



World Health
Organization

End of project evaluation for UNITAID-supported projects

Request for Proposal (RFP)
Bid reference 5112

28 March 2011

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1. INTRODUCTION

1.1 UNITAID Mission

UNITAID is a global health initiative, established to provide sustainable, predictable and additional funding to significantly impact on market dynamics to reduce prices and increase the availability and supply of high quality medicines, diagnostics and related commodities for the treatment of HIV/AIDS, malaria and tuberculosis, primarily for populations in low-income and lower-middle income countries. UNITAID provides funding for the procurement of medicines, diagnostics and related commodities on the basis of project proposals approved by the UNITAID Board and works primarily through collaborative actions with strategic partners. UNITAID is supported by public funding and is hosted by the World Health Organization ("WHO"). For the purpose of this document UNITAID is hereinafter referred to as WHO/UNITAID. Please refer to the UNITAID web-site (www.unitaid.eu).

The principal functions of the Secretariat are to carry out and manage the day-to-day operations of WHO/UNITAID, including implementing the work plan of WHO/UNITAID as approved by the Board, managing and coordinating relationships with Partners, and coordinating and facilitating technical support and advice to the Board.

1.2 WHO Mission Statement

The World Health Organization was founded in 1948 as a specialized agency of the United Nations. The objective of WHO (www.who.int) is the attainment by all peoples of the highest possible level of health. Health, as defined in the WHO Constitution, is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.

2. DESCRIPTION OF WORK TO BE PERFORMED

The objective of the proposed consultancy is to evaluate UNITAID funded projects that have reached the end of their project life cycle and are considered to have been completed. The evaluations should consider project achievements and lessons learnt as a result of the project implementation. The evaluation reports will be widely disseminated and available to all UNITAID Stakeholders, including the general public.

2.1 Key Requirements

The selected service provider is expected to provide end of project evaluations based on the completed project's contractual agreements and project plans. These will include any specific objectives that were initially set by UNITAID and its implementing partner as well as an assessment of the project's achievements and impact. Project impact should be evaluated from two perspectives:

market impact (intentional and unintentional) for the products provided under the project agreements; and
public health impact for the beneficiaries of the medicines, diagnostics and related products provided through the project.

The proposed project design, method and analysis should be adequately developed, well-integrated, well-reasoned, and appropriate to the overall aims of the completed project. Applicants are expected to provide details as to how they would evaluate the actual achievements of the UNITAID funded project relative to the previously defined expected objectives, outputs and outcomes of the project. Evaluations may consist of, but not be limited to, a survey of key beneficiaries of the projects and other relevant stakeholders. Survey questions will be specific to each UNITAID-funded project under evaluation and will for that reason be developed in consultation with the UNITAID Secretariat upon review of project specific documentation.

2.2 Reporting Requirements

The service provider is expected to submit to the Secretariat:

1. a final written assessment of each project under evaluation. This report will be made public on the UNITAID website;
2. written recommendations and advice to the UNITAID Secretariat on how to improve the effectiveness and efficiency of UNITAID project planning based on lessons learnt through the end of project evaluation process.

2.3 General Guidance

Applicants are asked to use the public information on the completed projects that is available on the UNITAID website (www.unitaid.eu) to develop and propose a methodology suitable for the end of project evaluations. UNITAID expects applicants to develop a budget based on the estimated cost of their proposed methodology.

The projects requiring end of project evaluation are found in Table 1. Project specific evaluation questions and potential survey instruments will be finalized between UNITAID and the selected applicant. The evaluation questions common to all project types cover the areas of relevance, effectiveness, efficiency and impact. For these reviews the questions are:

Relevance:

1. Identify the activities and outputs of the project and demonstrate that they are consistent with the objectives and expected outcomes as described in the project plan.

2. Indicate if and demonstrate how the project has contributed to UNITAID's overall goal of contributing to the scale up of and access to treatment for HIV/AIDS, malaria and TB for the most disadvantaged populations in developing countries using innovative global market based approaches.

Effectiveness:

3. Were the objectives of the project achieved? If yes, were they achieved within the timeframe specified in the initial project plan?
4. What are the main factors influencing the achievement or non-achievement of the objectives?

Efficiency:

5. How well did the project partners work closely with the relevant national authorities in the project's beneficiary countries (where applicable to the project)? Is it possible to demonstrate a close connection between implementing partners and national authorities?
6. Demonstrate that the project's procurement model was well defined and designed to identify and solve procurement-related problems as appropriate.

Impact:

7. Demonstrate that the partner organization can attribute UNITAID funding to medicines, diagnostics or preventive products purchased and patients treated by beneficiary country in a timely manner. If attribution of treatments, diagnostics or preventive products to UNITAID funding is not possible, suggest ways to improve the connection between UNITAID funding and patients treated.

The tasks and responsibilities for each review will include meeting with UNITAID Secretariat members and other stakeholders to:

1. meet with WHO/UNITAID staff to develop and refine evaluation questions and methodology, including survey design and survey questions;
2. consult with all relevant stakeholders of the UNITAID-funded project to ensure a balanced and fair perspective on the end of project achievements;
3. review the project documentation, including project specific monitoring indicators and financial reports;
4. review the current reporting templates for both project activity and project financial reporting and suggest improvements to routine project reports and modify, if necessary, the frequency and timing of reporting; and
5. provide an overall evaluation of the project management of each project under end of project evaluation including strengths, weaknesses, opportunities and threats; and



The selected provider(s) will be expected to work closely with the UNITAID Secretariat to undertake reviews of the projects using official documents, evaluation checklists, questionnaires and other associated tools to be discussed and developed with UNITAID M&E Officers. UNITAID requires that the consultant(s) consider the following information:

- the legal agreements between UNITAID and its implementing partners for each project;
- the progress reports and the follow-up performed by UNITAID Portfolio Managers with regards to semi-annual and annual reports from implementing partners;
- end of project reports from implementing partners,
- market intelligence gathered by UNITAID and from external sources;
- surveys of stakeholders and beneficiaries;
- visits to no more than 3 beneficiary countries (if deemed necessary); and
- the financial reports from implementing partners.

The selected service providers will be provided with project plans, legal agreements, project reports, including financial reports, from Implementing partners as well as any other information deemed necessary to perform a thorough evaluation of the project. The scope of the project evaluations should not extend beyond the scope of the relevant programmatic review provisions contained in the applicable agreements that UNITAID has with its implementing partners.

More information about the projects and the extent of individual country involvement can be found on the UNITAID website (www.unitaids.eu) under Projects:

"Malaria" Read more in UNITAID projects, "Scaling up bednet coverage" (for LLINs) (<http://www.unitaids.eu/en/llin.html>); and

"Cross-cutting issues", "Support to Global Fund Round 6", (<http://www.unitaids.eu/en/projects-mainmenu-3/cross-cutting-issues/support-to-global-fund-round-6-mainmenu-127.html>).

After reviewing this information, the potential evaluator(s) should propose to UNITAID how they would undertake the evaluations of the projects, including which countries, in their own judgment, warrant potential visits and why. The evaluations should be performed within the timeframe for presenting a report to the UNITAID Executive Board in December 2011.

The budget for the evaluations is to be proposed by the potential evaluator(s) and should be directly related to the activities to be undertaken for the evaluations.

3. BIDDER PROFILE

The service provider shall be a public institution, a private or public business entity or an individual with proven expertise in:

- project appraisal, project evaluation and/or project impact assessment in the global health, public health financing or development area;
- procurement, purchasing and supply chain of health products (specifically medicines and diagnostics) to treat, diagnose and prevent HIV/AIDS, TB and malaria; and
- the procurement environment for health products in low and middle income countries, particularly Africa.

In addition, the ability to communicate (verbally and in writing) in both English and French would be an advantage.

4. INSTRUCTIONS TO BIDDERS

Bidders should follow the instructions set forth below in the submission of their proposal to WHO/UNITAID.

4.1 Confidentiality Undertaking

Along with its bid, the bidders shall submit the Confidentiality Undertaking (see Annex 1), duly signed by the authorized officer.

4.2 Proposal format and content

All submissions must be in the WHO/UNITAID templates (see Annexes 2 and 3 for submission of proposals by non-consortium and consortium respectively; see Annex 4 for financial template), with all sections completed.

Bidders are required to complete the WHO/UNITAID project template, which includes clauses pertaining to conflicts of interest and sets out the minimum information requirements that bidders need to submit.

4.3 Language of the Proposal and other Documents

The proposal prepared by the bidder, and all correspondence and documents relating to the proposal exchanged by the bidder and WHO/UNITAID, shall be in English.

4.4 Costs Associated with the Preparation and Submission of the Proposal

Bidders shall bear all costs associated with the preparation and submission of the proposal up to the final award of the contract. WHO/UNITAID will in no case be



responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.

4.5 Scope of the Proposal

Bidders are required to offer services for the total requirement indicated in section 2 or for part of it only. Proposals shall use as a basis the specifications and requirements articulated in this RFP. Bidders shall indicate precisely which specific services are intended to be provided. Proposals not meeting these requirements may be rejected.

Bidders are expected to examine all corresponding instructions, forms, terms and specifications contained in this RFP.

4.6 Joint Proposal

Two or more institutions/entities may form a consortium and submit a joint proposal if this helps in finding a team capable of undertaking all elements of the anticipated work. Such a proposal must be submitted under the name of one member of the consortium - hereinafter "lead organization".

The lead organization will be responsible for undertaking all negotiations and discussions with WHO/UNITAID and performing the contract.

For such cases, the consortium must submit the following:

- a. Written signed authorization for the signing officer of the lead organization to submit the proposal on behalf of the consortium, signed by the authorized officers of each of the members of the consortium
- b. List of members of the consortium
- c. Agreed roles and responsibilities of the consortium
- d. Date of validity period of the consortium and its arrangements

4.7 Communications during the RFP Period

Prospective bidders requiring any clarification on technical, contractual or commercial matters may notify WHO/UNITAID via email at the following address:

unitaid-rfp@who.int

(subject heading: End of project evaluation of UNITAID-supported projects; Bid reference 5112).

WHO/UNITAID will respond in writing (via email only) to any request for clarification of the RFP that it receives prior to the closing date of the proposal. A consolidated document of WHO/UNITAID's response to all questions (including an explanation of the query but without identifying the source of enquiry) will be sent to all prospective bidders who have been sent the RFP. Questions are to be submitted in the format "Paragraph Number - Question."

There shall be no individual presentation by or meeting with bidders until after the closing date.

There should be no contact with WHO/UNITAID officials concerning the RFP process for the project from the date of issue of this RFP to the final selection, other than with the WHO/UNITAID email address: unitaid-rfp@who.int.

4.8 Proposal Format

The bidder shall submit seven (7) hard copies each of the complete proposal package by the closing date set forth in section 4.11 to the address in section 4.9. Proposal packages shall be considered as having met the mandatory requirements if the following are submitted:

- Hard copy of proposal, using the WHO/UNITAID template, with all sections completed
- Any other documents to support statements made in the proposal
- If the proposal is from a consortium:
 - Written signed authorization for the signing officer of the lead organization to submit the proposal on behalf of the consortium, signed by the authorized representatives of each of the members of the consortium
 - List of members of the consortium
 - Agreed roles and responsibilities of the consortium
 - Date of validity period of the consortium and its arrangements
- One (1) CD-ROM containing electronic copy of proposal and supporting documents.

The following instructions must be complied with:

- 1) The seven (7) copies shall be labelled "Master Copy" and "Copy1", "Copy2" and so on, as appropriate. The bidder must ensure that the content of all copies is identical. If at any time a difference is discovered between any copies of the proposal then the "Master Copy" will prevail as the official copy.
- 2) The seven (7) hard copies shall be unbound, provided in binders from which pages may be removed easily. Bidders must use dividers to separate the sections of the document.
- 3) All seven (7) copies of the proposal shall use the WHO/UNITAID template, with all sections addressed
- 4) All seven (7) copies of the proposal shall be typed or written in indelible ink and shall be signed by the bidder or a person or persons duly authorized to bind the bidder to the contract. A proposal shall contain no interlineations, erasures, or overwriting except, as necessary, to correct errors made by the bidder, in which case such corrections shall be initialled by the person or persons signing the proposal.
- 5) The electronic copies of the proposal and supporting documents on the

CD-ROM should be in pdf, or MS Word or Excel compatible files as appropriate and feasible.

4.9 Sealing and Marking of Proposals

Seven (7) copies of the complete proposal must be sent by registered mail, or via courier in a **sealed** envelope, marked clearly: End of project evaluation of UNITAID-supported projects; Bid reference 5112, to the following address:

**Office L173
Bid Ref : 5112
Attn: Dr Jorge Bermudez, Executive Secretary UNITAID
UNITAID c/o World Health Organization
20, Avenue Appia
CH-1211 Geneva 27
Switzerland**

NOTE: If the envelopes are not sealed and marked as per the instructions in this clause, WHO/UNITAID will not assume responsibility for the proposal's misplacement or premature opening and may, at its discretion, reject the proposal.

4.10 Period of Validity of Proposals

The offer outlined in the proposal must be valid for a minimum period of 90 calendar days after the closing date. A proposal valid for a shorter period may be rejected by WHO/UNITAID. In exceptional circumstances, WHO/UNITAID may solicit the bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. Any bidder granting the request will not be required nor permitted to modify its proposal.

4.11 Closing Date for Submission of Proposals

Proposals must be received by WHO/UNITAID at the address specified in section 4.9 by 17:00 Geneva time on Wednesday 13 April 2011.

In case the bid is hand delivered, the bidder shall ensure that the bid is marked with the date and time of delivery.

WHO/UNITAID may, at its own discretion, extend this closing date for the submission of proposals by notifying all bidders thereof in writing.

Any proposal received by WHO/UNITAID after the closing for submission of proposals will be rejected. Only hard copies are acceptable as official bid entries. No emailed proposals will be accepted as an official bid.

4.12 Modification and Withdrawal of Proposals

The bidder may withdraw its proposal any time after the proposal's submission and before the opening date, provided that written notice via email and fax of the withdrawal is received by WHO/UNITAID prior to the closing date.

The bidder's withdrawal notice shall be prepared, sealed, marked, and dispatched to be received before the closing date in accordance with section 4.11. The withdrawal notice may also be sent by email but must be followed by a signed confirmation copy received by the closing date.

Email for withdrawal of proposal: unitaid-rfp@who.int.

No proposal may be modified after the closing date for submission of proposals, unless WHO/UNITAID has issued an amendment to the RFP allowing such modifications (see section 4.14).

No proposal may be withdrawn in the interval between the opening date and the expiration of the period of proposal validity specified by the bidder in the proposal.

4.13 Receipt of Proposals from Non-invitees

WHO/UNITAID may, at its own discretion, extend the RFP to bidders that were not included in the individual invite list if this is necessary and in the interest of the Organization.

The RFP is posted on the WHO/UNITAID website and WHO/UNITAID welcomes any potential service provider to submit a proposal in response to the Request for Proposal.

4.14 Amendments of the RFP

At any time prior to the closing date for submission of proposals, WHO/UNITAID may, for any reason, whether on its own initiative or in response to a clarification requested by a bidder, modify the RFP by amendment. Amendments could include modification of project scope or requirements, project timeline expectations or extension of the closing date for submission.

All prospective bidders that have been invited directly by WHO/UNITAID to bid for this RFP will be notified by email of all amendments to the RFP. Amendments to the RFP will also be posted on the WHO/UNITAID website.

4.15 Proposal Structure

4.15.1 Acceptance Form

The bidder's proposal must be accompanied by a transmittal letter signed by a duly authorized representative of the bidder and states, using the Acceptance Form template (Annex 5):

- That the proposal meets the requirements of the RFP,
- The total cost of the proposal, indicating the United Nations convertible currency used (preferably US Dollars),
- The number of days the proposal is valid (from the date of the form).

4.15.2 Information of Firm/Organization submitting Proposal

Information of Firm/Organization submitting Proposal	
1	Company Information
1.1	Corporate information
1.1.1	Company mission statement
1.1.2	Service commitment to customers and measurements used
1.1.3	Organization structure
1.1.4	Geographical presence
1.1.5	Relevant experience (include description of the part of your Organization devoted to providing the services being considered)
1.2	Staffing information
1.2.1	Number and Geographical distribution of staff
1.2.2	Number of consultants employed on similar projects in each of the past three years
1.2.3	Staff turnover rate for the past three years
1.3	Audited financial statements for the past three (3) years
1.4	Legal information
1.4.1	History of Bankruptcy
1.4.2	Pending major lawsuits and litigations in excess of USD 100,000 at risk (indicate particularly those by licensees or patent infringement)
1.4.3	Pending Criminal/Civil lawsuits
1.5	Contractual relationships
1.5.1	Contractual programmes (with other UN agencies or contractors)
1.5.2	Contractual certification programs and certification status
1.6	Proposed sub-contractor arrangements including company information (as above for each sub-contractor)
2	Experiences and Reference Contact Information (list and provide five (5) detailed examples of relevant experience gained within the past five years of the issuance of this RFP that demonstrate the contractor's ability to deliver a solution that substantially demonstrates the functional and technical requirements of this RFP)
2.1	Project Name (project one)
2.1.1	Project Description
2.1.2	Status (under development/implemented)
2.1.3	Reason for Relevance (provide reason why this project can be seen as relevant to this project)
2.1.4	Roles and responsibilities (list and clearly identify the roles and responsibilities for each participating Organization)
2.1.4.1	Client Role and Responsibility

Information of Firm/Organization submitting Proposal	
2.1.4.2	Contractor Role and Responsibility. Previous contractor role in project
2.1.4.3	Third party contractors Role and Responsibility. Previous specified 3 rd party role in project.
2.1.5	Team members (indicate relevant members of the team from the project that will be used in this project)

5. OPENING OF PROPOSALS

WHO/UNITAID will open the proposals in the presence of a Committee formed by WHO/UNITAID at the Headquarters office in Geneva, Switzerland on **Friday 15 April 2011 at 15h00 Geneva time**. Each proposal will be opened during the session, each bidder will be announced and each Financial Proposal total cost will be read aloud. Bidders may wish to attend the session (at their own cost) and should inform WHO/UNITAID in advance via email if they plan to attend. Non-attendance has no implication on the evaluation of the bids.

6. EVALUATION OF PROPOSALS

At the outset, WHO/UNITAID will conduct the preliminary examination of the proposals to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the proposals are generally in order.

WHO/UNITAID is not bound to select any of the firms/institutions submitting proposals. Furthermore, since a contract would be awarded in respect of the proposal which is considered most responsive to the needs of the project concerned, due consideration being given to WHO/UNITAID's general principles, including economy and efficiency, WHO/UNITAID does not bind itself in any way to select the firm/institution offering the lowest price.

A two-stage procedure will be utilized in evaluating the proposals, with technical evaluation of the proposal being completed prior to any focus on or comparison of price.

6.1 Technical evaluation of proposals

The technical evaluation of proposals will be accomplished by a Selection Panel. The Selection Panel will evaluate all proposals which have passed the preliminary examination of proposals according to:

- appropriateness of the proposed approach/methodology;
- quality of the technical solution proposed;
- quality of personnel dedicated to support the evaluations;
- outline of identified roles, responsibilities and actions to be taken by each key member of the consultancy included in the proposal;
- management strategy/plan detailed in the document;



- experience of the firm in carrying out related projects;
- qualifications and competence of the key personnel proposed for the assignment;
- time allocations of each of the key personnel to the assignment specified in the proposal; and
- proposed timeframe for the assignment.

6.2 Financial Evaluation of Proposals

During the Financial Proposal Evaluation, the price proposal of all bidders will be compared.

7. ADDITIONAL REQUIREMENTS

7.1 Clarification of Proposals

WHO/UNITAID 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 of the proposal shall be sought, offered or permitted during this exchange.

7.2 Bidders' Presentations

At the discretion of WHO/UNITAID, selected bidders may be invited to supply additional information on the contents of their proposal during the evaluation period. Such bidders will be asked to give a presentation of their proposal (possibly with an emphasis on a topic of WHO/UNITAID's choice) followed by a question and answer session.

NOTE: Presentations or other individual contact is expressly prohibited before the closing date for proposal submission.

7.3 Place of Performance

The two projects under End of Project Evaluations are involved with the following countries:

Angola, Azerbaijan, Bangladesh, Belarus, Benin, Bhutan, Bulgaria, Burkina Faso, Cambodia, Central African Republic, China, Congo-Brazzaville, Cote d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Gambia, Guatemala, Guinea, Guinea-Bissau, India, Kazakhstan, Kyrgyzstan, Laos, Mali, Mauritania, Moldova, Morocco, Myanmar, Namibia, Nepal, Nigeria, Rwanda, Senegal, Serbia, Somalia, Sri Lanka, Sudan (North and South), Syria, Tajikistan, Tanzania, Tunisia, Vietnam, Zimbabwe.

UNITAID and the successful bidder will mutually agree on how the evaluations of the projects would be done, including which countries warrant potential visits and why.

8. AWARD OF CONTRACT

8.1 Award Criteria, Award of Contract

WHO/UNITAID reserves the right to accept or reject any proposal, and to annul the solicitation process and reject all proposals at any time prior to award of contract, without thereby incurring any liability to the affected bidder or any obligation to inform the affected bidder or bidders of the grounds for the WHO/UNITAID's action.

Prior to expiration of the period of proposal validity, WHO/UNITAID will award the contract to the qualified bidder whose proposal, after being evaluated, is considered to be the most responsive to the needs of the Organization and activity concerned.

WHO/UNITAID has the right to eliminate bids throughout the evaluation process. However, WHO/UNITAID is under no obligation to state the reasons for elimination to the bidder.

NOTE: WHO/UNITAID is **acting in good faith** by issuing this RFP. However, **this document does not obligate WHO/UNITAID to contract for the supply of any products or services.**

8.2 WHO/UNITAID's Right to modify Scope or Requirements during the Proposal Process

WHO/UNITAID reserves the right to, at any time during the proposal process, modify the scope of services and goods specified in the RFP. At any step in the evaluation process, WHO/UNITAID reserves the right to issue an amendment to the RFP detailing the change to only those bidders who have not been officially eliminated due to technical reasons at that point in time. Official elimination is signified by a direct communication to that effect from WHO/UNITAID.

8.3 WHO/UNITAID's Right to Extend/Revise Scope or Requirements at Time of Award

WHO/UNITAID reserves the right at the time of award of contract to extend/revise the scope of services and goods specified in the RFP without any change in base price of services (e.g. day rate for resources) or other terms and conditions.

8.4 WHO/UNITAID's Right to enter into Contract Price Negotiations

WHO/UNITAID reserves the right to enter into contract price negotiations with one or more bidders that have not been eliminated during the evaluation process.

8.5 Signing of the Contract

Within thirty (30) days of receipt of the contract the successful bidder shall sign and date the contract and return it to WHO/UNITAID according to the instructions provided at that time. If the bidder does not accept the contract terms without changes, then WHO/UNITAID has the right not to proceed with the selected bidder and instead contract with another bidder of its choice.

9. GENERAL AND CONTRACTUAL CONDITIONS

The general terms and conditions of the contractual agreement ("the Contract") between WHO/UNITAID and the selected bidder ("the Contractor") will include provisions as set forth in this section, and will cover the following issues:

- responsibilities, indemnities and liabilities of the Contractor(s) and WHO/UNITAID;
- conditions concerning the termination of the contract(s);
- clear deliverables and acceptance procedures;
- payment terms tied to the satisfactory completion of the work;
- training and post implementation support;
- allowance for changes;
- warranties and representations;
- notices.

Services under this 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.

9.1 Conditions of contract

Any and all of the Contractor's (general and/or special) conditions of contract are hereby explicitly excluded from the Contract, i.e., regardless of whether such conditions are included in the Contractor's offer, or printed or referred to on the Contractor's letterhead, invoices and/or other material, documentation or communications.

9.2 Responsibility

The Contractor will be responsible to ensure that the services rendered under the Contract are in accordance with the specifications and within the time prescribed.

9.3 Source of Instructions

The Contractor shall neither seek nor accept instructions from any authority external to WHO/UNITAID in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may

adversely affect WHO/UNITAID and shall fulfil its commitments with the fullest regard to the interests of WHO/UNITAID.

9.4 Warranties

The Contractor will warrant and represent to WHO/UNITAID as follows:

- 1) The deliverables shall meet the specifications and shall function in a manner which is fully adequate to meet its intended purpose. The Contractor furthermore warrants that the deliverables shall be error-free, in that the Contractor shall correct any errors in the deliverables, free of charge, within fifteen days after their notification to the Contractor, during a period of at least six months after completion of the work. It is agreed, however, that errors and other defects, which have been caused by modifications to the deliverables made by WHO/UNITAID without agreement of the Contractor are not covered by this paragraph.
- 2) The deliverables shall, to the extent it is not original, only be derived from, or incorporate, material over which the Contractor has the full legal right and authority to use it for the proper implementation of this Contract. The Contractor shall obtain all the necessary licenses for all non-original material incorporated in the deliverables including, but not limited to, licenses for WHO/UNITAID to use any underlying software, application, and operating deliverables included in the deliverables or on which it is based, so as to permit WHO/UNITAID to fully exercise its rights in the deliverables and the software without any obligation on WHO/UNITAID's part to make any additional payments whatsoever to any party.
- 3) The deliverables shall not violate any copyright, patent right, or other proprietary right of any third party and be delivered to WHO/UNITAID free and clear of any and all liens, claims, charges, security interest and any other encumbrances of any nature whatsoever.
- 4) The Contractor, its employees and any other persons and entities used by the Contractor shall furthermore not copy and/or otherwise infringe on the copyright of any document or other material (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.
- 5) Except as otherwise explicitly provided in this Contract, the Contractor shall at all times provide all the necessary on-site and off-site resources to meet its obligations hereunder. The Contractor shall only use highly qualified staff, acceptable to WHO/UNITAID, to perform its obligations hereunder.
- 6) The Contractor shall take full and sole responsibility for the payment of all wages, benefits and monies due to all persons and entities used by it in connection with the implementation and execution of the Contract, including, but not limited to, the Contractor's employees, permitted subcontractors and suppliers.

9.5 Legal Status

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 WHO/UNITAID on the one side and the Contractor or any person used by the Contractor on the other side.

Thus the Contractor shall be solely responsible for the manner in which the work is carried out. WHO/UNITAID shall not be responsible for any loss, accident, damage or injury, including, but not limited to, damage 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 the Contract, including travel, whether sustained on WHO/UNITAID premises or not.

The Contractor shall obtain adequate insurance to cover such loss, accident, injury and damages, before commencing work on the Contract. The Contractor shall be solely responsible in this regard and shall handle any claims for such loss, accident, damage or injury.

Nothing in or relating to the agreement with the Contractor shall be deemed a waiver of any of the privileges and immunities of WHO/UNITAID in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on 21 November 1947, or otherwise under any national or international law, convention or agreement.

9.6 Relation Between the Parties

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

9.7 Waiver of Breach

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

9.8 Liability

The Contractor hereby indemnifies and holds WHO/UNITAID 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 WHO/UNITAID at any time and based on, or arising out of, breach by the Contractor of any of its representations or warranties under the Contract, regardless of whether such representations and warranties are explicitly incorporated here in or are referred to in any attached Appendices.

9.9 Assignment

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

9.10 Officials not to Benefit

The Contractor warrants that no official of WHO/UNITAID has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract. The Contractor also warrants that it is not and will not be involved in, or associated with, any entity involved in terrorism.

9.11 Indemnification

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, WHO/UNITAID, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, *inter alia*, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. These obligations shall not lapse upon termination of the contract.

9.12 Contractor's Responsibility for Employees

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

9.13 Subcontracting

Any intention to subcontract aspects of this 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 this Contract unless it is proposed in the initial submission or formally agreed to by WHO/UNITAID at a later time. In any event, the total responsibility for the Contract rests with the prime contractor.

9.14 Language

The internal communications of the work performed for this project, management and contractual communications for this project will be executed in English.



9.15 Confidentiality

- 1) Except as explicitly provided in the Contract, the Contractor shall keep confidential all information 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 the 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 this Contract; or (iii) the information was received by the Contractor from a third party not in breach of an obligation of confidentiality.
- 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. These obligations shall not lapse upon termination of the contract.

9.16 Confidential Nature of Documents and Information

All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of WHO/UNITAID, shall be treated as confidential and shall be delivered only to WHO/UNITAID authorized officials prior to completion of work under this Contract.

The Contractor may not communicate at any time to any other person, Government or authority external to WHO/UNITAID, any information known to it by reason of its association with WHO/UNITAID which has not been made public except with the authorization of WHO/UNITAID; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

9.17 Title Rights

- 1) This is a work made for hire. WHO/UNITAID shall be the owner of all intellectual property rights, including but not limited to patents, copyrights and trademarks, with regard to all deliverables and other material which bears a direct relation to, or is made in consequence of, the services provided to the

Organization by the Contractor.

- 2) WHO/UNITAID 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.
- 3) At WHO/UNITAID's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist WHO/UNITAID in securing such proprietary rights and transferring them to WHO/UNITAID in compliance with the requirements of applicable law.

9.18 Cancellation

WHO/UNITAID shall have the right to cancel the Contract (in addition to other rights, such as the right to claim damages):

- 1) At will with the provision of thirty (30) days prior notice in writing;
- 2) 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;
- 3) 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.
- 4) In addition, WHO/UNITAID shall be entitled to terminate the 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 the paragraph above, the Contractor is:
 - a. In breach of any of his material 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 WHO/UNITAID; or,
 - b. Adjudicated bankrupt or formally seeks relief of his financial obligations.

9.19 Force Majeure

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 WHO/UNITAID shall be entitled to terminate the Contract (or any part of the Contract) forthwith if the implementation of the work is delayed or prevented by any such reason for an aggregate of thirty (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 ownership rights referred to in section 9.17 *Title Rights*, deliver to WHO/UNITAID all work products and other materials so far produced.

- a) Force majeure, as used in this Article, means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force which are beyond the control of the Parties.
- b) In the event of and as soon as possible after the occurrence of any cause



constituting force majeure, the Contractor shall give notice and full particulars in writing to WHO/UNITAID, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify WHO/UNITAID of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, WHO/UNITAID shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

- c) If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, WHO/UNITAID shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in section 9.19 *Cancellation*, except that the period of notice shall be seven (7) days instead of thirty (30) days.

9.20 Use of WHO/UNITAID name and emblem

Without WHO/UNITAID's prior written approval, the Contractor shall not, in any statement of an advertising or promotional nature, refer to the Contract or his relationship with WHO/UNITAID. In no case shall the Contractor use the name or the emblem of WHO or UNITAID, or any abbreviation thereof, in relation to its business or otherwise.

9.21 Successors and Assignees

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 WHO/UNITAID.

9.22 Payment

Payment will be made against presentation of an invoice in a UN convertible currency (preferably US Dollars) for each deliverable and subject to WHO/UNITAID's acceptance of each such deliverable. Any payments by WHO/UNITAID to the Contractor shall reflect any tax exemptions to which WHO/UNITAID is entitled by reason of the immunity it enjoys. WHO/UNITAID is exempt from all direct taxes, customs duties and the like and the Contractor shall consult with WHO/UNITAID 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 WHO/UNITAID to enable reimbursement thereof.

9.23 Title to Equipment

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

9.24 Insurance and Liabilities to Third Parties

The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract. Except for the workmen's compensation insurance, the insurance policies under this Article shall:

- a) Name WHO/UNITAID as additional insured;
- b) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against WHO/UNITAID;
- c) Provide that WHO/UNITAID shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

The Contractor shall, upon request, provide WHO/UNITAID with satisfactory evidence of the insurance required under this Article.

9.25 Settlement of Disputes

Any dispute relating to the interpretation or application of the contract shall, unless amicably resolved, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the

absences of agreement, with the rules of arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

9.26 Observance of the Law

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

9.27 Authority to Modify

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

9.28 Privileges and Immunities

Nothing in or relating to this Contract shall be deemed a waiver of any of the privileges and immunities of WHO/UNITAID in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on 21 November 1947 or otherwise under any national or international law, convention or agreement.

10. PERSONNEL

10.1 Approval of Contractor Personnel

WHO/UNITAID reserves the right to approve any employee, subcontractor or agent furnished by the Contractor. All of the Contractor's employees, subcontractors or agents performing work under this Agreement must have appropriate levels of experience and be adequately trained to perform the services. WHO/UNITAID reserves the right to undertake an interview process as part of the approval of Contractor personnel.

The Contractor acknowledges that the skill and experience of the Contractor's personnel proposed to be assigned to the project are material elements in WHO/UNITAID's engaging the Contractor for the project. Therefore, in order to ensure timely and cohesive completion of the project, both parties intend that personnel initially assigned to the project continue through to project completion. Once an individual has been approved and assigned to the project, such individual will not thereafter be taken off the project by the Contractor, or reassigned by the Contractor to other duties involving comparable employment by the Contractor while the project is in progress and for so long as there has been no suspension. Circumstances may arise, however, which necessitate that personnel be substituted during the progress of work due to delays or due to promotions, termination, sickness, vacation or other similar material change in the employment

circumstance of the employee, at which time a replacement of comparable background and experience may be substituted, subject to approval of WHO/UNITAID.

WHO/UNITAID may refuse access to or require replacement of any employee, subcontractor or agent of the Contractor if such individual renders, in the sole judgment of WHO/UNITAID, inadequate or unacceptable performance, or if for any other reason WHO/UNITAID finds such individual does not meet its security or responsibility requirements. The Contractor shall replace such an individual within fifteen (15) business days of receipt of written notice. The replacement will be comparable in skills required and will be billed at a rate that is equal to or less than the rate of the individual being replaced.

10.2 Project Managers

Each party shall appoint a qualified project manager ("Project Manager") who shall serve as such party's primary liaison throughout the course of the project including the Services. The Project Manager shall be authorized by the respective party to answer all questions posed by the other party and convey all decisions made by such party during the course of the project including the Services and the other party shall be entitled to rely on such information as conveyed by the Project Manager.

The Project Managers shall meet on a monthly basis in order to review the status of the project and provide WHO/UNITAID with reports. Such reports shall include detailed time distribution information in the form requested by WHO/UNITAID, which will be used to provide the Contractor's billing information to WHO/UNITAID and shall cover problems, meetings, progress and status against the implementation timetable.

10.3 Foreign Nationals

The Contractor shall verify that all its employees, agents and subcontractors are legally entitled to work in Switzerland and other countries required by the nature of the assignment. WHO/UNITAID reserves the right to request legally mandated Contractor-held documentation attesting to the same for each employee, agent or subcontractor of the Contractor assigned to work on the project. Each party hereby represents that it does not discriminate against individuals on the basis of race, gender, creed, national origin, citizenship.

10.4 Compliance with WHO/UNITAID's Policies

The Contractor shall at all times comply with and ensure that the Contractor and each of its subcontractors and their employees and agents comply with any applicable laws and regulations and any WHO/UNITAID policies and all WHO/UNITAID reasonable written direction and procedures relating to: (i) occupational health and safety, (ii) security and administrative requirements, including, but not limited to computer network security procedures, (iii) sexual



harassment, (iv) privacy, (v) general business conduct and disclosure, (vi) conflicts of interest and (vii) business working hours and official holidays.

In the event that the Contractor becomes aware of any violation or potential violation by the Contractor, its subcontractor or any of their employees or agents, of any laws, regulations, WHO/UNITAID policies or of other WHO/UNITAID reasonable written directions and procedures, the Contractor shall immediately notify WHO/UNITAID of such violation. WHO/UNITAID, in its sole discretion, shall determine the course of action to remedy such violation, in addition to any other remedy available to WHO/UNITAID in law or equity or under this Agreement.

10.5 Ethical Behaviour

WHO/UNITAID, the Contractor and each of the Contractor's subcontractors and their employees and agents shall adhere to the highest ethical standards in the performance of this Agreement.

10.6 Engagement of Third Parties and use of In-house Resources

The Contractor acknowledges that WHO/UNITAID may elect to engage Third Parties to participate in or oversee certain aspects of the project and that WHO/UNITAID may elect to use its in-house resources for the performance of certain aspects of the project. The Contractor shall at all times cooperate with and ensure that the Contractor and each of its subcontractors and their employees and agents cooperate, in good faith, with such Third Parties and with any WHO/UNITAID in-house resources.

TABLE 1
LIST OF PROJECTS DUE FOR END OF PROJECT EVALUATION*

Project name	Implementing partner	Areas covered
UNITAID support to the Global Fund for Round 6, Phase 1	The Global Fund to fight AIDS, TB and Malaria	Provision of treatment for paediatric and 2 nd line medicines for HIV/AIDS, provision of 2 nd line anti-TB and ACTs for the treatment of malaria to TGFATM beneficiary countries.
Accelerating Scale up of long lasting insecticide treated nets (LLINs)	UNICEF	Supply of 20 million LLINs to 8 countries which would otherwise experience a shortfall for their planned LLIN campaigns.

* End of project evaluations questions and survey instruments will be agreed between UNITAID and the successful bidder(s) for this RFP.