

UN-HABITAT AFGHANISTAN

INVITATION TO BID (ITB)

ITB No: UN/H/PACCS/MZR/KBL/2011/026

**Project ID: D-313
Peace Building in Afghanistan through Community
Consolidation and Solidarity**

**Title of Work: Supply & Delivery of Motor Grader for
Municipality of Mazar-e-Sharif, Balkh Province**

October 2011

INVITATION TO BID

**Supply & Delivery of Motor Grader for Mazar-e-Sharif Municipality of Balkh Province
ITB No: UN/H/PACCS/MZR/KBL/2011/026**

1. The United Nations Human Settlements Program (UN-HABITAT) –Afghanistan hereby solicits your bid for the above subject, in accordance with this document and the annexes attached. Bids are required to be submitted to the United Nations Human Settlements Program (UN-HABITAT) House # 431, Street 7, Taimani Area, District 4, Kabul Afghanistan, no later than **10.11.2011 at 14:00 HRS**

2. This Invitation to Bid (ITB) consists of this document and the following annexes:

- Annex A: Bid Form
- Annex B: Terms and Conditions to Bid
- Annex B-1: Declaration by bidder and Disclosure Requirement
- Annex C: Acknowledgement Letter
- Annex D: Contractor Qualification
- Annex D-1: Contractor Past Performance
- Annex D-2: Financial Data
- Annex D-3: Work Plan
- Annex E-: Specification
- Annex F: General Conditions of Goods

3. Bids must be submitted in the English language strictly using the attached Annex

4. (a). Your bid must be submitted in a sealed envelope/package clearly marked and addressed as follows:

**United Nations Human Settlement Program
Procurement Unit
House # 431, Street 7, Taimani Area, District 4, Kabul Afghanistan
Supply & Delivery of Motor Grader to Mazar-e-Sharif Municipality of Balkh Province
ITB Number: ITB No: UN/H/PACCS/MZR/KBL/2011/026
Attention: to Ghows Amirian: ghows.amirian@unhabitat-afg.org
Closing Date & Time: **10/November/2011 at 14:00 hours****

(b). Outer envelope/package of your bid must clearly indicate ITB number, name of the Project of UN-HABITAT official indicated in paragraph 4.a and 6 of this ITB, date and closing time and name of your company so that the UN-HABITAT can identify your bid at the time of receipt. Each bid for each ITB must be submitted in a separate envelope. Please do not combine different bids in the same envelope.

(c). It is the exclusive responsibility of the bidders to ensure that the sealed envelope/package containing the bid reaches the above address before the time and date indicated in paragraph 4.a. so that it is time stamped and acceptable for opening. Bids must be delivered to the designated address during the UN-HABITAT working hours from 8:00 a.m. to 4:00 p.m. Sunday through Thursday except for the UN-HABITAT holidays. Delivery to UN-HABITAT office location will be at the risk of bidders. Written proof of receipt will not be given unless a Postal/Courier service receipt or other form of receipt is presented for UN-HABITAT. *Bids received after the above mentioned Closing date and time will be invalidated.*

(d). UN-HABITAT Procurement Service strongly encourages you to deliver your bid by hand or via courier so that you can track delivery and ensure receipt by the UN-HABITAT Procurement Service in time for the deadline specified in this ITB.

5. A public opening of bids will take place on **November 10, 2011**, between 14:00-15:00 HRS in the Bid Room of the Procurement Unit. Companies submitting offers are welcome to send one (1) representative with proper authorization to observe the opening of bids received.

6. For queries on this ITB, please contact Email: Ghows Amirian procurement officer, ghows.amirian@unhabitat-afg.org Copy najib.amini@unhabitat-afg.org and Copy Sayed Abdul Ghani Musafar, Provincial Manager of Mazar-e-Sharif, E-mail: Sayed_Musafar@yahoo.com. Please notify the UN-HABITAT immediately if any part of this ITB is missing and/or illegible. Bidders are reminded that these e-mail addresses may be used only to send queries and acknowledgement letter requested in paragraph 8 below. *Bids must NOT be sent to this E-mail address.*

7. You are kindly requested to return the attached Annex C — Acknowledgement Letter duly signed by an authorized representative to the UN-HABITAT via e-mail advising whether or not your company intends to submit a bid prior to the designated closing date for receipt of bids. Please indicate the reason if you do not intend to submit a bid at this time. The UN-HABITAT will review the registration status of companies which have failed to return the completed acknowledgement letter. Failure to return the completed acknowledgement letter may result in removal of your company from the roster of registered suppliers.

8. Bidders are requested to submit bids in compliance with the terms and conditions specified in Annex B - Instructions to Bidder attached to this ITB.



Binod Shrestha
Country Representative
UN-HABITAT Afghanistan

Annex A
BID FORM

Procurement Unit,
UN-HABITAT
Kabul Afghanistan

Tender for

Supply & Delivery of Motor Grader for Mazar-e-Sharif Municipality of Balkh Province
ITB No: UN/H/PACCS/MZR/KBL/2011/026

I/We, the undersigned, having read and fully acquainted myself/ourselves with the contents of the Information and Instructions to Tenderers and Terms and Conditions of Tender pertaining to the above Tender, along with Bills, do hereby undertake the Contract for

Supply & Delivery of Motor Grader for Mazar-e-Sharif Municipality of Balkh Province
ITB No: UN/H/PACCS/MZR/KBL/2011/026

Referred to therein, in accordance with the aforesaid Instructions, Terms and Conditions for a total Tender price of US Dollars.....(in words)
US\$.....(in figure). [The make-up of the aforesaid total Tender Price is given in the accompanying Bill Quantities.]

I/We confirm that this offer shall be open for acceptance until.....and that it will not be withdrawn or revoked prior to that date.

1. Duly completed Tender Documents.
2. Documentary evidence to establish eligibility of tender
3. Documentary evidence to establish that goods offered from an eligible source and Origin.
4. Documentary evidence to establish eligibility of goods offered.
5. Documentary evidence to establish qualifications for the performance of the Contract.
6. Any other document.

I/We declare that the Photostat copies of documents and certificates submitted as part of the Tender are true copies of such documents and certificates.

I/We understand that UN-HABITAT is not bound to accept the lowest tender and that UN-HABITAT reserves the right to reject any or all tenders or to accept any part or a tender without assigning any reasons thereto.

My/Our Bank Reference is as follows:

.....
.....
.

Signature:

.....

Name of Tenderer

.....

Address...

Telephone Number...

Mobile Number.....

Email Address.....

Date:

.....

Company Stamp

Annex B

TERMS AND CONDITIONS TO BID

Outline of the Infrastructure Component of the project

Mazar-e-Sharif is one of the key and largest cities in north of Afghanistan with the estimated population of 300,600 people.

Mazar-e Sharif is located in one of Afghanistan's most fertile regions, extensively irrigated by the Balkh River and producing cotton, grain, and fruit. The town's industries include flour milling and the manufacturing of silk and cotton textiles. It is connected by road and air with Kabul, 200 miles (320 km) southeast, and other Afghan cities and is the nation's chief transit point for Soviet trade. A well-known Islamic theology school is located there. Nearby is Dehdadi, a military headquarters with an airfield. The inhabitants of Mazar-e- Sharif are mainly Uzbeks, Tajiks, and Turkmens.

The main objective of the project is:

- For better improvement of sanitation conditions in the city of Mazar-e-Sharif.
- For loading of rubbles, debris and solid wastes from around the city.
- For regular clearance and collection of solid wastes around the city of Mazar-e-Sharif.
- For better improvement of construction projects of Municipality in the city of Mazar-e-Sharif.

Scope of Tender

- Scope of the tender is to supply and delivery of One (1) Motor Grader to UN-HABITAT Mazar-e-Sharif Municipality of Balkh province.

Site Description

- Goods to be delivered to Mazar-e-Sharif UN-HABITAT Municipality Office.

2. PRESENT SITUATION AND PROBLEMS

Municipalities perform major key roles in development and providing of facilities for the resident of the cities. Thus this entity which plays such a crucial role, must have a sufficient machinery for their activities.

The project will provide one Motor Grader for municipality activity of Mazar-e-Sharif city as per the ITB technical specification. The required machinery will be procured through commercial supplier under public tendering within one month time.

EXPECTED IMPACT FROM THE PROJECT:

By supplying of Motor Grader to municipality of Mazar-e-Sharif will help them to solve some of their construction and sanitation problem in the city, and also it will help them to improve their activities.

Pre Bid Meeting

N/A

Cost of Tendering

The tenderer shall bear all costs associated with the preparation and submission of the tender document in compliance with tender requirements and the client will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the tendering process.

Eligible Tenderers

- 1) The companies who have sufficient experience of supply of machinery and equipments are eligible to apply.
- 2) Must have completed at least one or two projects contract value not less than USD150,000 within last three years
- 3) Average annual turnover during last 3 years must be not less than USD150,000.

Eligible goods and services

- 1 All goods shall be branded new (reputed brand).
- 2 All goods shall be supplied under the contract from manufacturer or their local accredited agent.
- 3 The bidder shall furnish, as documentary evidence, to establish the eligibility and conformity to the bidding documents of all goods and services which the bidder proposes to supply under the Contract.
4. The Bidder shall provide documentary evidence for the conformity to the requirement in the documents in the form of literature, brochures and data, and shall furnish a detailed description of the goods' essential technical and performance characteristics including details requested.

Submission of bids

Bids must be submitted in the English language on the Requirement specified in this Invitation to Bid (ITB). Bidders must provide all requisite information under this ITB and clearly and concisely respond to all points set out in this ITB. However, unnecessarily elaborate brochures and other presentations beyond those sufficient to present complete and effective Bids, are not encouraged.

Technical Specification of Requirement

No changes, substitutions or other alterations to the technical specifications of requirement stipulated in this ITB document will be accepted unless approved in writing by UN-HABITAT authorized official.

Warranty

UN-HABITAT requires one (1) year manufacturer warranty of the requested machinery under this ITB.

The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials unless otherwise provided in the Contract.

The Supplier further warrants that the Goods supplied under this Contract shall have no defect arising from design, materials or workmanship (except in so far as the design or material is required by the Purchaser's Specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.

This warranty shall remain valid for a period stated in the **Contract Data** after the Goods, or any portion thereof as the case may be, have been delivered (and commissioned) to the final destination indicated in the Contract.

Liquidated Damages

The Contract or Purchase Order concluded with the only successful contractor will provide that if the successful contractor fails to supply the specified goods/services within the lead time stipulated by his or her Bid, or within a period specified by a Purchase Order or a Contract, HABITAT shall, without prejudice to its other remedies under the Purchase Order or Contract, deduct from the Purchase Order or Contract price, as liquidated damages a sum equivalent to point five percent (0.5%) per week of delay calculated on the value of the Purchase Order or Contract until actual delivery, up to a maximum deduction of ten percent (10%) of the value of the Purchase Order or Contract.

Bid Bond

UN-HABITAT will retain sum of equal to [10%] Ten percent of the total contract price. The Performance Bond shall be valid for the entire period and ninety (90) after completion of the project. UN-HABITAT reserves the right to extend the validity of the Bid Bond if the contractual instrument is not yet in place.

No Commitment

This ITB does not commit UN-HABITAT to award a contract or to pay any costs incurred in the preparation or submission of bids, or costs incurred in making necessary studies for the preparation thereof, or to procure or contract for services or goods. Any bid submitted will be regarded as an offer made by the bidder and not as an acceptance by the bidder of the offer made by UN-HABITAT. No contractual relationship will exist except pursuant to a written contract document signed by the duly authorized official of UN-HABITAT Procurement Service and by the selected bidder. This ITB does not commit UN-HABITAT to consider any bid or to award a contract. If the bid is submitted on an "all or none" basis, it should clearly state so.

Evaluation Factors for Award include:

All bids will be evaluated in accordance with the provisions of the UN Financial Regulations and Rules and established procedures of the UN, as well as the requirements of this ITB. The following criteria will be considered in evaluating the bids:

- a. Realistic Price;
- b. Technical compliance (a. Compliance with technical specifications, b. Agreement with terms and conditions of contract, e. Submission of all mandatory documents).
- c. Authorized dealership with qualified maintenance/repair personnel;
- d. Availability of spare parts with supplier/in local market;
- e. List of major organizations company supplied equipment to during the last year
- f. Warranty period
- g. Delivery time

While price is an important factor, it would not be the only primary consideration in evaluating responses to this ITB.

Mandatory Documents to be attached with Bid Proposal:

1. Company Bank statements for the last three (3) months.
2. Valid Business registration certificate from AISA
3. Acknowledgment letter (Annex C)
4. Evidence of past performance (Annex D-2)
5. Financial data for qualification (Annex D-3)
6. Work Plan (Annex D-4)
7. Bid documents must be duly signed and stamped by authorized person
8. Signed agreement for partnership/Joint Venture, if applicable.

Note: Failure to provide any of those above documents result in invalid bids (therefore, will not be included for further evaluation)

Payment Terms

The UN Financial Regulations and Rules preclude advance payments or payments by letter of credit. Such provisions in a bid will be prejudicial to its evaluation by UN-HABITAT. The normal terms of payment by UN-HABITAT are 30 (thirty) days (or similarly discounted payment terms if offered by bidders) upon satisfactory delivery of goods or performance of services, acceptance thereof by UN-HABITAT and certification by UN-HABITAT of the Contractor's invoice. Bidders must therefore clearly specify in their bids the payment terms being offered.

GSA Clause (for USA vendors only)

The UN is eligible under the United States Foreign Assistance Act of 1961 to receive full benefits under General Services Administration (GSA) Contracts. Accordingly, all bids must specify whether or not items quoted by the bidder are currently subject to GSA Federal Supply pricing and indicate the GSA Contract Number and Expiration Date, wherever applicable.

Validity of Bids

Bids shall remain open and valid for acceptance for a period of at least Ninety (90) days from the date of opening specified in this ITB.

Rejection of Bids and Split Awards

UN-HABITAT reserves the right to reject any and all bids if they inter alia:

- I. is received after the deadline stipulated in the ITB;
- ii. Are not properly marked or addressed as required in the ITB;
- iii. Are delivered to another UN-HABITAT office location than the one required in the ITB;
- iv. Are transmitted by facsimile unless specifically indicated in the ITB;
- V. are unsolicited;
- vi. Contain an alternate bid; or
- vii. Are not otherwise in compliance with this ITB.

UN-HABITAT also reserves the right to split an award between any bidders in any combination as it may deem appropriate and the bidders must be willing to accept partial awards.

Withdrawal and Modification of Bids

Bids may be modified or withdrawn in writing, prior to the bid closing time specified therein. Bids may not be modified or withdrawn after that time.

Errors in Bids

Bidders or their authorized agents are expected to examine any maps, drawings, specifications, circulars, schedules and other instructions pertaining to the work, made available by UN-HABITAT to the bidders for inspection. Failure to do so will be at the bidder's own risk. In case of error in the totaling of prices, the unit price will govern.

Public Opening

Public opening of bids will take place at the address mentioned above on the same day and time bid closed or specified in this ITB. Bidders may send one (1) representative with proper authorization to observe the opening of bids at the time and location specified in the ITB.

Confidentiality

This ITB or any part thereof, and all copies thereof must be returned to UN-HABITAT upon request. It is understood that this ITB is confidential and proprietary to UN-HABITAT, contains privileged information, part of which may be copyrighted, and is communicated to and received by bidders on the condition that no part thereof, or any information concerning it may be copied, exhibited, or furnished to others without the prior written consent of UN-HABITAT, except that bidder may exhibit the specifications to prospective sub-contractors for the sole purpose of obtaining offers from them. Notwithstanding the other provisions of the ITB, bidders will be bound by the contents of this paragraph whether or not their company submits a bid or responds in any other way to this ITB.

Non-Disclosure Agreement

UN-HABITAT may require bidders to execute a Non-Disclosure Agreement in the form of Annex G before being provided with some or all of the information included in the ITB.

Collusive Bidding and other Anti-competitive Conduct

Bidders and their employees, officers, advisers, agents or sub-contractors must not engage in any collusive bidding or other anti-competitive conduct, or any other similar conduct, in relation to:

1. the preparation or submission of Bids;
2. the clarification of Bids; and
3. the conduct and content of negotiations, including final contract negotiations,

In respect of this ITB or procurement process, or any other procurement process being conducted by UN-HABITAT in respect of any of its requirements.

For the purposes of this clause, collusive bidding, other anti-competitive conduct, or any other similar conduct may include, among other things, the disclosure to, exchange or clarification with, any other Bidder, person or entity, of information (in any form), whether or not such information is commercial information confidential to UN-HABITAT, any other Bidder, person or entity in order to

alter the results of a solicitation exercise in such a way that would lead to an outcome other than that which would have been obtained through a competitive process.

In addition to any other remedies available to it, UN-HABITAT may, at its sole discretion, immediately reject any Bid submitted by a Bidder that, in UN-HABITAT's sole opinion, has engaged in any collusive bidding, other anti-competitive conduct, or any other similar conduct with any other Bidder, person or entity in relation to the preparation or lodgment of Bids, whether in respect of this ITB or procurement process, or any other procurement process being conducted by UN-HABITAT in respect of any of its Requirements.

Improper Assistance

Bids that, in the sole opinion of UN-HABITAT, have been compiled:

1. with the assistance of current or former employees of UN-HABITAT, or current or former contractors of UN-HABITAT in violation of confidentiality obligations or by using information not otherwise available to the general public or which would provide a non-competitive benefit;
2. with the utilization of confidential and/or internal UN-HABITAT information not made available to the public;
3. in breach of an obligation of confidentiality to UN-HABITAT; or
4. contrary to these terms and conditions for submission of a Bid,

Shall be excluded from further consideration

Use of former UN-HABITAT employee in the preparation of Bids and process

Without limiting the operation of the above clause, a Bidder must not, in the absence of prior written approval from UN-HABITAT, permit a person to contribute to, or participate in, any process relating to the preparation of a Bid or the procurement process, if the person:

1. at any time during the six months immediately preceding the date of issue of this ITB was an official, agent, servant or employee of, or otherwise engaged by, UN-HABITAT;
2. at any time during the 12 months immediately preceding the date of issue of this ITB was an employee of UN-HABITAT personally engaged, directly or indirectly, in the planning or performance of the requirement, project or activity to which the ITB relates; or
3. At any time, was an employee of UN-HABITAT involved, directly or indirectly, in the preparation of this ITB including any earlier versions or the management of this procurement process?

Corrupt Practices

All UN-HABITAT vendors shall adhere to the highest ethical standards, both during the procurement process and throughout the performance of a contract.

Conflict of Interest

A Bidder must not, and must ensure that its employees, officers, advisers, agents or sub-contractors do not, place themselves in a position that may, or does, give rise to an actual, potential or perceived conflict of interest between the interests of UN-HABITAT and the Bidder's interests during the procurement process.

If during any stage of the procurement process or performance of any **UN-HABITAT** contract a conflict of interest arises, or appears likely to arise, the Bidder must notify **UN-HABITAT** immediately in writing, setting out all relevant details of the situation, including those cases in which the interests of the Bidder conflict with the interests of **UN-HABITAT**, or cases in which any

UN-HABITAT, employee or person under contract with **UN-HABITAT** may have, or appear to have, an interest of any kind in the Bidder's business or any kind of economic ties with the Bidder. The Bidder must take such steps as **UN-HABITAT** may reasonably require resolving or otherwise dealing with the conflict to the satisfaction of **UN-HABITAT**.

Vendor Registration

UN-HABITAT vendors shall keep current the information required for them to be registered as a UN vendor via the UN Global Marketplace (UNGM) at www.ungm.org by means of electronic updates. UN vendors shall inform the UN immediately and in writing, setting out all relevant details, about any material change in the information provided to the UN in their vendor application, including, but not limited to, change of name due to merger, acquisition or otherwise; change of address; material claims against the vendor, or any litigation or arbitration in which the vendor is a party; any investigation or inquiry by any governmental regulatory, licensing or other authority into the conduct of the vendor or any officer or employee thereof that could materially adversely affect the financial or other standing of the vendor, or the ability of the vendor to provide to the UN any goods or services the subject of this ITB; criminal convictions of any employee, officer, adviser or agent of the vendor; civil judgments; the most recent financial statements or financial standing of the vendor including any filing for bankruptcy, or entry into receivership, by the vendor; abusive, unethical or unprofessional conduct of the vendor including corrupt practices and submission of false information; any assignment of assets by the vendor or other financial acts, and any acts of financial impropriety committed or suffered by the vendor; any of the aforementioned factors in relation to a holding, parent, subsidiary, or affiliated company of the vendor which could materially adversely affect the financial or other standing of the vendor, or the ability of the vendor to provide to the UN any goods or services the subject of this ITB. The submission, which may be in the form of a letter, fax or other electronic means, shall include all relevant documentation with regard to the changes. Upon receipt of such information, the UN will make an assessment and determine whether the changes require a re-evaluation of the vendor's status as a registered UN vendor. Vendors which fail to so inform the UN about such material changes or fail to submit their latest financial statements may risk suspension or removal from the UN vendor database.

Rights of UN-HABITAT

If UN-HABITAT determines that a vendor has engaged in collusive bidding, has received improper assistance, engaged in corrupt practices, or conflict of interest situations, then notwithstanding any other legal rights or remedies it may have, **UN-HABITAT** reserves the right, at its sole option, to:

- i. reject any bid or recommendation to award a contract to such vendor; and/or
- ii. Declare a company or firm or ineligible, either indefinitely or for a stated period of time, to become a **UN-HABITAT** registered vendor; and/or
- iii. Terminate any contract entered into with such vendor.

Contract

All firms responding to this ITB shall acknowledge in their Bid that the UN's General Conditions on Contract (Annex E) are acceptable. In addition, all firms responding to this ITB are required to acknowledge in their Bid, by submission of Annex B-1, that the above terms and conditions are acceptable. However, if any of the UN's General Conditions of Contract or any of the above terms and conditions is not acceptable, the Bidder is required to indicate in the Bid with specificity any reservation(s) it has in respect of any of them and must provide alternative language to the particular clause. Please note, however, that such reservation(s) or deviation(s) will be taken into account, in the sole discretion of the UN, in the evaluation of the Bid, including the comparative evaluation with other Bids.

Annex B-1
Declaration by Bidder and Disclosure Requirement

The undersigned represents to UN-HABITAT as follows (check as appropriate)¹:

1. Bidder accepts the Terms and Conditions in Annex B and agrees to do all acts required in Annex B.
2. Bidder also acknowledges that Bids may be partially awarded between different Bidders, in accordance with Annex B.
3. Bidder shall submit a performance bond as stated in Annex B if required in the ITB.
4. Bidder, if awarded a contract, may be liable for liquidated damages if provide for in this ITB or the contract.
5. Bidder is aware that UN-HABITAT is not committed to award a contract, or to reimburse any costs incurred by the Bidder in connection with the ITB process as stated in Annex B.
6. Bidder is aware that neither the ITB, nor any of its annexes, including this Annex B-1, constitutes any agreement or contractual relationship between the UN-HABITAT or any of its entities, and the Bidder. Bidder acknowledges that the sole purpose of the ITB and its annexes is to enable vendors to submit a Bid; Bidder will not regard or seek to rely upon the ITB or any of its annexes as an offer on the part of UN-HABITAT capable of acceptance by the Bidder.
7. Bidder acknowledges that Bids are evaluated according to the UN Financial Regulations and Rules.
8. Bidder is familiar with and accepts the payment terms in Annex B.
9. In the event the Bidder is a U.S. entity, Bidder will indicate in its Proposal whether or not the prices specified therein are currently subject to GSA Federal Supply pricing and state the GSA Contract Number and Expiration Date.
10. Bidder's Bid will be valid for the period stipulated in Annex B.
11. Bidder is familiar with and accepts the UN's conditions for the withdrawal and modification of Bids and the UN's rules governing errors in Bids and public opening of Bids.
12. Bidder accepts the Confidentiality terms stated in Annex B; and is aware that in
The event the UN requires Bidders to execute a non-disclosure agreement, as stated in Annex B, and Bidder refuses to sign, Bidder will not be invited to participate further in the ITB.
13. Bidder accepts the Collusive Bidding and other Anti-competitive Conduct terms stated in Annex B and represents that the Bid has been compiled without the improper assistance of employees or former employees of UN-HABITAT, in accordance with Annex B.

14. Bidder has not, and is not, engaged in any corrupt practices.
15. Bidder is not aware of any existing or potential conflict of interest as specified in Annex B. If during the procurement process a conflict of interest arises, or appears likely to arise, Bidder will notify UN-HABITAT immediately in accordance with Annex B.
16. Bidder agrees to immediately update its vendor profile in UNGM (www.ungm.org) with new information in accordance with Annex B.
17. Bidder acknowledges that any costs it may incur in connection with the Submission of a Bid to UN-HABITAT is at the sole expense of the Bidder.
18. Bidder shall promptly inform UN-HABITAT in writing of any bid submitted, or likely to be submitted, by a holding, parent, subsidiary, or affiliated company of the Bidder in response to this ITB of which it is aware, or ought reasonably to be aware.
19. Bidder shall submit a bid bond as stated in Annex B if required in the ITB.

REGISTERED OFFICE
OR OTHER ADDRESS
OF BIDDER:

POSTAL ADDRESS:

TELEPHONE NUMBERS:

E-mail Address

Signature of authorized official of Bidder or person otherwise authorized to sign the bid on behalf of the Bidder

SIGNATURE:

DATE OF SIGNATURE:

NAME (Block Letters):

POSITION HELD:

ANNEX C

ACKNOWLEDGEMENT LETTER

Dear Sir,

Subject: Supply & Delivery of Motor Grader for Mazar-e-Sharif Municipality of Balkh Province

We, the undersigned, acknowledge receipt of your Invitation to Bid (ITB) No. ITB No: UN/H/PACCS/MZR/KBL/2011/026 dated **19.10.2011** and hereby confirms that we:

[] INTEND [] DO NOT INTEND

To submit a bid to the UN-HABITAT by the deadline date of **10.11.2011** at 2:00 PM HRS and that we:

[] INTEND [] DO NOT INTEND

To send one (1) authorized representative to observe the public opening procedure.

We acknowledge that this ITB is confidential and proprietary to the UN-HABITAT, and contains privileged information. Upon request, we will return this ITB or any part thereof, and all copies thereof, to the Aceh Sanitation Assessment & Assistance Project of UN-HABITAT.

Name & Title of Authorized: _____
Representative: _____
Signature: _____
Company Name and Address: _____
Telephone No.: _____ E-mail: _____

IMPORTANT: In order for your company to remain as a registered vendor, you must return a completed copy of this acknowledgement letter by fax even if you do not intend to submit a bid at this time.

Failure to submit a completed copy of this acknowledgement letter for three consecutive times will be understood to mean that you no longer wish to receive such invitations and you will be suspended from the roster automatically.

If you do not intend to submit a bid to the UN-HABITAT, please indicate the reason:

- [] We do not have the capacity to submit a bid at this time.
- [] We cannot meet the technical requirement for this ITB.
- [] We do not think we can make a competitive offer at this time.
- [] Others: (Please Specify) _____

Kindly return this acknowledgement immediately via E-mail to:

ghows.amirian@unhabitat-afg.org, CC: najib.amini@unhabitat-afg.org

*Procurement Unit
UN-HABITAT
Attention: Bid Opening Official*

NOTE: Due to the current security arrangements, your authorized representative must present a completed copy of this letter in order to observe the public opening procedure.

Annex D

Details of machinery going to be offered
(Bidder's who are failed to fill up this format whose bid is rejected)

No	Item	Details of Equipment
01	Motor Grader	<ol style="list-style-type: none">1.Brand /Name (reputed brand)2.Country of Manufacture3.Model4.Engine capacity5.Fuel efficiency at full load operation6. Warranty period7. Delivery time8. Availability spare parts

Signature: _____

Date: _____

Stamp: _____

Annex D-1

QUALIFYING REQUIREMENTS CONTRACT

PAST PERFORMANCES

List of Customers Equipment Supplied

List of Customers	Name & Details of Contract	Detail of Equipments	Value (USD)	Date	Completed/ ongoing

Annex D-2

FINANCIAL DATA FOR QUALIFICATION

Company Name/Name of joint Venture Partner.....
Business Address:.....

Summary of assets and liabilities on basis of the bank statements of the latest three financial years.

	Year 2008	Year 2009	Year 2010
1. Fixed Assets			
2. Current Assets			
3.Total Assets (1+2)			
4.Current Liabilities			
5.Long Term Liabilities			
6.Total Liabilities (4+5)			
7.WorkingCapital (3-6)			

1. Name/Address of Bank:

.....
.....
.....

Attach certified copies of following documents:

1. Bank statements for the last three (3) months.
2. Business registration certificate from AISA

Annex D-3

BASIC PROGRAMME OF WORK

(Contractors may submit their own Programme)

Item No	Description of Activity	Quantity	“Delivery date” After issuance of order
1	Supply and delivery of Motor Grader to Mazar-e-Sharif UN-HABITAT Municipality office in Balkh Province	1	

UN-HABITAT AFGHANISTAN

Estimation Cost

UN-HABITAT AFGHANISTAN

Estimation Cost for Supply and Delivery of Motor Grader for Mazar-e-Sharif Municipality office of Balkh Province

Japan PACCS 2 Project

No	Descriptions	Qty	FOB Unit Price (\$)	Transportation/Scort Charges to Destination per unit	Duty Tax & Custom Clearance per unit	Seller Profit per unit	Total Amount in USD
1	Motor Grader (see attached specifications)	1					
2	Discounts	LS					
3.	Cost of recommended spares for a period of 3 years	Lot					
Grand Total USD							

Total of Contract Sum in Words (US \$) (Item No 1 only):

Signature:

Name of the Tenderer

Address:

Contact

Company Seal

Annex E

For Mazar-e-Sharif Office

SPECIFICATIONS

1. Motor Grader

Summary of Specifications:

Main technical specifications:

Rated power/turning speed Kw/rpm:	153/2200 160/2200
Dimension (mm) standard equipment:	8970*2625*3740

Work specifications

Maximum turning angle of front wheel:	50
Maximum sloping angle of front wheel:	17
Maximum swing angle of front axle:	15
Maximum turning angle of vehicle frame:	27
Maximum turning radius:	7.3m

Blade

Maximum lifting height (mm)	450
Maximum shovel depth (mm)	500
Maximum sloping angle	90
Cutting-in angle	28-70
Turning around angle	360

Other technical information:

Brand New	New
Electro-hydraulic control transmission	No-SPIN differential
Fuel Type	Diesel



The Ten Principles of the Global Compact

The Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

1. [The Universal Declaration of Human Rights](#)
2. [The International Labour Organization's Declaration on Fundamental Principles and Rights at Work](#)
3. [The Rio Declaration on Environment and Development](#)
4. [The United Nations Convention Against Corruption](#)

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption:

Human Rights

[Principle 1](#): Businesses should support and respect the protection of internationally proclaimed human rights; and

[Principle 2](#): make sure that they are not complicit in human rights abuses.

Labour Standards

[Principle 3](#): Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

[Principle 4](#): the elimination of all forms of forced and compulsory labour;

[Principle 5](#): the effective abolition of child labour; and

[Principle 6](#): the elimination of discrimination in respect of employment and occupation.

Environment

[Principle 7](#): Businesses should support a precautionary approach to environmental challenges;

[Principle 8](#): undertake initiatives to promote greater environmental responsibility; and

[Principle 9](#): encourage the development and diffusion of environmentally friendly technologies

Anti-Corruption

[Principle 10](#): Businesses should work against all forms of corruption, including extortion and bribery.

(See < <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> >



GENERAL CONDITIONS OF CONTRACT

CONTRACTS FOR THE PROVISION OF GOODS

1. **LEGAL STATUS OF THE PARTIES:** The United Nations and the Contractor shall also each be referred to as a “Party” hereunder, and:
 - 1.1 Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfilment of its purposes.
 - 1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* the United Nations, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.
2. **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its obligations under the Contract. Should any authority external to the United Nations seek to impose any instructions concerning or restrictions on the Contractor’s performance under the Contract, the Contractor shall promptly notify the United Nations and provide all reasonable assistance required by the United Nations. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the United Nations.
3. **ASSIGNMENT:**
 - 3.1 Except as provided in Article 3.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of the UN. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the United Nations. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of the UN. Any such unauthorized delegation, or attempt to do so, shall not be binding on the United Nations.
 - 3.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor’s operations, *provided that*:
 - 3.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and*,
 - 3.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor’s assets or ownership interests; *and*,
 - 3.2.3 the Contractor promptly notifies the United Nations about such assignment or transfer at the earliest opportunity; *and*,
 - 3.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to the United Nations following the assignment or transfer.



4. **SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of the United Nations. The United Nations shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the United Nations reasonably considers is not qualified to perform obligations under the Contract. The United Nations shall have the right to require any subcontractor's removal from United Nations premises without having to give any justification therefore. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.
5. **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof to any representative, official, employee, or other agent of the United Nations. The Contractor acknowledges and agrees that any breach of this provision is a breach of an essential term of the Contract.
6. **PURCHASE OF GOODS:** To the extent that the Contract involves any purchase of goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to any purchases of goods under the Contract:
 - 6.1 **DELIVERY OF GOODS:** The Contractor shall hand over or make available the goods, and the United Nations shall receive the goods, at the place for the delivery of the goods and within the time for delivery of the goods specified in the Contract. The Contractor shall provide to the United Nations such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until physical delivery of the goods to the United Nations in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by the United Nations.
 - 6.2 **INSPECTION OF THE GOODS:** If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify the United Nations when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, the United Nations or its designated inspection agents may also inspect the goods upon delivery in order to confirm that the goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to the United Nations or its designated inspection agents at no charge therefore. Neither the carrying out of any inspections of the goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.
 - 6.3 **PACKAGING OF THE GOODS:** The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by the United Nations as well as such other information as is necessary for the correct handling and safe delivery of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.
 - 6.4 **TRANSPORTATION & FREIGHT:** Unless otherwise specified in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that the United Nations receives all necessary transport documents in a timely manner so as to enable the United Nations to take delivery of the goods in accordance with the requirements of the Contract.



- 6.5 **WARRANTIES:** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of the United Nations stated in or arising under the Contract, the Contractor warrants and represents that:
- 6.5.1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;
 - 6.5.2 If the Contractor is not the original manufacturer of the goods, the Contractor shall provide the United Nations with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;
 - 6.5.3 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;
 - 6.5.4 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;
 - 6.5.5 The goods are new and unused;
 - 6.5.6 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the goods by the United Nations in accordance with the Contract;
 - 6.5.7 During any period in which the Contractor's warranties are effective, upon notice by the United Nations that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse the United Nations for the purchase price paid for the defective goods; and,
 - 6.5.8 The Contractor shall remain responsive to the needs of the United Nations for any services that may be required in connection with any of the Contractor's warranties under the Contract.
- 6.6 **ACCEPTANCE OF GOODS:** Under no circumstances shall the United Nations be required to accept any goods that do not conform to the specifications or requirements of the Contract. The United Nations may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall the United Nations be obligated to accept any goods unless and until the United Nations has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that the United Nations shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until the United Nations in fact provides such written acceptance. In no case shall payment by the United Nations in and of itself constitute acceptance of the goods.
- 6.7 **REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to the United Nations under the Contract, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, the United Nations, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from the United Nations of such rejection or refusal to accept the goods, the Contractor shall, in sole option of the United Nations:
- 6.7.1 provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by the United Nations; *or*,
 - 6.7.2 repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; *or*,
 - 6.7.3 replace the goods with goods of equal or better quality; *and*,
 - 6.7.4 pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to the United Nations.



6.8 In the event that the United Nations elects to return any of the goods for the reasons specified in Article 6.7, above, the United Nations may procure the goods from another source. In addition to any other rights or remedies available to the United Nations under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and the United Nations shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account.

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

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

7. INDEMNIFICATION:

7.1 The Contractor shall indemnify, defend, and hold and save harmless, the United Nations, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against the United Nations, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

7.1.1 allegations or claims that the possession of or use by the United Nations of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to the United Nations under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefore, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or*,

7.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

7.2 The indemnity set forth in Article 7.1.1, above, shall not apply to:

7.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by the United Nations directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; *or*

7.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof furnished under the Contract if the United Nations or another party acting under the direction of the United Nations made such changes.

7.3 In addition to the indemnity obligations set forth in this Article 7, the Contractor shall be obligated, at its sole expense, to defend the United Nations and its officials, agents and employees, pursuant to this Article 7, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.



- 7.4 The United Nations shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defence of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defence of the privileges and immunities of the United Nations or any matter relating thereto, for which only the United Nations itself is authorized to assert and maintain. The United Nations shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.
- 7.5 In the event the use by the United Nations of any goods, property or services provided or licensed to the United Nations by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:
- 7.5.1 procure for the United Nations the unrestricted right to continue using such goods or services provided to the United Nations;
- 7.5.2 replace or modify the goods or services provided to the United Nations, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; *or*,
- 7.5.3 refund to the United Nations the full price paid by the United Nations for the right to have or use such goods, property or services, or part thereof.

8. INSURANCE AND LIABILITY:

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



- 8.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by the United Nations, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:
- 8.5.1 name the United Nations as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
 - 8.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against the United Nations;
 - 8.5.3 provide that the United Nations shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,
 - 8.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to the United Nations.
- 8.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- 8.7 Except for any self-insurance program maintained by the Contractor and approved by the United Nations for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to the United Nations. Prior to the commencement of any obligations under the Contract, the Contractor shall provide the United Nations with evidence, in the form of certificate of insurance or such other form as the United Nations may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. The United Nations reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 8.5.3, above, the Contractor shall promptly notify the United Nations concerning any cancellation or material change of insurance coverage required under the Contract.
- 8.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.
9. **ENCUMBRANCES AND LIENS:** The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the United Nations against any monies due to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or the United Nations.
10. **EQUIPMENT FURNISHED BY THE UNITED NATIONS TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by the United Nations to the Contractor for the performance of any obligations under the Contract shall rest with the United Nations, and any such equipment shall be returned to the United Nations at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate the United Nations for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.
11. **COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**
- 11.1 Except as is otherwise expressly provided in writing in the Contract, the United Nations 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 United Nations under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the United Nations.



- 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 United Nations does not and shall not claim any ownership interest thereto, and the Contractor grants to the United Nations 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 United Nations, 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 United Nations 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 United Nations, shall be made available for use or inspection by the United Nations at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to United Nations authorized officials on completion of work under the Contract.
12. **PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS:** The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the United Nations, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise without the written permission the United Nations.
13. **CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party (“Discloser”) to the other Party (“Recipient”) during the course of performance of the Contract, and that is designated as confidential (“Information”), shall be held in confidence by that Party and shall be handled as follows:
- 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 United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.
- 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 United Nations sufficient prior notice of a request for the disclosure of Information in order to allow the United Nations 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 United Nations may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.
- 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. 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 affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.
- 14.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, the United Nations shall have the right to suspend or terminate the 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. In any case, the United Nations shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.
- 14.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which the United Nations 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. TERMINATION:

- 15.1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 18 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.
- 15.2 The United Nations may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of the United Nations applicable to the performance of the Contract or the funding of the United Nations applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, the United Nations may terminate the Contract without having to provide any justification therefore.

- 15.3 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by the United Nations, the Contractor shall, except as may be directed by the United Nations in the notice of termination or otherwise in writing:
- 15.3.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;
 - 15.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
 - 15.3.3 place no further subcontracts or orders for materials, services, or facilities, except as the United Nations and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
 - 15.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
 - 15.3.5 transfer title and deliver to the United Nations the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
 - 15.3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the United Nations thereunder;
 - 15.3.7 complete performance of the work not terminated; *and*,
 - 15.3.8 take any other action that may be necessary, or that the United Nations may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which the United Nations has or may be reasonably expected to acquire an interest.
- 15.4 In the event of any termination of the Contract, the United Nations shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, the United Nations shall not be liable to pay the Contractor except for those goods delivered and services provided to the United Nations in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from the United Nations or prior to the Contractor's tendering of notice of termination to the United Nations.
- 15.5 The United Nations may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:
- 15.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;
 - 15.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;
 - 15.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;
 - 15.5.4 a Receiver is appointed on account of the insolvency of the Contractor;
 - 15.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,
 - 15.5.6 the United Nations reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.
- 15.6 Except as prohibited by law, the Contractor shall be bound to compensate the United Nations for all damages and costs, including, but not limited to, all costs incurred by the United Nations in any legal or non-legal proceedings, as a result of any of the events specified in Article 15.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform the United Nations of the occurrence of any



of the events specified in Article 15.5, above, and shall provide the United Nations with any information pertinent thereto.

15.7 The provisions of this Article 15 are without prejudice to any other rights or remedies of the United Nations under the Contract or otherwise.

16. **NON-WAIVER OF RIGHTS:** The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

17. **NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, the United Nations shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and the United Nations shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

18. **SETTLEMENT OF DISPUTES:**

18.1 **AMICABLE SETTLEMENT:** The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.

18.2 **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 18.1, above, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim Measures 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.

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

20. **TAX EXEMPTION:**

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

20.2 The Contractor authorizes the United Nations to deduct from the Contractor’s invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with the United Nations before the payment thereof and the United Nations has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide the United Nations with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and the United Nations shall reimburse the Contractor for any such taxes, duties, or charges so authorized by the United Nations and paid by the Contractor under written protest.



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

22. **MODIFICATIONS:**

22.1 Pursuant to the Financial Regulations and Rules of the United Nations, only the Chief of the United Nations Procurement Division, or such other Contracting authority as the United Nations has made known to the Contractor in writing, possesses the authority to agree on behalf of the United Nations to any modification of or change in the 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 the Contract shall be valid and enforceable against the United Nations unless provided by a valid written amendment to the Contract signed by the Contractor and the Chief of the United Nations Procurement Division or such other contracting authority.

22.2 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 22.1, above.

22.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any goods or services provided under the Contract shall not be valid and enforceable against the United Nations nor in any way shall constitute an agreement by the United Nations thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 22.1, above.

23. **AUDITS AND INVESTIGATIONS:**

23.1 Each invoice paid by the United Nations shall be subject to a post-payment audit by auditors, whether internal or external, of the United Nations or by other authorized and qualified agents of the United Nations at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract. The United Nations shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the United Nations other than in accordance with the terms and conditions of the Contract.

23.2 The Contractor acknowledges and agrees that, from time to time, the United Nations may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract. The right of the United Nations to conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract. The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the United Nations access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the United Nations hereunder.

24. **LIMITATION ON ACTIONS:**

24.1 Except with respect to any indemnification obligations in Article 7, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 18.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

24.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready



to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

25. **CHILD LABOUR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. 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 the United Nations to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.
26. **MINES:** The Contractor warrants and represents that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines. 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 the United Nations to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.
27. **SEXUAL EXPLOITATION:**
- 27.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging 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 these provisions shall entitle the United Nations to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.
- 27.2 The United Nations 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.

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