

Annex V: Terms and Conditions

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TERMS AND CONDITIONS

UNAIDS reserves the right not to award a contract to any vendor who does not accept the terms and conditions defined in this Annex.

1. RESPONSES TO THE RFP

General conditions of responses

- 1.1 Bidders are required to hold proposals valid for at least 120 days from the deadline for submission.
- 1.2 Any expenses incurred in formulating a Proposal to this RFP will be borne by, and are the sole responsibility of, the bidder. This includes any costs and expenses associated with any preliminary by bidders in order to respond to this RFP. The bidder shall not be compensated for any costs incurred in relation to the submission of a Proposal. Furthermore, the Contractor shall draw up, at his own expense, all plans, drawings and other documents necessary for carrying out of the Contract as may be awarded to him.
- 1.3 Bidders are expected to examine all instructions, forms and specifications associated with this RFP. Failure to furnish all information required by the RFP and associated documents, or submission of a Proposal, which does not comply with these documents, will be at the bidder's risk and may affect the evaluation of the proposal. Should the bidder have any reservation as to the adequacy of the technical specifications set out in this RFP to meet UNAIDS requirements, attention should be drawn to this in the bidder's proposal, and a solution meeting those requirements put forward by the bidder.
- 1.4 Through the submission of a Proposal, the bidder automatically confirms that he is, without exception, capable of fulfilling all the obligations of the Contract that may be entered into, and that he has received and taken due note of all information required for that purpose. Consequently, the Vendor shall not be able to claim any errors or omissions in the plans and various documents of the RFP, or that the sense of the provisions thereof has not been fully understood.
- 1.5 Bidders must be prepared to provide proof of adequate insurance covering their employees (and those of any partners and/or sub-contractors) when on UNAIDS premises, as well as proof of adequate third party liability insurance and any other insurance coverage which may be required pursuant to UNAIDS General terms and conditions.
- 1.6 The selected bidder must assign qualified persons to the work to be carried out. These persons must not be changed during the implementation of the project.
- 1.7 The following documents are provided as part of the RFP process:
 - Cover letter (request for proposals)
 - Annex I : Proposal Submission Form
 - Annex II: Project Terms of Reference
 - Annex III: Technical Component (response template)
 - Annex IV: Price Component (response template)
 - Annex V: Terms and Conditions
 - Annex VI: Acceptance Process
- 1.8 Every Proposal must be signed and dated by the bidder (or Prime Contractor) and be received by UNAIDS by the Closing Date and Time. No consideration will be given to Proposals which:

- are obviously unrealistic (e.g., due to an obvious discrepancy between the Proposal and the RFP);
 - fail to satisfy the requirements;
 - are received after the Closing Date and Time;
 - are inadequate in regard to content and samples submitted; and/or
 - show inadequate ability, experience or financial strength.
- 1.9 Proposals shall not be taken into consideration, unless they are submitted by using any and all special forms and/or documents, which have been provided by UNAIDS to the Vendors for that purpose.
- 1.10 The Proposals shall be opened on the date and at the time specified by UNAIDS, by an authorized representative of the Organization. Depending on the estimated contract price, the opening of the Proposals may be either public or private.
- 1.11 The information contained in this RFP and any other information furnished by UNAIDS as part of the RFP process, must be treated as confidential and no use, other than for the purpose of responding to this RFP, is authorized. Bidders shall maintain the confidentiality of all documents and information received in the course of this RFP process. Bidders shall ensure observance of this confidentiality obligation by their employees, consultants, sub-contractors, agents, and other persons to whom disclosure needs to be made for the purpose of submitting a proposal under this RFP to UNAIDS and shall indemnify and hold harmless UNAIDS for any claims and liabilities resulting from the breach of this obligation.
- 1.12 UNAIDS reserves the right to have all material provided to bidders returned at the end of the RFP process.
- 1.13 All documents provided by bidders to UNAIDS in respect of this RFP will be treated as confidential.
- 1.14 Any intention to subcontract aspects of any eventual contract must be specified in detail in the tender submitted. Information concerning the subcontractor, including the qualifications of the staff proposed for use must be covered with same thoroughness as the prime contractor. No subcontracting will be permitted under any eventual contract unless it is proposed in the initial submission or formally agreed to in writing by UNAIDS at a later time. In any event, the total responsibility for the contract will rest with the prime contractor.
- 1.15 Should bidders wish to form a consortium for the purposes of responding to this RFP, bidders must indicate to UNAIDS with whom they propose to “partner” and which “partner” in the consortium will take the lead as “prime contractor” for the purposes of this RFP. This information (including company name, address, telephone, fax number and e-mail address) must be provided to UNAIDS, together with the name and title of the relevant duly authorized officer with signing authority. Without prejudice to the individual responsibility of each partner/subcontractor, the prime contractor shall assume full responsibility for all the work and prices quoted in response to this RFP and the fulfilment of any and all obligations in that regard, both towards UNAIDS and third parties.
- 1.16 Vendors must specify in the Proposal the time limits within which they will complete the work and provide the services covered by the RFP.
- 1.17 Vendors must specify in their bid if there are clauses in this terms and conditions and in general within RFP that they cannot accept.
- 1.18 UNAIDS reserves the right to split the bid and award separate Contracts for parts of the work, components or items, to different bidders of its choice; should this be the case, the pricing conditions for each part shall remain unchanged.
- 1.19 UNAIDS reserves the right to award the Contract(s) for only part of the work and/or for part of the items quoted for.

- 1.20 UNAIDS reserves the right to award the Contract(s) on the basis of the Programme's particular objectives and needs
- 1.21 UNAIDS reserves the right to award the Contract(s) to one or more the bidder(s) of its choice, even if not the lowest bid(s)
- 1.22 UNAIDS reserves the right not to award any Contract at all
- 1.23 UNAIDS reserves the right to negotiate any special terms and conditions, including alterations to the scope of the work, with any shortlisted bidder(s)
- 1.24 UNAIDS reserves the right to enter into contract price negotiations with one or more of the short-listed bidders.
- 1.25 In addition to the procedures related to evaluation of bids as detailed in this RFP, UNAIDS may, at its discretion, ask any bidder for clarification of any part of its proposal to assist in the examination, evaluation and comparison of proposals. The request for clarification and the response shall be in writing. No change in price or substance shall be sought, offered or permitted during this exchange.

Pricing Conditions

Fixed Prices (Lump Sum)

- 2.1 All main and extra work must be calculated for service to be provided. All necessary extra charges have to be taken into account.
- 2.2 The bidder must note any reservations concerning the requirements and specifications set forth in the Request for Proposals and must propose a complete solution in response to the RFP.
- 2.3 In the event the Vendor quotes a fixed price for the work, series of works, services supplies, any amount by which the fixed price is exceeded shall be borne by the Vendor. UNAIDS, on its part, shall honour the fixed price award even if that amount is not reached. A fixed price shall only be awarded if the work is based on clearly defined and complete information (detailed descriptions, plans and/or other documents).
- 2.4 If, before or during the execution of the work, UNAIDS requires amendments to the Contract, which result in changes in the quantities or the execution as set out in the estimate, the parties shall reach an agreement on equitable price increases or decreases.

Unit Price

- 3.1 Unit prices shall apply to works properly carried out until their acceptance. In the absence of any provision to the contrary, the Vendor shall not be entitled to any compensation for additional works, transportation, machines and materials, nor for other similar services.
- 3.3 Charges for work not foreseen in the Contract must be agreed between the parties before such work is carried out. These charges shall be determined on the same basis as the prices contained in the Proposal. Any charges for such work must, in any event, be related to the prices charged for work covered by the Contract. In the event no agreement is reached, UNAIDS will be free to commission the work from another company. In this particular case, the initial contractor cannot claim for any damages.

Applicable Pricing Conditions

- 4.1 Prices quoted in the Proposal must be net, and must reflect all tax exemptions to which UNAIDS is entitled by virtue of the privileges and immunities it enjoys. VAT is not normally applicable, but must be shown separately if it is to be charged. Prices quoted must be in a UN convertible currency (preferably US Dollars).
- 4.2 Unless otherwise specified, prices must be fixed and not open to revision. If the RFP allows for possible price revisions, the basis for, and other provisions applicable to, such revisions must be

clearly set out, including in regard to the criteria employed (e.g., price indices), and shall, wherever possible, refer to official documents originating from government authorities.

Technical Project Management

- 6.1 Project responsibilities for UNAIDS and the selected bidder will be specified in any Contract between the parties.
- 6.2 The coordination of interventions, as well as the handling of technical details, is the responsibility of the selected bidder.
- 6.3 The selected bidder must take into account that their offer should include a local project manager who will be in charge of coordinating work.

Contractual Conditions

- 7.1 This RFP, together with the selected bidder's Proposal, shall also form an integral part of the Contract, it being understood that any and all of the bidder's (including bidder's partners) general and other contractual terms and conditions, regardless of whether they are included or referred to in the Proposal, invoices or other documents accepted by UNAIDS, will by this reference automatically be excluded from the Contract and shall have no force and effect whatsoever between the parties unless, but only unless and only to the extent any such terms or conditions have explicitly been agreed to by UNAIDS in writing.
- 7.2 Any Contract(s) or order(s) resulting from this RFP shall include UNAIDS General Terms and Conditions.
- 7.3 Except as provided in 7.5 below, all clauses of the Contract shall be final and binding. Except as explicitly provided in the Request for Proposals and/or these General Conditions, neither of the contracting parties shall have the right to withdraw its acceptance of any of these clauses.
- 7.4 The order of precedence of the documents forming the Contract shall be as follows:
 - the text of the Contract or order form
 - the technical specifications
 - the description of the work to be done
 - any special conditions explicitly agreed by the parties in writing
 - any special conditions incorporated in the Request for Proposals
 - these General Conditions of Contract, and standard general and contractual conditions of UNAIDS
 - such plans as may be drawn up by UNAIDS
- 7.5 Any and all of the Vendor's general and other contractual terms and conditions, including those of the Vendor's sub-contractors or other partners, regardless of whether they are included or referred to in the Proposal, invoices or other documents accepted by UNAIDS, are by this reference explicitly excluded from the Contract and shall have no force and effect whatsoever between the parties.

Consortium of Firms

- 8.1 In the event several firms form a consortium or a temporary association for the purpose of carrying out the Contract, they must designate a representative (i.e., a "Prime Contractor") duly empowered to deal with UNAIDS, in such a way that UNAIDS, in dealing with the Prime Contractor alone, shall be deemed to have dealt with all the firms in question. Paragraph 7.3 above shall mutatis mutandis apply to the Prime Contractor.

Working Conditions

- 9.1 For the entire duration of the Contract, the Contractor shall undertake to abide by any and all applicable labour/employment rules and regulations.

Work Schedule

- 10.1 The Contractor shall not commence work before the commencement date specified in the Contract, or, in the absence thereof, before having received UNAIDS' written request to that effect.
- 10.2 The Contractor shall cooperate with UNAIDS in the coordination of all work to be carried out, and shall provide all information in the manner stipulated.

2. GENERAL TERMS AND CONDITIONS

General information

- 11.1 These General Conditions of Contract shall apply to all work, including the supply and installation of equipment, technical assistance, maintenance works and services to UNAIDS, 20 Avenue Appia, CH 1211 Geneva 27, Switzerland.
- 11.2 Services under any eventual contract will be supplied on a fixed-price basis in a UN convertible currency (preferably US Dollars), based on the UN exchange rate of the date of invoice. The contract to be concluded with the selected Contractor will include provisions as set forth in this section.
- 11.3 Note that UNAIDS **is acting in good** faith by issuing this RFP. This document is a sample only and does not obligate UNAIDS to contract for the supply of any products or services. These conditions are in reference to any eventual contract(s).

Legal Status

- 12.1 The Contractor shall be considered as having the legal status of an independent contractor and as such there will be no employer/employee relationship between UNAIDS on the one side and the contractor or any person used by the Contractor on the other side. Any eventual contract does not constitute a partnership between UNAIDS and the contractors, or constitute either Party as the agent of the other. Thus the Contractor shall be solely responsible for the manner in which the work is carried out. UNAIDS shall not be responsible for any loss, accident, damage or injury, including, but not limited to, damages to test equipment, spare parts and other property, suffered by the Contractor or persons or entities claiming under the Contractor, arising during or as a result of the implementation or execution of any eventual Contract, including travel, whether sustained on UNAIDS premises or not. The Contractor shall obtain adequate insurance to cover such loss, accident, injury and damages, before commencing work on any eventual Contract. The contractor shall be solely responsible in this regard and shall handle any claims for such loss, accident, damage or injury.

Relation between the Parties

- 13.1 The Contract does not constitute a partnership between the Parties or to constitute either Party as the agent of the other.

Sub-Contractors

- 14.1 Except as agreed in the Contract, the Contractor shall not assign nor sub-contract all or any part of the work to any third parties without UNAIDS' prior written approval.
- 14.2 UNAIDS shall, at its sole discretion, be entitled to reject any proposed assignment or sub-contracting, without having to give any justification in that regard.
- 14.3 Notwithstanding any approved assignment and/or sub-contracting, the Contractor shall remain fully responsible for the work and the fulfilment of any and all obligations in that regard, both towards UNAIDS and towards third parties.

Waiver of breach

- 15.1 The waiver by an act, omission or knowledge of either, its agents or its employees of any provision or breach of any eventual contract shall not prevent subsequent enforcement of such provision or excuse further breaches.

Place of Performance

- 17.1 Design work will be carried out on, or in proximity to, the UNAIDS headquarters in Geneva, Switzerland to allow frequent contact between the contractor and UNAIDS staff. In depth technical review sessions will be regularly scheduled with the view that UNAIDS staff will become fully conversant with the system and able to maintain it after final delivery.

Work Schedule

- 18.1 The work must be carried out in the time specified, without halting or unduly interfering with the work of UNAIDS or other parties working for, or on behalf of, UNAIDS. The Contractor shall not be entitled to any form of compensation for work performed outside regular office hours, unless otherwise agreed, in writing between the parties.
- 18.2 A Contractor who fails to observe the specified time limits for reasons which are not outside his control shall be responsible for any and all resulting damages, including the reasonable claims of parties other than UNAIDS.

Language

- 19.1 The internals of the work performed for this project and management and contractual communications for this contract will be executed in English.

Title Rights

- 20.1 This is a work made for hire. UNAIDS shall be the owner of all intellectual property rights, including but not limited to patents, copyrights and trademarks, with regard to material which bears a direct relation to, or is made in consequence of, the services provided to the organization by the contractor.
- 20.2 UNAIDS reserves the right to revise the work, to use the work in a different way from that originally envisaged or to not use the work at all.

Confidentiality

- 21.1 Except as explicitly provided in the contract, the Contractor shall keep confidential all information marked "confidential" which comes to its knowledge during, or as a result of, the implementation and execution of the contract. Accordingly, the Contractor shall not use or disclose such information for any purpose other than the performance of its obligations under any eventual contract. The Contractor shall ensure that each of its employees and/or other persons and entities having access to such information shall be made aware of, and be bound by, the obligations of the Contractor under this paragraph. However, there shall be no obligation of confidentiality or restriction on use, where: (i) the information is publicly available, or becomes publicly available, otherwise than by any action or omission of the Contractor, or (ii) the information was already known to the Contractor (as evidenced by its written records) prior to becoming known to the Contractor in the implementation and execution of the contract; or (iii) the information was received by the Contractor from a third party not in breach of an obligation of confidentiality.
- 21.2 The Contractor, its employees and any other persons and entities used by the Contractor shall furthermore not copy and/or otherwise infringe on copyright of any document (whether machine-readable or not) to which the contractor, its employees and any other persons and entities used by the Contractor have access in the performance of this Contract.

Supervision

- 22.1 UNAIDS may have the work supervised by a third party to the extent it deems necessary to ensure that the work carried out is in accordance with the terms and conditions of the Contract.
- 22.2 Supervision carried out by, or on behalf of, UNAIDS shall not relieve the Contractor of his obligations and shall in no way decrease his responsibility for the proper carrying out of the work or detract from his various obligations concerning the protection of persons and property.
- 22.3 UNAIDS reserves the right to check or to have checked the quality of equipment and/or materials used, or intended to be used, to carry out the work.
- 22.4 For the purpose of supervising the work, UNAIDS shall have the right to take free samples or to have such free samples taken on its behalf.
- 22.5 Rejected equipment and/or materials shall be replaced by the Contractor, at no additional cost to UNAIDS.

Site

- 23.1 The Contractor shall be responsible for safety on the site when carrying out work related to the Contract, and shall at his own expense take all appropriate measures to ensure effective protection against accidents.
- 23.2 The Contractor shall take all appropriate measures to ensure compliance with any and all applicable laws and regulations. He shall inform the competent authorities sufficiently in advance of any possible requests for authorizations.
- 23.3 The Contractor shall pay particular attention to the safety, cleanliness and good order of the site. He shall take all steps to ensure that the work is carried out without endangering persons or property.
- 23.4 The Contractor must obtain from UNAIDS or, if necessary, from the public utilities concerned (e.g., water, gas, electricity, telephone, public transport, drains and sewers, surveyor's department, etc) all information concerning the site(s). He shall take all measures necessary to avoid damage or risk to the site(s) occasioned by the work.
- 23.5 The Contractor shall be required, by the date of acceptance of the work, to restore the site and the surrounding area to good order, and to remove from it all materials, waste, etc, and any temporary installations related to the carrying out of the work.

Modifications

- 24.1 UNAIDS shall have the right to modify or delete requirements set forth in, or to add requirements to, the Contract. During the execution of the work, only UNAIDS shall furthermore be entitled to make such changes to the plans and specifications, as it deems appropriate or necessary.
- 24.2 The Contractor shall not be entitled to object to these modifications and/or changes or to claim any compensation for such modifications and/or changes in excess of the prejudice actually suffered by the Contractor as a direct result thereof.
- 24.3 The Contractor may not make any change to the specifications and/or plans without the agreement of UNAIDS, and shall comply with all additional instructions given to him by UNAIDS. In the event the Contractor considers that any modifications and/or changes to the Contract requested by UNAIDS during the course of the work might prejudice the work, he shall advise UNAIDS to that effect immediately and in writing.
- 24.4 In the event additional or supplementary work needs to be carried out, such work shall be the subject of an estimate based on the prices contained in the original Proposal. Such additional and supplementary work shall only be implemented after the corresponding estimate has been accepted in writing by UNAIDS.

Contractor's Responsibility

- 25.1 Responsibility for loss of, or damage to, the work and for similar risks, shall remain with the Contractor until the date of acceptance.
- 25.2 UNAIDS shall have no obligation whatsoever to insure the work and related equipment, material and/or other supplies, against any risk prior to acceptance.
- 25.3 The Contractor shall be responsible for the proper, prompt and error-free execution of the work.
- 25.4 Until final acceptance, the Contractor shall indemnify UNAIDS and hold UNAIDS harmless against any claim made by third parties for possible damages suffered on account of improper performance of the work. The Contractor shall continue to indemnify and hold UNAIDS harmless against such claims on account of improper maintenance, following final acceptance.
- 25.6 The Contractor shall take out adequate liability insurance with a reputable insurance company, and shall maintain this insurance coverage for as long as claims may be made against him. UNAIDS may at any time request to see the certificate of insurance with a view to verifying that the policy is in force and adequate for the purposes of the Contract.
- 25.7 The above mentioned insurance shall in no way limit the Contractor's responsibility and liability.
- 25.8 UNAIDS will not be held responsible for any damages caused during the execution of the installation, nor for loss of material nor tools until acceptance.
- 25.9 The selected bidder will be responsible for any damages caused by its staff.

Liability

- 27.1 The Contractor hereby indemnifies and holds UNAIDS harmless from and against the full amount of any and all claims and liabilities, including legal fees and costs, which are or may be made, filed or assessed against UNAIDS at any time and based on, or arising out of, breach by the Contractor of any of its representations or warranties under any eventual Contract, regardless of whether such representations and warranties are explicitly incorporated in the contract or are referred to in its attached annexes.

Default

- 28.1 UNAIDS shall have the right to cancel the Contract (in addition to other rights, such as the right to claim damages):
 - (a) in the event the Contractor fails to begin work on the date specified, or to implement the work in accordance with the terms of the Contract; or
 - (b) in the event the progress of work is such that it becomes obvious that the obligations undertaken by the Contractor and, in particular, the time of fulfilment, will not be respected.

Termination

- 29.1 UNAIDS shall have the right to terminate any eventual contract (in addition to other rights, such as the right to claim damages) subject to prior written notice:
 - i. in the event the Contractor fails to begin work on the date agreed, or to implement the work in accordance with the terms of the contract; or
 - ii. in the event the progress of work is such that it becomes obvious that the obligations undertaken by the Contractor and, in particular, the time of fulfilment, will not be respected.

- 29.2 In addition, UNAIDS shall be entitled to terminate any eventual contract (or part thereof), in writing, with immediate effect (in addition to other rights, such as the right to claim damages), if, other than as provided in paragraph 29.1 above, the Contractor is:
- i. in breach of any of its obligations under the Contract and fails to correct such breach within a period of thirty (30) days after having received a written notification to that effect from UNAIDS;
 - ii. adjudicated bankrupt or formally seeks relief of his financial obligations.
- 29.3 In the event of a termination, the Contractor shall immediately deliver and transfer all work products and materials so far produced to UNAIDS in accordance with UNAIDS intellectual property rights.

Force Majeure

- 30.1 No party to the Contract shall be responsible for a delay caused by **force majeure**: that is, a delay caused by strike, lock-out, foreign or civil war, or any other event outside his control, it being agreed, however, that UNAIDS shall be entitled to terminate the Contract (or any part of the Contract) forthwith if the work is delayed or prevented by any such reason for an aggregate of 30 days. Such termination shall be subject to payment of an equitable part of the Contract sum and/or other reasonable charges. In the event of such termination, the Contractor shall, in accordance with the intellectual property rights, deliver to UNAIDS all work products and other materials so far produced.

Advertising

- 31.1 Without UNAIDS' prior written approval, the Contractor shall not, in any statement of an advertising or promotional nature, refer to any contract or their relationship with UNAIDS. In no case shall the Contractor use the name or the emblem of UNAIDS, or any abbreviation thereof, in relation to its business or otherwise.

Successors and Assignees

- 32.1 The Contract shall be binding upon the successors and assignees of the Contractor and the Contract shall be deemed to include the Contractor's successors and assignees, provided, however, that nothing in the Contract shall permit any assignment without the prior and written approval of UNAIDS.

Payment

- 33.1 Payment will be made against presentation of an invoice in a UN convertible currency (preferably US Dollars), based on the UN exchange rate of the date of invoice. for each deliverable and subject to UNAIDS' acceptance of each such deliverable. Any payments by UNAIDS to the Contractor shall reflect any tax exemptions to which UNAIDS is entitled by reason of the immunity it enjoys. UNAIDS is exempt from all direct taxes, customs duties and the like and the Contractor shall consult with UNAIDS so as to avoid the imposition of such charges. As regards duties and other indirect taxes, the Contractor shall list such charges on invoices as a separate item and, to the extent required, cooperate with UNAIDS to enable reimbursement thereof.

Unenforceability

- 34.1 If any provision of any eventual Contract is held to be invalid or unenforceable, the validity of the other provisions of that Contract shall not be affected thereby. In such cases, the invalid or unenforceable provisions of that Contract should be construed in such.

Applicable Law

- 35.1 Any matter relating to the interpretation or application of the Contract, which is not covered by its terms, shall be resolved by reference to the laws of Switzerland.

Arbitration

- 36.1 Any dispute relating to the interpretation or application of the Contract shall, unless amicably resolved, be settled exclusively by arbitration. Arbitration shall be conducted in accordance with the modalities to be agreed upon by both parties, or, in the absence of agreement, with the rules of arbitration of the International Chamber of Commerce. Both parties shall accept the arbitral award as final.