relates to Government Funds set up to accelerate priority sector development? 1.2 What examples of Funds deployed in other countries might Fiji be able to learn from and adapt?

2 Assess what the financing opportunities are within eligible sectors and what are those that fall under the Sustainable Development Bond Framework with a specific focus on marine protected areas (MPAs)

The Consulting Firm will need to answer the following questions under this Activity:

- 2.1 Conduct strategic stakeholder consultations to ascertain entities that would be interested in accessing debt financing for their blue economy projects.
- 2.2 What are the archetypes of investment opportunities in the blue economy space? Archetypes can be divided by types of business/projects, use of proceeds, size of financing needed, type of financing needed, investment-readiness, and social and environmental impact
- 2.3 How investment ready are the prospects, what are their barriers to accessing financing from local capital markets, and what de-risking instrument can help them access funds from local financial institutions?
- 2.4 What is the quantum of financing needed for the four gazetted marine protected areas, and extrapolating from that, what may be the quantum financing need to meet the 30X30 target in Fiji?

3 Assess what the state of financing to blue economy is, and what incentives financial institutions need to develop a blue economy portfolio

The Consulting Firm will need to answer the following questions under this Activity:

- 3.1 To what extent are banks lending to blue economy businesses/projects?
- 3.2 What is getting in the way of developing a blue economy portfolio on their books?
- 3.3 What are the archetypes of financial institutions that would lend to this sector? Match the financial institution archetypes with customer archetypes identified under Activity 2.
- 3.4 What are the additional skillsets that financial institutions need to invest in internally to build the blue economy portfolio on their books?
- 3.5 What market enablers can financial institutions partner with to ensure they have steady deal flow?

4 Recommendations on the Fund design and operationalization based on 1-3

The Consulting Firm will need to answer the following questions under this Activity:

	<p>4.1 What use of proceeds should the Fund support, and what should be the high-level eligibility criteria for financial institutions to draw on the Fund?</p> <p>4.2 What instrument should the Fund be used as to ensure it unlocks financing for blue economy businesses/projects?</p> <p>4.3 What are the characteristics of a financial instrument product (including concessionality) which would meets the needs of the investment archetypes (e.g. interest rate subsidy, equity contribution, on-lending capital, collateral replacement, guarantee)</p> <p>4.4 What fund flow / draw down mechanism is envisaged between the Government and the financial institutions to ensure efficient, and active use of the Fund?</p> <p>4.5 What capacity building is needed to ensure financial institutions draw on the Fund, and use this to start building a blue economy portfolio in their core business?</p> <p>4.6 What organizations should banks partner with to have to ensure steady deal flow?</p>								
<p>Person to Supervise the Work/Performance of the Service Provider</p>	<ol style="list-style-type: none"> 1. ICRBE and BBB Project Manager (UNDP) 2. Regional Technical Specialist, Finance and Innovation (UNCDF) 								
<p>Frequency of Reporting</p>	<p>The Consulting Firm needs to prepare work schedules that align with the National Budget submission deadlines of the Fijian Government and assign strong multi-disciplinary teams in a way which ensures that the final deliverables will reflect the policy direction set by the Fijian Government.</p> <p>The consulting services will be implemented over a three-month (10 weeks) period from the commencement date.</p> <p>The following reports, in English language, will be submitted in format and copies as stipulated in the contract. Expected timelines for deliverables are from the issuance of Notice to Proceed. A detailed outline for each deliverable will be agreed in the contract based on the firm’s approach and methodology. Tentative milestone payment percentages are subject to verification at contract negotiations. All components of each item must be completed to qualify for a milestone payment.</p> <table border="1" data-bbox="586 1654 1403 1875"> <thead> <tr> <th style="background-color: #f28b82;">Deliverable</th> <th style="background-color: #f28b82;">Submission Deadline</th> </tr> </thead> <tbody> <tr> <td>Inception Report</td> <td>2 weeks</td> </tr> <tr> <td>Detailed Assessment and Analysis Report</td> <td>5 weeks</td> </tr> <tr> <td>Detailed Options Report for Policy Decision Making</td> <td>3 weeks</td> </tr> </tbody> </table>	Deliverable	Submission Deadline	Inception Report	2 weeks	Detailed Assessment and Analysis Report	5 weeks	Detailed Options Report for Policy Decision Making	3 weeks
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Progress Reporting Requirements	Each deliverable will be reviewed by the ADB and UNDP/UNCDF technical assistance team and relevant Fijian Government agencies who will be required to provide comments within 5 working days after the submission of each deliverable. If no comments are received within maximum of 5 working days, the deliverable will be considered agreed. Upon acceptance as determined by ADB, UNDP/UNCDF and relevant Fijian Government agencies, the progress payments will be made according to the payment schedule specified in the contract. Deliverables will be provided as soft copies in MS Office and PDF formats, and hard copies will be provided to ADB and relevant Fijian Government agencies as agreed in the contract.											
Location of work	Hybrid Approach – Remote Work and In country (TBC)											
Expected duration of work	10 Weeks											
Target start date	18 July 2022											
Latest completion date	30 September 2022											
Travels Expected	<table border="1"> <thead> <tr> <th>Destination/s</th> <th>Estimated Duration</th> <th>Brief Description of Purpose of the Travel</th> <th>Target Date/s</th> </tr> </thead> <tbody> <tr> <td>Suva, Fiji</td> <td>TBC</td> <td>TBC</td> <td>TBC</td> </tr> </tbody> </table>				Destination/s	Estimated Duration	Brief Description of Purpose of the Travel	Target Date/s	Suva, Fiji	TBC	TBC	TBC
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Suva, Fiji	TBC	TBC	TBC									
Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)	<input checked="" type="checkbox"/> Office space and facilities											
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											
Value Added Tax on Price Proposal	<input checked="" type="checkbox"/> must be exclusive of VAT and other applicable indirect taxes											
Validity Period of Proposals (<i>Counting for the last day of submission of quotes</i>)	<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	<p>Tentative milestone payment percentages are subject to verification at contract negotiations. All components of each item must be completed to qualify for a milestone payment. Payments will be done upon completion of the deliverables/outputs and as per below percentages:</p> <table border="1"> <thead> <tr> <th>Deliverable</th> <th>Submission Deadline</th> <th>Milestone Payment</th> </tr> </thead> <tbody> <tr> <td>Inception Report</td> <td>2 weeks</td> <td>10%</td> </tr> <tr> <td>Detailed Assessment and Analysis Report</td> <td>5 weeks</td> <td>40%</td> </tr> <tr> <td>Detailed Options Report for Policy Decision Making</td> <td>3 weeks</td> <td>50%</td> </tr> </tbody> </table>	Deliverable	Submission Deadline	Milestone Payment	Inception Report	2 weeks	10%	Detailed Assessment and Analysis Report	5 weeks	40%	Detailed Options Report for Policy Decision Making	3 weeks	50%
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Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment	<ol style="list-style-type: none"> ICRBE and BBB Project Manager (UNDP) Regional Technical Specialist, Finance and Innovation (UNCDF) 												
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>Eligibility</p> <ol style="list-style-type: none"> Completeness of Proposal Registered company Acceptance of UNDP General Conditions of Contract (GTC) <p>Technical Proposal (70%)</p> <input checked="" type="checkbox"/> Expertise of the Firm 35% <ul style="list-style-type: none"> At least 10 years or more of experience in fund design or financial instrument design (20%) Experience in private sector and public sector lending in Fiji or in the region (10%) Experience is designing and developing blue economy projects (5%) <input checked="" type="checkbox"/> Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan 20% <ul style="list-style-type: none"> Completeness of proposed methodology and appropriateness which includes scripts, concepts, timelines etc. (10%) 												

	<ul style="list-style-type: none"> - Can mobilise team that have the relevant expertise to operationalise the deliverables of this consultancy (10%) <p><input checked="" type="checkbox"/> Management Structure and Qualification of Key Personnel 15%</p> <ul style="list-style-type: none"> - Require a team with the minimum of 3 members to undertake this assignment (5%) - The lead consultant or team leader should have a Masters Degree in the relevant field and has experience in fund design or financial instrument design or equivalent (10%) <p><u>Financial Proposal (30%)</u> 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"/> One and 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)
Contact Person for Inquiries (Written inquiries only)	<p><i>Dale Kacivi</i> <i>Procurement Associate</i> dale.kacivi@undp.org</p> <p>Any delay in UNDP’s response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.</p>

FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL

To: Dale Kacivi, Procurement Associate

Dear Sir:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the RFP (RFP/FJI10-006-2022) dated 6/28/2022 , and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions:

A. Qualifications of the Service Provider (Provide these documents or written evidence)

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 (Provide these documents or written evidence)

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.

C. Qualifications of Key Personnel (Provide these documents or written evidence)

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*

	Deliverables [list them as referred to in the RFP]	Percentage of Total Price (Weight for payment)	Price (Lump Sum, All Inclusive)
1	Inception Report	10%	
2	Detailed Assessment and Analysis Report	40%	
3	Detailed Options Report for Policy Decision Making	50%	
	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				
a. Team Leader				
b. Expertise 1				
c. Expertise 2				
c. Expertise 3				
II. Other Related Costs				

Note: Bidders are expected to state their travel cost as per the scope of requirement.

*[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.