

## **REQUEST FOR PROPOSAL (RFP)**

**08 Apr 2013**

## **UNITED NATIONS CHILDREN'S FUND (UNICEF)**

### **Wishes to invite you to submit a proposal for**

Developing the Functional Analysis of the Ministry of Education (ME) of the Republic of Moldova and its subordinated structures (see page 10 for detailed Terms of Reference)

### **SEALED Proposals** should be sent to:

UNICEF Moldova  
LRPS-DSU-2013-9106243  
131, 31 August 1989 street, Chisinau, Moldova

### **E-Mail Proposals** should be sent to:

**chisinau@unicef.org**

For Technical proposal the subject will be LRPS-DSU-2013-9106243 – Technical  
For Financial proposal the subject will be LRPS-DSU-2013-9106243 – Financial

## **IMPORTANT – ESSENTIAL INFORMATION**

The reference **LRPS-DSU-2013-9106243** must be shown on the envelope containing the Technical Proposal and on the envelope containing the Price Proposal, as well as on the outer packaging containing both envelopes.

The bid form must be used when replying to this request for proposal.

The Proposals **MUST** be received at the above address by latest 17:00 on **31 May 2013**. Due to the nature of this RFP, there will be no public opening of proposals.

Proposals received after the stipulated date and time will be invalidated.

It is important that you read all of the provisions of the request for proposal, to ensure that you understand UNICEF's requirements and can submit a proposal in compliance with them. Note that failure to provide compliant proposals may result in invalidation of your proposal.

## BID FORM

**THIS PAGE/BID FORM** must be completed, signed and returned to UNICEF. Bid must be made in accordance with the instructions contained in this Request for Proposal.

### TERMS AND CONDITIONS OF CONTRACT

Any Contract or Purchase Order resulting from this INVITATION shall contain UNICEF General Terms and Conditions and any other Specific Terms and Conditions detailed in this INVITATION.

### INFORMATION

Any request for information regarding this INVITATION must be forwarded by fax to the attention of the person who prepared this document, with specific reference to the Invitation Number.

The Undersigned, having read the Terms and Conditions of RFP **LRPS-DSU-2013-9106243** set out in the attached document, hereby offers to supply the services specified in the schedule at the price or prices quoted, in accordance with any specifications stated and subject to the Terms and Conditions set out or specified in the document.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name & Title: \_\_\_\_\_

Company: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Tel. No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

Validity of Offer: \_\_\_\_\_

Currency of Offer: \_\_\_\_\_

Please indicate after having read UNICEF Payment Terms which of the following Payment Terms are offered by you:

10 Days, 3.0% \_\_\_\_\_ 15 Day, 2.5% \_\_\_\_\_ 20 Days, 2.0% \_\_\_\_\_ 30 Days, Net \_\_\_\_\_

Other Trade Discounts: \_\_\_\_\_

## 1.0 PROCEDURES AND RULES

### 1.1 ORGANISATIONAL BACKGROUND

UNICEF is the agency of the United Nations mandated to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. Guided by the Convention on the Rights of the Child UNICEF strives to establish children's rights as international standards of behaviour towards children. UNICEF's role is to mobilise political will and material resources to help countries ensure a "first call for children". UNICEF is committed to ensuring special protection for the most disadvantaged children.

UNICEF carries out its work through its headquarters in New York, 8 regional offices and 125 country offices worldwide. UNICEF also has a research centre in Florence, a supply operation based in Copenhagen and offices in Tokyo and Brussels. UNICEF's 37 committees raise funds and spread awareness about the organisation's mission and work.

### 1.2 PURPOSE OF THE RFP

The purpose of this RFP is to invite proposals for Developing the Functional Analysis of the Ministry of Education (ME) of the Republic of Moldova and its subordinated structures

### 1.3 FORECAST SCHEDULE

The schedule of the contractual process is as follows:

Closing date and time for submission of full proposal: **17:00 on 31 May 2013**

### 1.4 RFP CHANGE POLICY

All requests for formal clarification or queries on this RFP must be submitted in writing to Denis Suschevici via e-mail at [dsushevici@unicef.org](mailto:dsushevici@unicef.org) / via fax at 22-02-44. Please make sure that the e-mail or fax mentions the RFP reference number.

Only written inquiries will be entertained. Please be informed that if the question is of common interest, the answer will be shared with all potential RFP bidders.

Erasures or other corrections in the proposal must be explained and the signature of the applicant shown alongside. All changes to a proposal must be received prior to the closing time and date. It must be clearly indicated that it is a modification and supersedes the earlier proposal, or state the changes from the original proposal. Proposals may be withdrawn on written request received from bidders prior to the opening time and date. Bidders are expected to examine all instructions pertaining to the work. Failure to do so will be at bidder's own risk and disadvantage.

### 1.5 RFP RESPONSE FORMAT

Full proposals should be submitted in ENGLISH and must be received not later 17:00 on **31 May 2013** in one (01) original and one (01) copy, duly signed and dated. Bidders must submit a sealed proposal, with two **separate sealed envelopes inside for a) the Technical Proposal and b) the Price Proposal.**

Sealed proposals must be securely closed in suitable envelopes and dispatched to arrive at the UNICEF office indicated no later than the closing time and date. They must be clearly marked as follows:

- Outer envelope: Name of company  
RFP number **LRPS-DSU-2013-9106243**  
UNICEF Moldova  
131, 31 August 1989 street, Chisinau, Moldova
- Inner envelope – technical proposal: Name of company, RFP number - technical proposal
- Inner envelope - price proposal: Name of company, RFP number - price proposal

Proposals received in any other manner will be invalidated.

Sealed proposals received prior to the stated closing time and date will be kept unopened. The responsible officers will open technical proposals when the specified time has arrived and no proposal received thereafter will be considered. UNICEF will accept no responsibility for the premature opening of a proposal not properly addressed or identified. Any delays encountered in the mail delivery will be at the risk of the bidder.

Offers delivered at a different address or in a different form than prescribed in this RFP, or which do not respect the required confidentiality, or received after the designated time and date, will be rejected.

All references to descriptive materials should be included in the appropriate response paragraph, though the material/documents themselves may be provided as annexes to the proposal/response.

The bidder must also provide sufficient information in the proposal to address each area of the Proposal Evaluation contained in 1.10 to allow the evaluation team to make a fair assessment of the candidates and their proposal.

Proposals sent by e-mail should be submitted in ENGLISH and must be received not later 17:00 on **31 May 2013** in one (01) e-mail for the **Technical Proposal** containing a scanned copy duly signed and dated with the e-mail subject **LRPS-DSU-2013-9106243 – Technical** and one (01) e-mail for the **Price Proposal** containing a scanned copy duly signed and dated with the e-mail subject **LRPS-DSU-2013-9106243 – Financial**.

The official address for e-mail submission will be [chisinau@unicef.org](mailto:chisinau@unicef.org). The e-mail sent shall be free from viruses and corrupted files. Max. File Size per transmission: 5 MB. Shall the submitted Financial Proposal contain a secured document, the password shall not be provided until requested further.

## 1.6 BIDDER RESPONSE

### 1.6.1 Formal submission requirements

The formal submission requirements as outlined in this Request for Proposal must be followed, e.g. regarding form and timing of submission, marking of the envelopes, no price information in the technical proposal, etc.

### 1.6.2 Bid Form

The completed and signed bid form must be submitted together with the proposal.

### 1.6.3 Mandatory criteria

All mandatory (i.e. must/have to/shall/should) criteria mentioned throughout this Request for Proposal have to be addressed and met in your proposal.

#### 1.6.4 Technical Proposal

The technical proposal should address all aspects and criteria outlined in this Request for Proposal, especially in its statement of work, terms of reference and paragraph 1.10 of this Request for Proposal. However, all these requirements represent a wish list from UNICEF. The bidders are free to suggest/propose any other solution. UNICEF welcomes new ideas and innovative approaches.

**No price information should be contained in the technical proposal.**

#### 1.6.5 Price Proposal

The price proposal should be as per but not limited to paragraph 1.10 of this Request for Proposal.

#### 1.6.6 Checklist for submission of proposals

- Bid form filled in and signed
- Envelope for technical proposal
  - Technical proposal
  - Technical proposal does not contain prices
  - Envelope is sealed
  - Envelope is marked as follows:  
Name of company, RFP number - technical proposal
- Envelope for price proposal
  - Price proposal
  - Envelope is sealed
  - Envelope is marked as follows:  
Name of company, RFP number - price proposal
- 1 outer enveloped
  - Containing  bid form,  envelope for technical proposal, and  envelope for price proposal
  - Envelope is sealed
  - Envelope is marked as follows  
  
Name of company  
LRPS-DSU-2013-9106243  
131, 31 August 1989 street, Chisinau, Moldova

### 1.7 CONFIDENTIAL INFORMATION

Information, which the bidder considers proprietary, should be clearly marked "proprietary", if any, next to the relevant part of the text, and UNICEF will treat such information accordingly.

### 1.8 RIGHTS OF UNICEF

UNICEF reserves the right to accept any proposal, in whole or in part; or, to reject any or all proposals. UNICEF reserves the right to invalidate any Proposal received from a Bidder who has previously failed to perform properly or complete contracts on time, or a Proposal received from a Bidder who, in the opinion of UNICEF, is not in a position to perform the contract. UNICEF shall not be held responsible for any cost incurred by the Bidder in preparing the response to this Request for Proposal. The Bidder agrees to be bound by the decision of UNICEF as to

whether her/his proposal meets the requirements stated in this Request for Proposal. Specifically, UNICEF reserves the right to:

- contact any or all references supplied by the bidder(s);
- request additional supporting or supplementary data (from the bidder(s));
- arrange interviews with the bidder(s);
- reject any or all proposals submitted;
- accept any proposals in whole or in part;
- negotiate with the service provider(s) who has/have attained the best rating/ranking, i.e. the one(s) providing the overall best value proposal(s);
- contract any number of candidates as required to achieve the overall evaluation objectives.

## 1.9 PROPOSAL OPENING

Due to the nature of this RFP, there will be no public opening of proposals.

## 1.10 PROPOSAL EVALUATION

After the opening, each proposal will be assessed first on its technical merits and subsequently on its price. The proposal with the best overall value, composed of technical merit and price, will be recommended for approval. UNICEF will set up an evaluation panel composed of technical UNICEF staff and their conclusions will be forwarded to the internal UNICEF Contracts Review Committee.

The evaluation panel will first evaluate each response for compliance with the requirements of this RFP. Responses deemed not to meet all of the mandatory requirements will be considered non-compliant and rejected at this stage without further consideration. Failure to comply with any of the terms and conditions contained in this RFP, including provision of all required information, may result in a response or proposal being disqualified from further consideration.

The proposals will be evaluated against the following:

<b>CATEGORY</b>	<b>POINTS</b>
1. Technical Evaluation Criteria	70
Only proposals which receive a minimum of 50 points will be considered further.	
2. Price Proposal	30
The total amount of points allocated for the price component is 40. The maximum number of points will be allotted to the lowest price proposal that is opened and compared among those invited firms/institutions which obtain the threshold points in the evaluation of the technical component. All other price proposals will receive points in inverse proportion to the lowest price; e.g.:	
Score for price proposal X =	$\frac{\text{Max. score for price proposal} * \text{Price of lowest priced proposal}}{\text{Price of proposal X}}$
<b>Total Technical and Price</b>	<b>100 Pts</b>

UNICEF will award the contract to the vendor whose response is of high quality, clear and meets the projects goals, including:

The price/cost of each of the technically compliant proposals shall be considered only upon evaluation of the above technical criteria.

The bidders should ensure that all pricing information is provided in accordance with the following:

The currency of the proposal **shall be in USD**. The bidder will suggest a payment schedule for the Contract, linked to unambiguous Contract milestones. All prices/rates quoted must be **exclusive of all taxes** as UNICEF is a tax-exempt organization.

#### **1.10 PROPERTY OF UNICEF**

This RFP, along with any responses there to, shall be considered the property of UNICEF and the proposals will not be returned to their originators. In submitting this proposal the bidder will accept the decision of UNICEF as to whether the proposal meets the requirements stated in this RFP.

#### **1.11 VALIDITY**

Proposal must be valid for a minimum of ninety (90) days from the date of opening of this RFP and must be signed by all candidates included in the submission. For proposals from institutions, the proposal must also be signed by an authorised representative of the institution. Bidders are requested to indicate the validity period of their proposal in the Proposal Form. UNICEF may also request for an extension of the validity of the proposal.

#### **1.12 CONTRACTUAL TERMS AND CONDITIONS**

The UNICEF Special and General Terms and Conditions are attached and will form part of any contract resulting from this RFP.

#### **1.13 FULL RIGHT TO USE AND SELL**

The bidder warrants that it has not and shall not enter into any agreement or arrangement that restrains or restricts UNICEF or the recipient Governments rights to use, sell, dispose of or, otherwise, deal with any item that may be acquired under any resulting Contract.

#### **1.14 PAYMENT TERMS**

Payment will be made only upon UNICEF's acceptance of the work performed in accordance with the contractual milestones. The terms of payment are Net 30 days, after receipt of invoice and acceptance of work. Payment will be effected by bank transfer in the currency of billing. Financial proposals should include proposed stage payments.

## **ANNEX I – STATEMENT OF WORK AND TERMS OF REFERENCE**

### **Developing the Functional Analysis of the Ministry of Education (ME) of the Republic of Moldova and its subordinated structures**

#### **1. BACKGROUND**

The Government Program "European Integration: Freedom, Democracy and Welfare" (2011-2014) envisages that the educational system of the country needs to be brought in line with the EU standards and requirements alongside three main pillars: pre-university education; higher education and research; and induction and continuous training of civil servants. In line with these strategic objectives, the Ministry of Education, the central authority of public administration charged with the development and implementation of the state policy in education, has the mission of developing and promoting the state policy in education in line with the international standards of social and economic development, developing education strategies, ensuring continuous modernization and alignment with the European education system, and providing access to education, research and professional development for all citizens of the Republic of Moldova.

It is acknowledged that the implementation of the on-going reforms in the education sector requires a review and realignment of the current structure of the Ministry of Education to better meet the existing and emerging needs and policy priorities in this area. Several reviews have taken place in the previous periods, one of them being a report from 2007 analysing the policy development, monitoring and evaluation functions of the ministry. It highlights some key areas which are in need of change. The Ministry is currently planning an up-date of the existing information, and a more detailed analysis to be undertaken with the support of the Human Resource Department of the State Chancellery of Moldova.

In this context, the Ministry of Education has requested the support of an experienced expert to strengthen Ministry's capacities to undertake the updating of the structural review and a more detailed analysis of selected functional areas, and to start the implementation of the critical reorganization activities. The UNDP, through its Transitional Capacity Support (TCS) for the Public Administration of Moldova Project, has contracted two national consultants whose tasks are: to perform the functional analysis of the Ministry of Education and to review the HR practices within the Ministry.

However, in order to undertake a detailed and comprehensive analysis of the education sector, not only the Ministry of Education shall be subject to a functional review, but also its subordinated structures. Taking into account the complexity of the foreseen tasks, the Ministry of Education has requested the assistance of a team of experts / company to undertake the structural review of the subordinated structures and a more detailed analysis of Ministry's functional areas, and to start the implementation of the critical reorganization activities. When undertaking these activities, the experts are expected to take into consideration the Ministry's Strategic Development Plan 2012-2014 and, particularly, the draft Decentralization Strategy in the area of Education.

The team of experts shall work in close cooperation with the contracted consultant responsible for performing the functional review of the Ministry of Education, in order to provide joint recommendations for the optimal reorganization of the Ministry.

#### **2. PURPOSE, OBJECTIVES, SCOPE AND EXPECTED OUTPUTS OF THE WORK**

The experts will perform the functional review of the Ministry of Education and its subordinated structures, and undertake a more detailed analysis of functional areas of competence of these structures, within the scope of existing and emerging needs and requirements.

In order to achieve this, the experts will be responsible for:



- Detailed analysis of background documents and the existing regulations of the Ministry of Education and subordinated institutions, against existing legal and institutional requirements of the Government of Moldova, as well as the current and expected needs and priorities of the Ministry of Education;
- Carrying out interviews with relevant stakeholders within the Ministry of Education and subordinated institutions, other relevant government institutions, under the guidance of the Deputy Minister, to develop an understanding of the actual competencies and functions carried out and how these compare with the relevant regulations;
- Developing an organizational mapping of the Ministry of Education, its subordinated institutions and their relationship with bodies implementing, monitoring, and evaluating education policy at the local level;
- Drafting a Structural Review Report, including above analysis as well as recommendations for changes, such as regulations, re-organization of the structure, number of staff, job descriptions etc;
- Undertake a detailed analysis of the selected functional areas of competence, based on the conclusions of the Structural Review Report and under the guidance of the Deputy Minister, which require a more in-depth consideration and recommendations.
- Support inclusion of the proposed changes into the Ministry's Strategic Development Plan.

For the purposes of this ToR, the Ministry of Education' subordinated institutions are as follows:

*Subordinated structures:*

1. Quality Assurance Agency (Agenția de Asigurare a Calității)
2. Education Sciences Institute (Institutul de Științe ale Educației)
3. Centre for Informational and Communication Technologies in Education (Centrul Tehnologiei Informaționale și Comunaționale în Educație)
4. Republican medical and psycho-pedagogical Consultation (Consultația republicană medico-psiopedagogică)

*Monitored institutions:*

5. Continuous Education Institute (Institutul de Instruire Continuă)
6. Special Textbook Fund (Fondul Special pentru Manuale)
7. State Enterprise Trading Company "Mold-Didactica" (Întreprinderea de Stat Firma Comercială de Intermediere "Mold-Didactica")
8. State Production and Commerce Enterprise "Didactica" (Întreprinderea de Stat de Producere și Comerț "Didactica")
9. State Enterprise Scientific Methodical and Editorial Centre "Pedagogic Universe" (Întreprinderea de Stat Centrul Științific Metodic și Editorial "Univers-Pedagogic")

*Additionally, the experts should review one or two municipal/district Education Directorates, in order to identify potential drawbacks, overlapping or missing functions, in line with the Education Decentralization Agenda, as well as international good practices in this area.*

### **3. ACTIVITIES**

The assignment will envisage the following activities:

- On the functional analysis:
  - Identification of ME's current functions, appropriately fulfilled and those which remain outside ME's scope; analysis of the strategic policy documents and formulation of a structure/functions scenario, so that the ME could better implement its statutory functions, in line with the international best practices and European Integration agenda.
  - Identification - quantitatively and qualitatively - of overlapping and missing functions;
  - Identification and classification of institutional functions, including functions necessary but currently not covered by the existing structure;
  - Time quantification, resources quantification for each function, where possible;

- On the Business processes:
- Institutional technologies used are clearly identified and evaluated, with proposals regarding the new technologies;
- On the Institutional capacities:
- Quantification of data on skills and knowledge relevant for the internal work processes;
- Understanding of the employee turnover and resulting lack and insufficiency of competences;
- Planning human resources and contingencies;
- Identification of required aptitudes and skills.

#### 4. DELIVERABLES AND DELIVERY DATES

Nr.	Deliverable	Timetable/Deadlines
1.	Familiarization with the situation in the Ministry of Education and subordinated institutions, and preparation of a detailed approach (methodology) and producing an action plan for the assignment;	March - April 2013
2.	Stakeholder interviews, surveys and other relevant instruments;	April - May 2013
3.	Detailed analysis of selected functional areas of competence and drafting the Structural Review Report	May - June 2013
4.	Presentation of the Structural Review Report and support to the consultation and approval process;	July 2013
5.	Support the update of the Strategic Development Plan;	July - August, 2013
6.	<b>Final report</b>	<b>August, 2013</b>

#### 5. PERIOD OF ACTIVITIES

The consultation is foreseen for a period of 6 months, with occasional travel to the Republic of Moldova, as required and to be agreed with the ME

#### 6. TEAM COMPOSITION

In view of the purpose, scope and focus of the work, the Functional analysis will have to be conducted by a team of experts. The team, led by a Team leader, will be composed of several highly-qualified international consultants with expertise in the field of education, public administration and social policy.

The minimum competencies required from the Team Leader:

- Master degree in education, law, public administration, social policy, or other relevant field (PhD degree in the respective area would be considered an advantage);
- Minimum 10 years of working experience in the education sector, public administration; experience of working in a ministry will constitute an advantage;
- Extensive experience in performing functional reviews and reorganization activities;
- Experience in successfully advising senior public sector officials (or senior staff from other organizations) on organizational structure and human resource management issues (including concrete examples);
- Previous experience in Central Eastern Europe countries, CIS is strongly desirable;

- Proven skills of knowledge transfer techniques and experience in capacity building projects;
- Strong analytical, organizational and interpersonal skills;
- Excellent interpersonal and communication skills and ability to work in a team;
- Fluency in English, proficiency in Romanian and/or Russian would be an advantage;
- Computer proficiency, including knowledge of MS Office products.

The minimum competencies required from the *team members*:

- University degree in law, public administration, social policy, education or other relevant field (Master degree in the respective area would be considered an advantage);
- Minimum 5 years of working experience with/in public administration; experience of working in a ministry will constitute an advantage;
- Experience in performing functional reviews and reorganization activities;
- Previous experience in Central Eastern Europe countries, CIS would constitute an advantage;
- Proven skills of knowledge transfer techniques and experience in capacity building projects;
- Strong analytical, organizational and interpersonal skills;
- Excellent interpersonal and communication skills and ability to work in a team;
- Fluency in English; proficiency in Romanian and/or Russian would be an advantage;
- Computer proficiency, including knowledge of MS Office products.

The team of experts responsible for undertaking this consultancy will be required to provide the following Backstopping Services:

- Planning and organization of the field visits including practical and logistical arrangements such as travel, hotel reservations, and visa applications, presentations, and debriefing;
- Collection of information, quality control of services and reports preparation and delivery;
- All logistical arrangements;
- Timely, discrete, and diplomatic handling of any issues that may arise between the different participants and the team.

## **7. SUPERVISION ARRANGEMENTS**

The experts will work under the general guidance and management of the Deputy Minister of Education, and in close coordination with the Department for Policy, Strategic Planning and External Assistance of the State Chancellery and under supervision of UNICEF Moldova for administrative and authorization aspects. The experts will report on their activities, progress and findings to the Deputy Minister of Education.

The experts will closely coordinate with the experts and advisors assigned to the ME through other developmental projects (such as EU High Level Policy Advice Mission and the Transitional Capacity Support National Consultants).

## **8. OFFICIAL TRAVEL INVOLVED:**

The dates will be established with the consultant/s and travel expenses included into the contract budget.

## **9. UNSATISFACTORY PERFORMANCE**

In case of unsatisfactory performance, the contract will be terminated by notification letter sent 5 days prior to the termination date. In the mean time, UNICEF will initiate another selection in order to identify appropriate contractor.

## ANNEX II - UNICEF SPECIAL TERMS AND CONDITIONS

### 1. UNETHICAL BEHAVIOUR

UNICEF strictly enforces a policy of zero tolerance concerning unethical, unprofessional or fraudulent acts of UNICEF bidders. Accordingly, any registered bidder that is found to have undertaken unethical, unprofessional or fraudulent activities will be suspended or forbidden from continuing business relations with UNICEF.

### 2. CORRUPT AND FRAUDULENT PRACTICES

UNICEF requires that all bidders associated with this Invitation to Bid/Request for Proposal observe the highest standard of ethics during procurement and execution of the work. In pursuance of this policy UNICEF

(a) defines for the purpose of this provision the terms set forth as follows:

(i) corrupt practice means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in the execution of a contract, and

(ii) fraudulent practice means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the client of the benefits of free and open competition;

(b) will reject a proposal for award if it determines that the selected supplier/contractor have engaged in any corrupt or fraudulent practices in competing for the contract in question;

(c) will declare a bidder ineligible, either indefinitely or for a stated period of time, to be awarded a UNICEF-financed contract if at any time it determines that it has engaged in any corrupt or fraudulent practices in competing for, or in executing a UNICEF-financed contract.

### 3. GUIDELINES ON GIFTS AND HOSPITALITY

Bidders shall not offer gifts or hospitality to UNICEF staff members. Recreational trips to sporting or cultural events, theme parks or offers of holidays, transportation, or invitations to extravagant lunches or dinners are also prohibited.

### 4. LATE DELIVERY

Without limiting any other rights or obligations of the parties hereunder, if the Contractor will be unable to deliver the services by the delivery date stipulated in the Contract, the Contractor shall (i) immediately consult with UNICEF to determine the most expeditious means for delivering the services and (ii) use an expedited means of delivery, at the Contractor's cost, if reasonably so requested by UNICEF.

### 5. RIGHTS OF UNICEF

In case of failure by the Contractor to perform under the terms and conditions of this Contract, UNICEF may, after giving the Contractor reasonable notice to perform and without prejudice to any other rights or remedies, exercise one or more of the following rights:

(a) procure all or part of the services from other sources, in which event UNICEF may hold the Contractor responsible for any excess cost occasioned thereby. In exercising such rights UNICEF shall mitigate its damages in good faith;

(b) refuse to accept delivery of all or part of the services;

(c) terminate the Contract without any liability for termination charges or any other liability of any kind of UNICEF;

(d) for late delivery of services or for services which do not meet UNICEF's terms of reference/statement of work and are therefore rejected by UNICEF, claim liquidated damages from the Contractor and deducts 0.5% of the value of the services pursuant to a Contract per additional day of delay, up to a maximum of 10% of the value of the Contract. The payment or deduction of such liquidated damages shall not relieve the Contractor from any of its other obligations or liabilities pursuant to this Contract.

## **ANNEX III - UNICEF GENERAL TERMS AND CONDITIONS FOR INSTITUTIONAL/ CORPORATE CONTRACTS**

### **1. ACKNOWLEDGMENT COPY**

Signing and returning the acknowledgment copy of a contract issued by UNICEF or beginning work under that contract shall constitute acceptance of a binding agreement between UNICEF and the Contractor.

### **2. DELIVERY DATE**

Delivery Date to be understood as the time the contract work is completed at the location indicated under Delivery Terms.

### **3. PAYMENT TERMS**

- (a) UNICEF shall, unless otherwise specified in the contract, make payment within 30 days of receipt of the Contractor's invoice which is issued only upon UNICEF's acceptance of the work specified in the contract.
- (b) Payment against the invoice referred to above will reflect any discount shown under the payment terms provided payment is made within the period shown in the payment terms of the contract.
- (c) The prices shown in the contract cannot be increased except by express written agreement by UNICEF.

### **4. LIMITATION OF EXPENDITURE**

No increase in the total liability to UNICEF or in the price of the work resulting from design changes, modifications, or interpretations of the statement of work will be authorized or paid to the contractor unless such changes have been approved by the contracting authority through an amendment to this contract prior to incorporation in the work.

### **5. TAX EXEMPTION**

Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the UN, including its subsidiary organs, is exempt from all direct taxes and is exempt from customs duties in respect of articles imported or exported for its official use. Accordingly, the Vendor authorizes UNICEF to deduct from the Vendor's invoice any amount representing such taxes or duties charged by the Vendor to UNICEF. Payment of such corrected invoice amount shall constitute full payment by UNICEF. In the event any taxing authority refuses to recognize the UN exemption from such taxes, the Vendor shall immediately consult with UNICEF to determine a mutually acceptable procedure.

Accordingly, the Contractor authorizes UNICEF to deduct from the Contractor's invoice any amount representing such taxes, duties, or charges, unless the Contractor has consulted with UNICEF before the payment thereof and UNICEF has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide UNICEF with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

### **6. LEGAL STATUS.**

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

### **7. 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 the Contract, respect the local customs and conform to a high standard of moral and ethical conduct.

## **8. INDEMNIFICATION**

The Contractor shall indemnify, hold and save harmless and defend, at its own expense, UNICEF, 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 the acts or omissions of the Contractor or its employees 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, product 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.

## **9. INSURANCE AND LIABILITIES TO THIRD PARTIES**

- (a) 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.
- (b) The Contractor shall provide and thereafter maintain all appropriate workmen's compensation and liability insurance, or its equivalent, with respect to its employees to cover claims for death, bodily injury or damage to property arising from the execution of this Contract. The Contractor represents that the liability insurance includes sub-contractors.
- (c) 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 work 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.
- (d) Except for the workmen's compensation insurance, the insurance policies under this Article shall:
  - (i) name UNICEF as additional insured;
  - (ii) include a waiver of subrogation of the Contractor's rights to the insurance carrier against UNICEF;
  - (iii) provide that UNICEF shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
- (e) The Contractor shall, upon request, provide UNICEF with satisfactory evidence of the insurance required under this Article.

## **10. SOURCE OF INSTRUCTIONS**

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

## **11. 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 UNICEF 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.

## 12. TITLE TO EQUIPMENT

Title to any equipment and supplies which may be furnished by UNICEF shall rest with UNICEF and any such equipment shall be returned to UNICEF at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment when returned to UNICEF shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear.

## 13. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

UNICEF shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights and trademarks, with regard to documents and other materials which bear a direct relation to or are prepared or collected in consequence or in the course of the execution of this contract. At UNICEF's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to the UNICEF in compliance with the requirements of the applicable law.

## 14. CONFIDENTIAL NATURE OF DOCUMENTS

- (a) All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of UNICEF, shall be treated as confidential and shall be delivered only to the UN authorized officials on completion of work under this Contract.
- (b) The Contractor may not communicate any time to any other person, Government or authority external to UNICEF, any information known to it by reason of its association with UNICEF which has not been made public except with the authorization of the UNICEF; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract with UNICEF.

## 15. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

- (a) 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 UNICEF 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 UNICEF of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. On receipt of the notice required under this Article, UNICEF 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 the Contract.
- (b) 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, UNICEF shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 14, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.
- (c) 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.

## 16. TERMINATION

If the Contractor fails to deliver any or all of the deliverables within the time period(s) specified in the contract, or fails to perform any of the terms, conditions, or obligations of the contract, or 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, UNICEF may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate the Contract, forthwith, in whole or in part, upon thirty (30) days notice to the Contractor.

UNICEF reserves the right to terminate without cause this Contract at any time upon thirty (30) days prior written notice to the Contractor, in which case UNICEF shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

In the event of any termination no payment shall be due from UNICEF to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this contract.

Upon the giving of such notice, the Contractor shall have no claim for any further payment, but shall remain liable to UNICEF for reasonable loss or damage which may be suffered by UNICEF for reason of the default. The Contractor shall not be liable for any loss or damage if the failure to perform the contract arises out of force majeure.

Upon termination of the contract, UNICEF may require the contractor to deliver any finished work which has not been delivered and accepted, prior to such termination and any materials or work-in-process related specifically to this contract. Subject to the deduction of any claim UNICEF may have arising out of this contract or termination, UNICEF will pay the value of all such finished work delivered and accepted by UNICEF.

The initiation of arbitral proceedings in accordance with Article 22 "Settlement of Disputes" below shall not be deemed a termination of this Contract.

#### **17. SUB-CONTRACTING**

In the event the Contractor requires the services of subcontractors, the Contractor shall obtain the prior written approval and clearance of UNICEF for all sub-contractors. The approval of UNICEF 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 in conformity with the provisions of this Contract.

#### **18. ASSIGNMENT AND INSOLVENCY**

1. The Contractor shall not, except after obtaining the written consent of UNICEF, assign, transfer, pledge or make other dispositions of the Contract, or any part thereof, of the Contractor's rights or obligations under the Contract.
2. Should the Contractor become insolvent or should control of the Contractor change by virtue of insolvency, UNICEF may, without prejudice to any other rights or remedies, terminate the Contract by giving the Contractor written notice of termination.

#### **19. USE OF UNITED NATIONS AND UNICEF NAME AND EMBLEM**

The Contractor shall not use the name, emblem or official seal of the United Nations or UNICEF or any abbreviation of these names for any purpose.

#### **20. OFFICIALS NOT TO BENEFIT**

The Contractor warrants that no official of UNICEF 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 the Contract.

#### **21. PROHIBITION ON ADVERTISING**

The Contractor shall not advertise or otherwise make public that the Vendor is furnishing goods or services to UNICEF without specific permission of UNICEF.



## **22. SETTLEMENT OF DISPUTES**

### **Amicable Settlement**

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to 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.

### **Arbitration**

Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party or the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of six percent (6%) 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 controversy, claim or dispute.

## **23. PRIVILEGES AND IMMUNITIES**

The privileges and immunities of the UN, including its subsidiary organs, are not waived.

## **24. CHILD LABOUR**

UNICEF fully subscribes to the Convention on the Rights of the Child and draws the attention of potential suppliers to Article 32 of the Convention 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.

## **25. ANTI-PERSONNEL MINES**

UNICEF supports an international ban on the manufacture of anti-personnel mines. Anti-personnel mines have killed and maimed thousands of people, of whom a large proportion are children and women. Anti-personnel mines present a serious obstacle to the return of populations displaced from their residences by fighting around their villages and homes. UNICEF has, therefore, decided not to purchase products from companies that sell or manufacture anti-personnel mines or their components.

## **26. AUTHORITY TO MODIFY**

No modification or change in this Contract, no waiver of any of its provisions or any additional contractual relationship of any kind with the Contractor shall be valid and enforceable against UNICEF unless provided by an amendment to this Contract signed by the authorized official of UNICEF.

## **27. REPLACEMENT OF PERSONNEL**

UNICEF reserves the right to request the Contractor to replace the assigned personnel if they are not performing to a level that UNICEF considers satisfactory. After written notification, the Contractor will provide curriculum vitae of appropriate candidates within three (3) working days for UNICEF review and approval. The Contractor must replace the unsatisfactory personnel within seven (7) working days of UNICEF's selection.

If one or more key personnel become unavailable, for any reason, for work under the contract, the Contractor shall (i) notify the project authority at least fourteen (14) days in advance, and (ii) obtain the project authority's approval prior

to making any substitution of key personnel. Key personnel are designated as follows:

- (a) Personnel identified in the proposal as key individuals (as a minimum, partners, managers, senior auditors) to be assigned for participation in the performance of the contract.
- (b) Personnel whose resumes were submitted with the proposal; and
- (c) Individuals who are designated as key personnel by agreement of the Contractor and UNICEF during negotiations.

In notifying the project authority, the Contractor shall provide an explanation of circumstances necessitating the proposed replacement(s) and submit justification and qualification of replacement personnel in sufficient detail to permit evaluation of the impact on the engagement.

Acceptance of a replacement person by the project authority shall not relieve the Contractor from responsibility for failure to meet the requirements of the contract.