A Guide to Contracting

in Mine Action

Second Edition

GICHD | CIDHG

The Geneva International Centre for Humanitarian Demining (GICHD), an international expert organisation legally based in Switzerland as a non-profit foundation, works for the elimination of mines, explosive remnants of war and other explosive hazards, such as unsafe munitions stockpiles. The GICHD provides advice and capacity development support, undertakes applied research, disseminates knowledge and best practices and develops standards. In cooperation with its partners, the GICHD's work enables national and local authorities in affected countries to effectively and efficiently plan, coordinate, implement, monitor and evaluate safe mine action programmes, as well as to implement the Anti-Personnel Mine Ban Convention, the Convention on Cluster Munitions and other relevant instruments of international law. The GICHD follows the humanitarian principles of humanity, impartiality, neutrality and independence.

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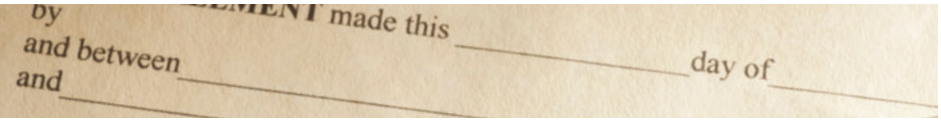

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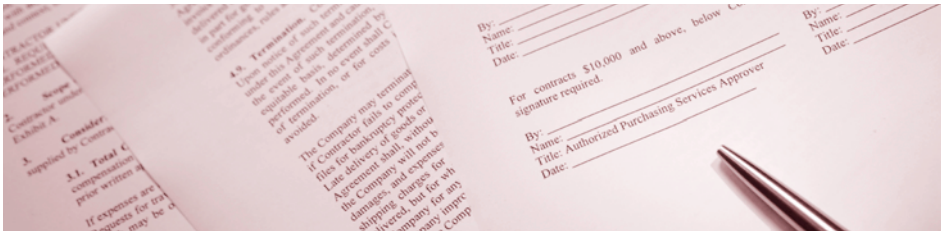

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LIST OF ACRONYMS

BAC	Battle Area Clearance
EOD	Explosive Ordnance Disposal
EOI	Expression of Interest
ERW	Explosive Remnants of War
EUC	End User Certificate
GICHD	Geneva International Centre for Humanitarian Demining
IED	Improvised Explosive Device
IFI	International Financial Institution
IMAS	International Mine Action Standards
IP	Implementing Partner
ITB	Invitation to Bid
LTA	Long-Term Agreement
MACC	Mine Action Coordination Centre
MDD	Mine Detection Dog
MRE	Mine Risk Education
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NMAA	National Mine Action Authority
NMAC	National Mine Action Centre
NMAS	National Mine Action Standards
NGO	Non-Governmental Organisation
PRAC	Procurement Review and Advisory Committee
QA	Quality Assurance
QC	Quality Control
RFP	Request for Proposal
RFQ	Request for Quotation
SHA	Suspect Hazardous Area
SOP	Standing Operating Procedure
SOW	Statement of Work
TOR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNMAS	United Nations Mine Action Service
UNOPS	United Nations Office for Project Services
UXO	Unexploded Ordnance
VA	Victim Assistance
VTF	Voluntary Trust Fund

A substantial amount of donor contributions for mine action is spent on contracting commercial entities, non-governmental organisations (NGOs) and public sector operators to carry out demining and other mine action related activities. Most donor contributions administered through the United Nations Mine Action Service (UNMAS) managed Voluntary Trust Fund (VTF) and the Assessed Budgets for Peacekeeping are spent on the contracting of capacity for mine clearance. Contributions to the VTF alone totalled more than US$ 394 million during the period of 1994 to 2007, and US$ 92.5 million for 2008.

National authorities also directly contract mine action capacities. In some countries, like Croatia and Bosnia and Herzegovina, contracting is the predominant feature of humanitarian demining. International Financial Institutions (IFI) and national governments also finance a large number of demining contracts to support civil engineering projects such as roads, power lines, irrigation works, dams etc.

The problem of contracting in mine action is its difficulty in defining the end product in terms of cleared or verified land, quality and number of square metres. Mine action contracting should create an incentive for contractors to release land in the most cost-effective way possible, preferably through non-technical methods and with a minimum of actual mine clearance, which is expensive and time consuming.

There is limited business and contracting expertise within the mine action community; this guide is written in a language which is appropriate for those who are new to the topic.

Ambassador Stephan Husy
Director
Geneva International Centre for Humanitarian Demining

INTRODUCTION

THE NEED FOR A GUIDE AND THE TARGET AUDIENCE

This guide aims to assist national directors and mine action programmes in mine action contracting. However, it should also benefit commercial and not-for-profit demining operators, prime contractors for civil engineering works, IFIs and manufacturers of mine clearance equipment and other organisations involved in mine action, including donors. In addition, more and more commercial companies involved in oil, gas and mining are working in mine affected countries and are in need of demining services. These companies normally contract services directly; this guide can provide them with advice and guidance on how to carry out quality mine action contracting.

Knowledge of the various contracting modalities in mine action varies. For this reason, this guide starts out by explaining the basics in contracting. Readers with previous experience in mine action contracting may wish to skip over the introductory sections on basic contracting and may benefit from reading only selected parts of the guide.

Many organisations have developed and tested their own procedures for contracting. This guide has not been developed to replace such procedures but to further develop and improve them.

METHODOLOGY FOR THE STUDY

This guide has been developed through information gathering from various agencies and organisations involved in mine action contracting, such as NGOs, commercial companies, various United Nations (UN) agencies, trust funds, donors and civil engineering firms.

Information has been gathered through interviews, different questionnaires and studies of documentation that have been made available to the GICHD. A number of fact-finding missions and country studies focusing on contracting methods were also undertaken as a part of the study. In order to support the study and the development of this guide, a study advisory group was established. The study advisory group consisted of representation from commercial contractors, non-governmental organisations, a representative from the United Nations Mine Action Service (UNMAS), a contracting expert and gender experts from the Swiss Campaign's Gender and Mine Action Programme.

Some of the chapters were researched and written by contributors external to the GICHD with expertise in specific areas of contracting and mine action.

Country studies were carried out in Afghanistan, Bosnia and Herzegovina, Cambodia, Croatia, Denmark and Lebanon.

CONTRACTING IN MINE ACTION

INTRODUCTION

Mine action is carried out by many different types of organisations, such as NGOs, commercial companies, national mine action teams or military units. Mine action includes mine clearance, survey, mine risk education, victim assistance and stockpile destruction. The method for engaging these different types of actors is mainly through contracting but also through grants. Contracts are awarded to commercial companies and NGOs. Contracting agencies (also referred to as principals) include national mine action authorities (NMAA) or national mine action centres (NMAC), UN agencies, bilateral aid agencies and civil engineering companies.

This guide will focus on explaining the use of contracts for mine clearance and survey. Demining involves the clearance and return of contaminated land to mine affected communities through the detection, removal or destruction of all mines and unexploded ordnance (UXO) hazards. Effective demining operations aim to clear land in a safe and efficient manner at the lowest cost possible. In order to achieve effective and efficient demining, a high degree of quality planning and management of operational practices and assets is required. Demining processes and procedures need to be subjected to high levels of quality management, including quality assurance and quality control of the end product. Quality management needs to be built into any demining programme from commencement of activities through execution and completion. The manner in which mine action contracting is carried out can play a crucial role in ensuring that mine action activities are effective and efficient.

It is important that the concept of land release is also considered in mine action contracting. This is to ensure that limited and costly mine clearance assets are not used for clearance of suspect hazardous areas (SHA) that could have been released through non-technical methods, such as the collection and analysis of relevant information. It is still a challenge for the mine action community to appropriately address the concept of land release through non-technical means in mine action contracts.

Mine action has basic principles and considerations that are not necessarily found in other types of contracting activities and which need to be considered during the contracting process. They are described later in this guide. Even when work is carried out under an arrangement such as a memorandum of agreement rather than a formal contract, these basic principles and considerations should be described and included in the written agreement. In addition to the principles described in this guide, the International Mine Action Standards (IMAS) provide guidance on mine action contracting under IMAS 07.20.

When a donor is planning to fund mine action activities in a specific country, it is often advantageous to discuss the terms and conditions under which mine action can take place in the country. This discussion should include topics such as procedures for licensing and accreditation of mine action organisations and their assets. If the donor and receiving country can reach an agreement on national taxation, social fees and payments, operating licenses, customs and import duties, import licenses and other hidden extra charges, implementation will be easier and more cost efficient. It is also crucial that the NMAA and/or NMAC are included in such discussions.

"A contract is an agreement creating and defining the obligations between two or more parties"

Sir John William Salmond (3 December 1862 | 19 September 1924)

DEFINITION OF A CONTRACT

A contract is an exchange of promises between two or more parties to carry out, or refrain from carrying out, an activity which is enforceable in a court of law. A contract is a legally binding agreement and an exchange of promises for the breach of which the law will provide a remedy.

An agreement is said to be reached when an offer capable of immediate acceptance is met with a "mirror image" acceptance. The parties must have the necessary capacity to contract and the contract must not be indeterminate, impossible or illegal. Contract law is based on the principle expressed in the Latin phrase pacta sunt servanda (usually translated "pacts must be kept" or "promises must be kept", but more literally "agreements are to be kept").

Technically, any verbal agreement between two parties can constitute a binding legal contract. The practical limitation to this is that only parties to a written agreement have the evidence, in the form of the written contract itself, to prove the actual terms decided on at the time the agreement was made. Verbal agreements rely on the good faith of all the parties and can be difficult to prove.

Commercial contracts include employment letters, invoices, purchase orders and utility contracts. Complex contracts are often necessary for construction projects, goods or services that are highly regulated, goods or services with detailed technical specifications, intellectual property agreements and international trade.

CONTRACTING IN MINE ACTION

In the context of mine clearance, a contract is normally an agreement between a contracting agency and a contractor for provision of certain services and/or equipment. The contractor can be a commercial company or an NGO providing mine clearance services.

Contract document

Normally, a mine action contract will consist of a number of parts including, but not limited to the following:

- the contract document
- the Statement of Work (SOW), also referred to as the Scope of Work
- the contractor's technical proposal
- the contractor's financial proposal
- certain parts of the IMAS that are specific to the contract awarded
- a Code of Conduct regulating the conduct of the contractor's personnel such as interaction with local communities and prohibiting any illegal or unethical activity (sexual, physical and psychological exploitation and abuse, sexual harassment, trafficking, use of drugs/alcohol, corruption, use of child labour, environmental and property damage etc)
- general conditions for the contracting agency
- any other documents referred to

Some of the documents referred to can be attached to the contract document as annexes. Other documents are not physically attached to the contract but are incorporated by reference; an example is the IMAS, which are too voluminous to attach to every mine action contract. In addition, the contractor's technical proposal and any changes or amendments are normally incorporated by reference.

Mechanical demining contractor in the Kurdistan Region

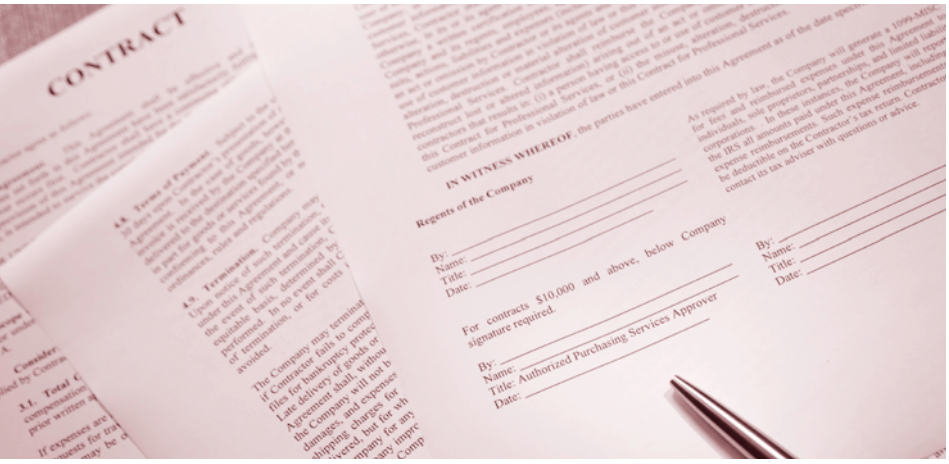
A number of documents form the entire contract (ie main body of the contract, statement of work, financial proposal, general conditions, etc); it is important to outline in the main body of the contract the order of precedence over one another in case of conflict. For instance, the documents forming the contract can be said to be interpreted in the following order of priority (note that this is only an example):

- main body of the contract
- SOW
- contractor's financial and technical proposals
- general terms and conditions of the contracting agency
- IMAS or NMAS or both which are incorporated by reference and then specific series of IMAS or NMAS relevant to the contract

- code of conduct
- organisational diagram, qualifications and experience of key personnel
- any other document listed within the tender document forming part of the contract

DIFFERENT TYPES OF CONTRACTS

In mine action, there are mainly two types of contracts: fixed price contracts and cost plus contracts. There are benefits to both contracting agencies and contractors with both types of contracts. There are also different variations of both contract types and the two types can be combined.



Contract documents

A fixed price contract means that the contracting agency will pay a fixed price to the contractor regardless of what the contract actually costs the contractor to perform. The contractor carries all the risk of loss associated with higher than expected costs, but benefits from this type of contract if costs turn out to be less than expected. In mine action, this is the most common type of contract.

Fixed price contracts provide an incentive for the contractor to carefully manage activity costs and keep them as low as possible through increased efficiency and cost-effective approaches. Fixed price contracts also make it easier for the contracting agency to compare technical and financial components of proposals provided that all other parts of the proposal, including the expertise, experience and background of the bidder, are similar and comparable, and that the contracting agency has been able to specify the activity requirements and conditions through a detailed SOW.

Fixed price contracts have a number of specific consequences and characteristics as follows:

- the contracting agency can more easily compare proposals during the evaluation process
- the contract is easier to administer for the contracting agency
- the contracting agency may have to pay a premium to the contractor if they are to bear the cost-uncertainty as part of the contract price
- there can be disagreements between the contracting agency and the contractor over any changes or interpretations of the statement of work and whether they were included in the original statement of work
- it is important for the contracting agency to specify and verify the quality of the work conducted by the contractor; there is a risk that the contractor may seek to minimise costs by cutting back on the quality of its output
- if the agreed fixed price is too low, the principal assumes the additional risk that the contractor may be unable to fulfil contractual conditions or will use every means to generate claims
- the contracting agency may consider asking the contractor to take out a performance bond to reduce the additional risk

A cost-plus contract requires the contracting agency to reimburse the contractor for all costs and pay a percentage of these costs as a fixed fee. The cost of overcoming any errors, omissions and other charges is covered by the contracting agency. The use of cost-plus contracts has several advantages for the contracting agency:

- costs are limited to what is actually required under the contract
- the contractor cannot make excessive profits
- the possibility that a potential loss for the contractor will result in reduced quality or other negative consequences is avoided

Cost-plus contracts may also have some serious disadvantages for the contracting agency:

- the total cost of the contract is uncertain, and there is little incentive for the contractor to control costs
- the contractor is responsible for controlling costs, yet the higher the costs the higher the contractor's profit
- the contractor may be tempted to incur costs that bring benefit to other contracts they are undertaking, such as by expanding the purchase of equipment and over-manning to avoid training costs for other contracts or workforce layoff costs
- the contracts may be more expensive for the contracting agency because of additional contract administration requirements

"Contracting in Mine Action is the regular way we do business that allows us to focus the resources that have been provided by member states to accomplish our mandates"

Justin Brady, United Nations Mine Action Service

DAILY RATE CONTRACTS FOR UXO CLEARANCE

Commercial operators estimating the cost of a clearance activity can expose themselves to significant financial risk if the duration of the job exceeds their estimated completion time. This can occur due to heavy rain during the 'wet season', or by encountering significant quantities of UXO or ERW that were not expected.

An estimation of the time to clear is usually derived from the results a survey. However, as surveys are often conducted on a percentage of the total area only, it is possible to miss heavily contaminated areas where fragmentation or UXO/ERW are concentrated or ammunition caches and/or burial pits may exist. In other instances, the client may be eager to have the clearance undertaken and wish to forego a survey. In these cases there is a significant risk of underestimating the duration of the task, and subsequently the actual clearance cost.

If there is a risk of underestimation, the commercial UXO contractor can either increase the clearance cost in order to allow for a sufficient buffer or recommend a daily rate. Inflation of the cost to cover unforeseen circumstances my result in the bid becoming uncompetitive. A daily rate option affords the UXO contractor some degree of protection, whilst spreading the clearance cost across the duration of the task. The daily rate takes into consideration the 'worst case' scenario and offers an approximate period to conduct the clearance.

A daily rate may have the potential to increase cost to the client should the duration of the project take longer than estimated, but it protects the commercial operator where the level of contamination is questionable, particularly where profit margins are minimal. The financial risk is transferred from the UXO contractor to the client. However, the task will most probably take less time than initially forecast, so the client may actually save money. The client is usually presented with all of the costing options (unless they specifically nominate the rate method) and will decide on the best option for their circumstance.

Daily rates are often preferred by large organisations where the UXO contractor has a long-term or permanent presence at a clearance site. The daily rate is easy for the client to budget for, as the cost is constant. The client can also re-direct the EOD Operator assets, or extend the duration of the task to suit their changing requirements without the need to modify any existing contracts, which provides greater flexibility.

LEGAL COMPONENTS OF A CONTRACT [1]

The specific contents of the legal component of the contract will be driven by the standard practices and other requirements of the contracting agency. However, as a minimum, it should contain the following details:

- date and duration of the contract
- parties to the contract
- brief background to the contracted activity
- the role of the contractor and the use of any subcontractors
- the role of the contracting agency
- insurance to be held by the contractor (ie medical, life, disability, worker's compensation and third party liability)
- current and residual liabilities for both the principal and the contractor
- schedule and milestones for the payment of fees
- requirements for any type of guarantees or bonds
- penalty clauses if applicable
- process for amendments to the contract
- grounds for termination of the contract
- suspension and force majeure
- governing law and procedures for dispute resolution
- IMAS and/or NMAS incorporated by reference
- any other matters of relevance to the specific contracted activity

Further discussion on legal aspects of mine action contracting is provided under chapter 4 on the contracting process.

TECHNICAL COMPONENTS OF A CONTRACT [2]

When conducting the interviews for this study, contractors and contracting agencies all had one response in common: the requirements for services to be provided under a contract must be precise and well defined in order to minimise misunderstandings. If the requirements are not clear, the contract will inevitably lead to disputes between the contractor and the contracting agency.

In mine action contracts, the requirements are normally defined in a statement of work (SOW) in which the contracting agency defines what is required under the contract in terms of personnel, methods, equipment, timeframes and expected output. SOWs can be written in many different ways. It is essential that the SOW be as inclusive and comprehensive as possible. The SOW will dictate what the contractor does and the manner and standard to which the work is carried out.

SOWs can be written in such a way that they outline in detail what is to be achieved in terms of square metres and the capacity required. In other cases, SOWs identify a specific area within which all hazards are to be removed, and it is up to the contractor to describe what kind of capacity it will employ to achieve the objectives in the SOW.

The design of the SOW is of outmost importance. The requirements under the contract must be clear with minimal risk of misinterpretation from the contractor or the contracting agency. At the same time, SOWs must have some built in flexibility so that operations can be run in a flexible and non-bureaucratic manner.

The content of the SOW will vary depending on the nature of the contracted activity and the environment in which the activity will be conducted; as a minimum, it should contain the following information:

- the background and objectives of the contract
- relevant terms, definitions and abbreviations
- the role of other parties involved in the contract such as the NMAA or NMAC, independent Quality Assurance (QA) agencies and other representatives of the contracting agency such as field staff
- the specific objectives and outcomes to be achieved under the contract
- specific capacity or technology to be provided (ie number and type of teams, machines, mine detection dogs, etc)

- approximate performance targets for each capacity (ie manual demining team, mine detection dog team, mechanical ground preparation team)
- the timeframe and duration of the contracted activity
- specific milestones within the duration of the contract and the timeframe in which they are to be achieved
- standards to be achieved, eg according to IMAS and/or NMAS (including version and date of publication)
- any limitations on, or requirements for, the method of operation to be adopted by the contractor
- procurement or leasing of equipment as well as ownership and maintenance issues
- reporting requirements including progress reports and post-contract auditing and documentation
- type of expertise of the contractor's personnel

OTHER TYPES OF AGREEMENTS USED IN MINE ACTION

In mine action, other types of agreements are also used to formalise cooperation between two agencies such as Memoranda of Agreement (MOA), Memoranda of Understanding (MOU) and grant agreements. These types of agreements can be used between the UN and a donor country when the donor provides in-kind personnel or equipment to a UN mine action programme. They can also be used between other organisations as a formal agreement for a specific activity.

MEMORANDUM OF AGREEMENT

An MOA is a document signed by two or more parties to work together on an agreed project or to meet an agreed objective. The purpose of an MOA is to have a written understanding of the agreement between the parties. An MOA can include an exchange of money. An MOA can be used between agencies, the public and the federal or state governments, communities and individuals. An MOA lays out the ground rules of a positive cooperative effort. The responsibilities of each of the parties should be fully described in the MOA.

MEMORANDUM OF UNDERSTANDING

An MOU is a document describing a bilateral or multilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is most often used in cases where the parties do not wish to enter into a legal commitment or in situations where the parties cannot create a legally enforceable agreement (a contract). It is a more formal alternative to a "gentlemen's agreement".

In some cases, depending on the exact wording, MOUs can have the binding power of a contract; as a matter of law, contracts do not need to be labelled as such to be legally binding. Whether or not a document constitutes a binding contract depends only on the presence or absence of well-defined legal elements in the text of the document. For example, a binding contract typically must contain mutual consideration and legally enforceable obligations of the parties.

GRANTS AND GRANT AGREEMENTS

Grants are funds disbursed by one party (grant makers), often the UN or a governmental agency, to a recipient, often a non-profit entity such as an NGO. Most grants are made to fund a specific project. In mine action, a grant can be given when an NGO has its own mine action programme and is soliciting funding from one or more donors. It can also be given when the UN or a donor wishes to provide funding for demining to a specific country and asks for proposals under a grant modality instead of a contract modality. In either case, the NGO submits a technical proposal and a separate financial proposal/budget.

Under the terms of most grant agreements, the NGO is normally required to submit periodic substantive and financial reports to the donor before they will receive their next instalment under the grant. These reports outline the activities undertaken during the reporting period, as well as progress made in achieving the goals and objectives of the project. The financial report provides information to the donor on the expenditures made during the reporting period.

The funder will also normally require a final substantive and financial report upon completion of the activities under the grant agreement. These reports are sometimes required to follow a format determined by the funder and are to be submitted one to two months following completion of the grant activities.

Grants are often administered in a similar manner to contracts.

SUBCONTRACTING

A subcontractor is an individual, or in many cases a business, that signs a contract to perform part or all of the obligations of a prime contractor's contract. A subcontractor is hired by a prime contractor (or general contractor) to perform a specific task as part of the overall project.

In mine action, there are different types of technical capacities used for clearance. They include manual demining, mine detection dogs (MDD) and mechanical ground preparation machines. Most mine action companies and NGOs do not have the expertise in each of these different types of capacities. For example, if there is a contract requiring more than one type of capacity, a bidder may decide to subcontract a specialist in mine detection dogs rather than trying to buy and/or train its own mine detection dog capacity. Subcontracting such capacities is generally cheaper than developing one's own capacity and expertise. In this way the prime contractor receives the same or better service than it could have provided on its own, at lower overall risk and normally lower cost.

Before deciding that it is necessary to make use of a subcontractor, the prime contractor should carry out an assessment to ensure that outside assistance is needed and whether a subcontractor will increase performance under the contract at the same or reduced cost. The prime contractor should then decide which specific tasks to subcontract, and what sort of subcontractor will best perform the required work.

The prime contractor should also consider what type of relationship is required with the subcontractor. Some prime contractors choose to share control of the project with a trusted subcontractor, even including the subcontractor in strategic decision-making. Subcontractors are often good sources of valuable information and insight on ways prime contractors can save time and money or improve quality. Other prime contractors choose to maintain a high degree of control internally and subcontract only minor parts of larger contracts on a limited, as-needed basis. Some subcontractors may be seeking a long-term business relationship, while others may simply wish to gather information in order to complete their work in a timely and professional fashion. An important question is whether or not the subcontractor will provide a good fit with the prime contractor.

It is important for prime contractors to recognise that the time to respond to tenders in mine action is often limited, and that there are a limited number of specialised providers in mine action. If a prime contractor wishes to work with a subcontractor, it is vital to identify and start negotiations with subcontractors as soon as possible in order to meet tender deadlines. It often happens that, for instance, manufacturers of demining machines will receive several requests for subcontracting from various commercial contractors when a bigger Request for Proposals (RFP) has been issued. During the process of gathering information for this guide, it was stressed by several manufacturers of demining machines that they often end up with a very limited time to respond to requests from prime contractors and that the information they receive regarding the tender is limited to only certain parts of the RFP. This makes it hard for manufacturers to provide a timely and technically accurate response to prime contractors.

The sourcing of a subcontractor can be done through a competitive process, but it is more common in the demining industry for prime contractors to identify appropriate partners and approach them directly. For instance, if the requirement for the contract is a demining machine with a tiller, there are only a limited number of manufacturers who can provide such demining machines on short notice. It may be worth it for a prime contractor to negotiate stand-by arrangements with certain subcontractors in order to have the main elements of their relationship worked out in advance.

Typically prime contractors will subcontract for mechanical demining

Under most procurement rules, the contracting agency must give approval to the prime contractor for any subcontracting and will require a copy of the subcontract to ensure that there are no conflicts with the prime contract. The contracting agency does not have direct contractual relationships with subcontractors, and the prime contractor is responsible for the acts, defaults and negligence of its subcontractors and their agents or employees even when the contracting agency has approved the subcontract.

Once a suitable subcontractor has been identified, the prime contractor should negotiate a contract in order to ensure a mutually beneficial relationship. This document should include:

- tangible measures of job performance
- financial incentives to encourage the subcontractor to meet deadlines and control costs as much as possible
- a clear definition of responsibilities and performance criteria between the prime contractor and subcontractor
- procedures for changing the subcontractor relationship, including the means for amendments and extensions, cancellation or termination
- the requirement for adherence to NMAS and IMAS
- clearly defined reporting requirements
- information on liability

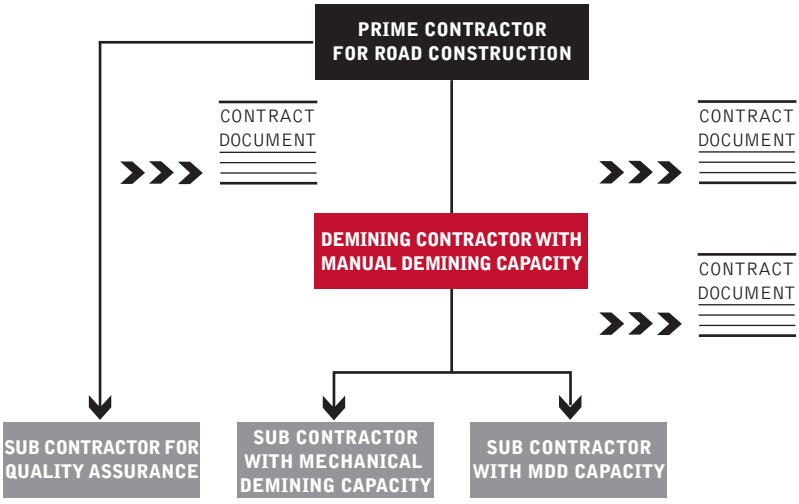
Finally, the contract should set strict confidentiality rules if needed and specify who owns the rights to any new methods, procedures or materials that are created from the business arrangement. Obviously a contract with a subcontractor also must be in adherence with any rules stipulated in the contract between the prime contractor and the contracting agency.

The use of subcontractors can be very beneficial for the prime contractor if properly managed. Skilled, experienced and professional subcontractors with a strong work ethic can greatly improve the performance of demining prime contractors.

OUTSOURCING

In mine action, external capacity is sometimes contracted through a stand-alone contract with a subcontractor providing QA of other demining contractors. There are examples where this has been successful and other examples where this has been less successful. The main reason for failure has, in many cases, been that the QA contractor is a competitor to the clearance contractor in other countries where the QA contractor is carrying out clearance. When using the option of contracting an external QA capacity, it is recommended to use companies that are normally not bidding on demining contracts and that specialise in QA. One example where this worked well was in Skallingen, Denmark, where QA was successfully contracted to a company which had no previous demining experience but had good overall QA experience.

Subcontracting of QA capacity in mine action



SUBCONTRACTING IN MOZAMBIQUE | AN EXAMPLE [3]

Mozambique is an example of a country that has actively sought to integrate road clearance into its national reconstruction and development programme. Mozambique's National Administration for Roads (ANE) first encountered serious problems with landmine and unexploded ordnance contamination during its Emergency Road Programme (1994–1996).

ANE has developed a system whereby the prime contractor assumes complete responsibility for demining services. Tender documents make it clear that the bidders must include a specialised subcontractor for mine/Explosive Remnants of War (ERW) survey and clearance. After the award of contract, the prime contractor is not allowed to mobilise the road-works crews until the demining subcontractor produces a certificate from the country's National Demining Institute (IND) that the roads, bridges, gravel pits and other worksites relating to the roads rehabilitation project have been cleared. Subsequently, any missed devices incidents are the responsibility of the prime contractor and, after mobilising the heavy equipment and work teams, delays due to missed devices would be extremely costly. ANE does not require external quality assurance – it leaves this responsibility to the prime contractor.

Financing for the requisite demining works is provided in the budget for the road rehabilitation project. A provisional two to five per cent of the total budget is allocated for demining services, but ANE pays for actual and reasonable expenses. ANE maintains close contact with the IND, with two of its engineers serving in a liaison role. It sends all its project plans to IND and requests all the relevant contamination and clearance records. Even if IND certifies that a road segment has been entirely cleared, ANE still requires the prime contractor to subcontract a demining firm to complete another survey and clearance operation. Given its costly experiences with missed devices in the past, ANE wants to put all responsibility for clearance on the prime contractor.

In addition, IND provides technical assistance and advice regarding the commercial companies who are invited to carry out the work and QA tasks. Other ministries that work with IND on contracting commercial demining companies are the Ministry of Tourism, Public Works, Communications, Energy, Transport and Industry and Commercial as well as other development bodies.

IND also contracts demining companies to carry out demining as part of the humanitarian and development plans, in which QA companies are also contracted. In such cases, it is IND's responsibility to verify that the work has been completed according to the contract.

ENDNOTES

[1] Adapted from IMAS 07.20 Guide for the development and management of mine action contracts

[2] Adapted from IMAS 07.20 Guide for the development and management of mine action contracts

[3] This section is adapted from GICHD, A Review of Ten Years Assistance to the Mine Action Programme in Mozambique, October 2005.

BEST VALUE IN PROCUREMENT

VALUE FOR MONEY IN PROCUREMENT IN MINE ACTION

It is generally recognised under all public procurement guidelines that the procurement of goods and services, including works, must be based on value for money. Value for money should not be equated with paying the lowest initial price: it is defined as "the optimum combination of whole-of-life costs and quality".

Public procurement guidelines state that goods and services should be procured under competitive bidding unless there are convincing reasons to the contrary. The form/extent of the competition should be appropriate to the value and complexity of the procurement. The contracting agency should ensure that barriers to the participation of suppliers are eliminated while ensuring that the intended purpose is achieved. Fair competition promotes economy, efficiency and effectiveness and is a useful means of ensuring that the market is fully tested. Procurement through competition remains the best way of achieving best value for money, and it should also demonstrate transparency and integrity in the process.

Although competition is normally encouraged for most procurement, it is not always appropriate or cost-effective for low value items, or sufficient for complex goods and services or where no well-developed market exists. Increasingly, value for money depends on combining competition with innovative ways of procurement while managing the risks effectively. The wide diversity in the value and types of goods and services which are purchased through public procurement means that no one single procurement method is appropriate to promote value for money.

Value for money is enhanced in public procurement by encouraging competition through non-discrimination and a competitive processes, thus promoting the use of resources in an efficient, effective and ethical manner and making of decisions in an accountable and transparent manner.

In order to be in the best position to determine value for money, tender documentation needs to specify clear, logical, comprehensive and relevant conditions for participation by bidders. It should also use appropriate evaluation criteria which will enable the proper identification, assessment and comparison of the costs and benefits of all submissions on a fair and common basis over the whole procurement cycle. This requires a comprehensive and thorough process leading up to issuing the tender.

Cost is not the only determining factor in assessing value for money. When assessing alternative procurement processes or solutions, a whole-of-life cost assessment should take into account all aspects of cost over time such as: capital, maintenance, spare parts, management, operating and disposal costs. In mine action, an example of such a process would be to include training and the replenishing of consumable items when procuring trauma kits for use by demining teams.

The whole-of-life cost may be very different to the initial price of some complex procurements, including large supplies, service contracts and construction projects. Many costs will only arise over the life of the use of the item; for example, as a result of operating the equipment, energy costs, equipment maintenance costs, staff training, disposal costs and the environmental impact of both the old equipment and the new equipment at the end of its working life. Higher expenditure on better quality may be offset on a whole-of-life costing basis, for example by lower maintenance costs, longer life or higher residual value.

All potential suppliers should have the same opportunities to compete for business and should be treated fairly. Assessment should be based on their legal, commercial, technical and financial abilities, not on their degree of political affiliation or ownership, location, ethnicity or size. The goods or services to be procured must be considered on the basis of their suitability for their intended purpose, not on the basis of their origin.

The procurement process itself is an important consideration in achieving value for money. Participation in a procurement process imposes costs on government agencies and potential suppliers. These costs should be considered to determine a process which is appropriate to the scale, scope and relative risk of the proposed procurement.

It is vital that throughout the procurement process, there is transparency and integrity. Transparency refers to the clarity and openness to public scrutiny of the process; integrity requires that business is conducted in a reasonable manner with all suppliers treated fairly, equally and honestly. The drive to achieve best value for money must not compromise ethical standards of conduct. Best value for money is fostered by good practice in this context. It is easier for contracting agencies to require high standards of integrity from their suppliers when they conduct their own business according to these same high standards. The highest standards of integrity in procurement are expected from contracting agencies and their procurement agents because public procurement involves spending public funds.

Several large international organisations and national procurement guidelines recommend that the process of soliciting offers and selecting a contractor should be guided by the principles described below:

- competition – encourage competition among suppliers
- efficiency and effectiveness – seek efficiency and effectiveness in the procurement process to obtain value for money for the contracting agency
- fairness / transparency / non-discrimination – treat all suppliers equally and fairly during the procurement process
- objectivity / integrity / honesty – evaluators should declare any real or potential conflict of interest and should reject gifts, hospitality and benefits of any kind from suppliers which might be reasonably seen to compromise the evaluators' objectivity or integrity
- accountability – personnel of contracting agencies need to be accountable for the responsibilities assigned to them and the decisions made by them; they should keep appropriate records
- confidentiality / accuracy of information / protection of intellectual property – respect the confidentially of information acquired in the course of performing duties and do not disclose any such information without having proper and legitimate authority to do so
- conformity to the laws serving the public interest / responsiveness – conform to the relevant national legislation, as well as to other requirements and commitments regarding public procurement; serve the public interest and act with responsiveness in using public funds
- professionalism – work to a high standard of professionalism by complying with the legislation in force and applying best practices
- "green purchasing" – take advantage of the opportunities to incorporate environmental considerations and issues into the procurement process

FRAUD AND CORRUPTION

It is very important that officials involved in public procurement have the utmost integrity at all times. Most contracting agencies have a code of ethics for their staff which provides guidance on how staff should conduct themselves in the workplace and with colleagues outside of the organisation. The reason for such stringent rules and procedures in procurement is to promote transparency, fairness and equity and to avoid fraud or corruption.

Fraud is defined as an intentional deception for personal gain or to damage another individual. It is an impairment of integrity, virtue or moral principle; depravity, decay or an inducement to do wrong by improper or unlawful means.

The World Bank defines fraud and corruption as follows:

- corrupt practice is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party
- fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation
- collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party
- coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party
- obstructive practice is: (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (ii) acts intended to materially impede the exercise inspections and audit rights

THE TENDERING PROCESS

INITIAL CONSIDERATIONS

When competitive tendering is used, the following factors must be considered:

- whether there will be prequalification
- whether the intent to tender will be advertised nationally or internationally
- what type of contract will be used (eg fixed cost, cost-plus or other)
- whether tenders will be opened publicly
- payment terms and conditions (on completion of agreed phases, reports, on milestones etc)
- requirement for 1) parent company guarantees; 2) bank performance bonds; 3) insurance cover; and/or 4) indemnity cover

INVITATIONS TO BID

An Invitation to Bid (ITB) is normally used for procurement of goods, services or works with standard and firm specifications that can be expressed qualitatively and quantitatively. ITBs are very similar to Requests for Proposals in their design but with the distinct difference that they include exact requirements regarding the minimum requirements. An example is when a specific type of vehicle with exact specifications is to be purchased. The evaluation is done by confirming that a proposal is compliant with all aspects of the specifications. Contracts are awarded to the bidder with the lowest priced offer that is technically compliant considering all aspects including delivery, after sales servicing and more.

If necessary, the two-envelope system, where suppliers are requested to submit their technical and financial offers separately, can be used when the ITB method has been chosen. The financial proposals are then to be opened in a separate bid opening session after the completion of the technical evaluation. Normally, however, the two-envelope system is not used for the ITB method.

REQUEST FOR PROPOSALS

A Request for Proposal (RFP) is used for the procurement of services, works and goods when requirements cannot be quantitatively and qualitatively expressed in the specifications at the time when the invitation is issued (eg consulting or similar services, purchase of complex goods where requirements may be met in a variety of ways).

The RFP uses a two-envelope system and requires suppliers to submit their technical and financial proposals in separately sealed envelopes. The financial proposals are opened in a separate bid opening session after the completion of the technical evaluation. The purpose of the two-envelope system is to ensure that the technical evaluation can be undertaken focusing solely on the contents of the technical proposals without bias from the financial aspects of the proposals. An evaluation comparing all factors, both technical and financial, is then carried out.

Proposals are evaluated, ranked and awarded according to the cumulative analysis methodology, defining best value as the best overall benefit when considering both technical and financial factors.

The evaluation criteria are set out in the RFP by identifying the technical and price evaluation factors, with stress on the key areas of importance that will be considered in the source selection. The ratio between technical quality and price may differ from one RFP to another. In most RFPs, the technical quality is weighted more heavily than price considerations. The right balance between the various evaluation criteria must be established before the RFP is issued, and expressly stated in the tendering documents.

The evaluation criteria, including the weighting between the technical and financial proposals, needs to be clearly specified in the RFP and not deviated from during the evaluation process.

A typical RFP is comprised of the following documents:

- letter of invitation with the evaluation method
- statement of work
- model contract
- special and general terms & conditions
- if applicable, reference to the International or National Mine Action Standards

Normally RFPs are used for contracting for services such as mine clearance.

CALL FOR EXPRESSIONS OF INTEREST

The call for an Expression of Interest (EOI) is a notice which provides general information on the requirements for goods, works or services of upcoming solicitations. A call for EOI is one method to search for and identify suitable and possible suppliers. Through the call for EOI, contractors and suppliers are requested to formally express interest by a definite deadline. Interest is expressed through the submission of detailed information demonstrating experience and qualifications in providing the relevant goods or services.

Once the EOI has been received, the information provided is evaluated and considered when determining which companies should be shortlisted and invited to submit detailed proposals. Since the EOI is issued before any requests for proposals are issued, the method requires time for both the call for EOI and the subsequent tendering process. Typically, calls for EOI will be advertised in newspapers and magazines in addition to being advertised on websites and other means of public communications.

Typically, a call for EOI will contain the following:

- a brief description of the work to be undertaken or the services required
- a deadline for submission of the EOI
- the objective and the scope of the potential contract
- expected procurement under the potential contract

When responding, interested companies and NGOs will be asked to provide the following non-exhaustive list of information:

- full name and address, country, telephone and fax numbers, e-mail address, website and contact person
- a brief presentation of the company/NGO including the following information:
  a) years in existence (when the company was established and number of years in operation)
  b) legal registration of the company or NGO in the country where the business is based
  c) size of the company (number of employees (men and women), assets, organisational structure, regional, local and global representation)
  d) policies and procedures for internal quality assurance
  e) financial statements (number of years is normally specified)
  f) list of recent references
  g) certificates of satisfactory completion of similar projects of comparable size during the last three to five years
  h) summary of ongoing and completed contracts for the past three years, indicating location of project, client and type of assets being deployed
  i) previous history in terms of ethical considerations (code of conduct), gender balance among staff, among other things

Based on the results from the call for EOIs, one or several RFPs will be sent out to the qualified companies.

PREQUALIFICATION

Prequalification is a formal method of assessing companies against predetermined criteria, and only suppliers who meet established criteria are invited to respond to an RFP. The process ensures that solicitation documents are only sent to companies with adequate capabilities and resources to carry out the tasks associated with the RFP. When using prequalification, enough time must be allowed for potential companies to prepare responsive and informative submissions. Compared to other market research tools available, prequalification is a formal process where supplier appraisal and background checks are done before an RFP is issued. Normally all companies that meet the prequalification criteria will be invited to tender. Prequalification does not necessarily lead to a contract.

Specifically, prequalification is used when:

- the equipment is technically complicated
- the services are highly specialised such as mine clearance services
- a high degree of risk is involved in the procurement
- the high costs of preparing detailed bids could discourage competition
- the importance of the goods or services for the project is high and late delivery or delivery of a wrong product or service would have costly implications

Prequalification can help reduce the risk of contract failure. In cases where there are many qualified and eligible suppliers, prequalifications may reduce procurement costs because it reduces the need for constant market research in order to identify suppliers. However, prequalification is a costly and complex exercise which requires specific skills and a good understanding of financial parameters. A careful assessment of the advantages and disadvantages of conducting a prequalification should be undertaken.

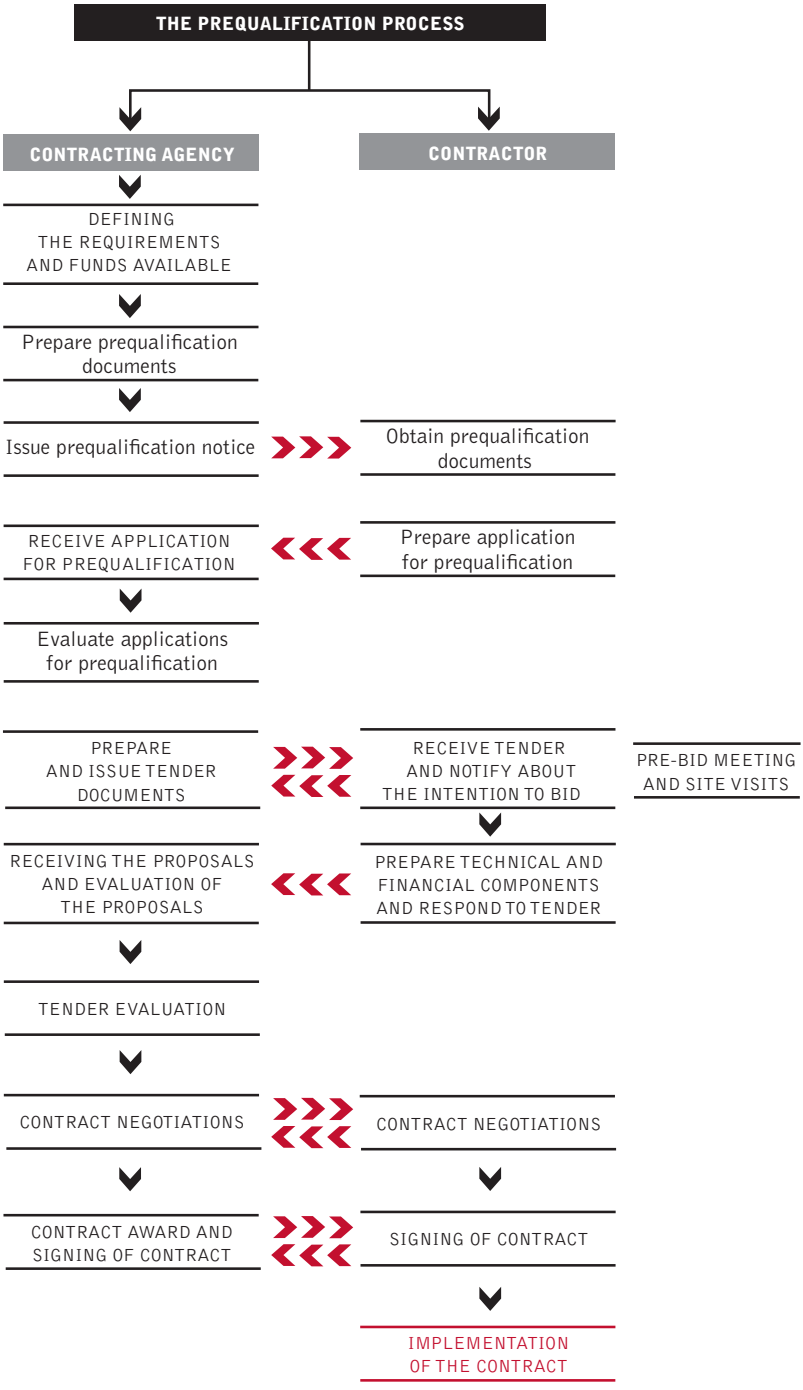
A prequalification process will usually include a prequalification notice and the subsequent issuing of the prequalification documents. In some cases, companies will be asked to pay for the prequalification documents.

The prequalification exercise should be repeated regularly for frequently procured products due to changing market conditions and new technology available.

Typically, the prequalification document[1] will include the following documents:

- instructions to applicants
- information on the opening and evaluation of the applications
- instructions on which information to provide in the applications
- the criteria for qualification
- a summary description, delivery and completion schedule, technical specifications and drawings describing the requirements
- various application forms

The prequalification process



The prequalification process | Description

To the left the typical prequalification process and the actions and interactions between the contracting agency and contractor are described.

Initially, the contracting agency together with the client will define what is required under the contract in terms of capacity and output. The expected cost is also compared to the funds available.

The prequalification documents are prepared; a prequalification notice is then issued through the relevant medias.

Interested contractors can then obtain the prequalification documents from the contracting agency, prepare an application for prequalification and submit the same to the contracting agency.

After receiving applications, the contracting agency will issue the tender to the qualified companies; the process that follows is the normal process for a tender.

ISSUANCE OF TENDERS

Once a tender document such as an RFP has been prepared, it is normally issued to a number of shortlisted companies and/or NGOs that are considered to be able to provide the services required. The tender documents normally consist of the following components:

- a cover letter inviting the bidder to participate in the tender and indicating the type of services required, the deadline for submission of proposals, how the proposal should be submitted (one-envelope or two-envelope system), the contracting agency's policies on advance payments, currency of bids, etc
- the SOW outlining the services to be provided
- division of responsibilities
- a list of company specific information to be provided
- a proposal submission form
- in some cases a model contract and general conditions

STATEMENT OF WORK

A Statement of Work (SOW) is a document that describes the tasks that must be performed under the contract. It outlines all of the expected deliverables and timelines for implementation of the services. Detailed requirements are usually specified in a SOW along with many other terms and conditions. The SOW forms a part of the contract and is usually attached as one of the annexes.

Below is an example of information that can be included in a SOW for demining.

A general introduction, which can include:

- a background to the conflict, including the use and types of landmines and explosive ordnance used in the country
- current mine action activities in the country and relevant UN Security Council resolutions and UN mandate (if applicable)
- an estimate of the number of women, girls, boys and men affected by mines and ERW and the respective impact on each group
- number of provinces, communities, regions contaminated by mines/ERW if known
- number of mine accidents and victims annually disaggregated by sex and age

- most common activities resulting in accidents, ie when travelling, collecting firewood, collecting water etc, if known
- impact on UN peacekeeping mission, where and if relevant
- impact on humanitarian assistance operations
- description of the national mine action authority, mine action centres (including regional offices) and other mine action organisations in the country if applicable

The background will also include a number of annexes such as:

- a map of the mine threat in the country in question
- a map detailing the locations of main offices and sub-offices for mine action established by the NMAA
- the country's status concerning the Anti-Personnel (AP) Mine Ban Convention and other relevant international legal obligations

An introduction to the task and the requirements under the task including:

- a description of the technical requirements under the contract
- main concept of operations
- clearance, survey and land release required in terms of number of square metres; distance of road required (for road clearance this part will also include the width to be cleared, marking and more)
- technical requirements including: (i) area or sector where the contractor will be required to operate; (ii) types of assets required under the contract, ie elements/teams for manual clearance, mechanical clearance including types of machines, mine detection dogs and/or EOD and organisational structure in country (this information should include the number and types of teams, equipment, vehicles, communications, medical support, support elements and the reporting lines for the staff); and (iii) priorities and proposed sequence of activities
- expected duration of the contract

BID BOND

In some cases, a contracting agency may require a bidder to submit a bid bond with its proposal or bid. A bid bond is a debt secured by a bidder for a complex contract; it provides a guarantee to the contracting agency that the bidder will take on the job if selected. The existence of a bid bond provides the owner with assurance that the bidder has the financial means to accept the job for the price quoted in the bid.

Bid bonds help the selection process of a job contract run smoothly. Without them, contracting agencies would have little in the way of assurance that the selected bidder would be able to properly complete the job without running into cash flow problems along the way. A sample Bid Bond is attached in Annex 9.

TECHNICAL AND FINANCIAL COMPONENTS OF A PROPOSAL

Technical component

The technical component of a proposal should be concisely presented and can be structured in the following order, including, but not necessarily limited to:

- description of the bidder and the bidder's qualifications
- requirements for services, including any assumptions made by the bidder
- proposed approach to undertake the task, methodology, timing and outputs
- proposed team structure

The bidder should include a detailed implementation plan and timeline in the technical proposal demonstrating how it will meet the deadlines for each phase of the SOW: preparations, mobilisation, operations, demobilisation and completion of the contract.

It is important for the bidder to explain in some detail all logistical arrangements for the contract, especially for the preparation and mobilisation phases. Failure to carry out thorough and realistic logistical planning has probably been the single biggest cause of contract failures in the past.

Since most contracting agencies require the submission of CVs for the bidder's senior staff in order to evaluate the personnel component of the technical proposal, the bidder should ensure that CVs for its staff are very detailed and demonstrate the qualities and experience required under the SOW. In addition, in the case of mine detection dog contracts, bidders should also submit the record of each dog in order to prove that their dog teams have experience carrying out the type of services required under the contract.

Financial component

The structure of the financial component of the contract will depend on whether the contract is to be a fixed price, cost-plus or a combination contract. Normally the financial component should contain an overall quotation in one currency, either in US dollars or in the currency of the country where the bidder is based. If the bidder is submitting the quotation in another currency, this will normally be converted into US dollars for reasons of ease of comparison. If none of the above is relevant, the contracting agency should specify the currency into which bid prices are to be converted in the bid documents. The exchange rates to be used should be the official selling rates published by an authoritative source. Bid documents should state and name the sources for the selling rates.

When converting the quotation into one single currency for the purpose of bid comparison three elements have to be considered as follows:

- the currency into which bid prices are to be converted
- the source of the exchange rates at which they are to be converted
- the date on which the rate prevails

The financial component should be accompanied by a cover letter signed by an authorised representative of the bidder which confirms the total price being proposed and the period of validity of the financial proposal. It is important to follow the instructions provided by the contracting agency in the tender documentation in terms of advance payments, requirements for bonds and guarantees and more.

The financial component should include staff costs for international and national staff, international and domestic travel, mine clearance and protective equipment, vehicles and fuel, accommodations, insurances, rent of office premises, materials, project management costs, profit and other related expenses. The financial component should be presented in the form of a detailed budget that itemises the cost for the services for each unit of the

contract for the duration of the contract. Under UN contracts, it is often required for the contractor to itemise the financial component under the phases of the contract, ie mobilisation phase, operational phase and demobilisation.

Itemising means the break-down of costs for each individual under the contract per month. This should include the salary, per diems and other allowances, insurance, any other staff costs (including provisions for parental leave), travel (domestic and international), price for each equipment item including vehicles (rent or purchase), fuel, rent, communications, electricity, expendables, specific protective outfits for women and men and any other charges related to the contract. Normally, the contractor will also be asked to provide a budget line indicating the profit. For an example of a sample financial component see Annex 9.

Budgeting

It is important that the contractor's budget and financial proposal are realistic and represent the actual cost in order to present a competitive proposal. A budget that is too low will constitute a problem for the contractor during the implementation of the contract, and a budget that is too high will result in failure during the competitive process. Local prices and staff costs must be properly researched before finalising the financial component of the proposal. A site visit represents an excellent opportunity to gather information on local prices. It is extremely important to take all costs into account and include budget items such as all costs related to staff, vehicles, fuel, maintenance, insurances, domestic and international travel, per diems, equipment, expendables, IT and communications equipment and charges, camping equipment, office rent and profit.

When importing goods, the cost for transporting them in country must be properly researched. It should take into account the cost for the transportation (to the country and within the country) and also the charges for insurances, customs clearances, importation and taxes. The contractor should also budget for having to store the equipment upon arrival in country if the equipment is not immediately picked up. All the above listed charges can significantly increase the budget. In many countries the cost for domestic transportation by road or air is significant.

In addition, when demining machines are imported there might be a requirement for accreditation tests. Typically, such costs are born by the contractor and can include running costs including fuel and maintenance, transportation costs and staff costs.

As with any budgeting, it is crucial to take all costs into account when preparing a budget for the financial component of a proposal. Many small costs that are not budgeted for may result in a lower profit for the contractor. For the contracting agency, these small costs can lead to reduced quality in performance if the contractor is trying to save money on operational activities. Below are a number of costs and charges that are typically forgotten when preparing budgets:

- bank charges for international wire transfers
- losses due to exchange rate fluctuations
- importation and customs clearance charges
- visa fees
- costs related to storage of imported goods in airports and harbours
- charges for domestic transportation of equipment and staff
- costs for tests of demining machines
- other costs that have not been properly researched in the budget preparations

Pre-bid meetings and site visits

A site visit (also referred to as pre-tender visit) is often required to provide the necessary inputs for proposals. The information gathered during the field visit will greatly assist in the preparations of the technical and financial components of the proposal. For the technical component, technical information that is specific to the country can be gathered to ensure that the approach and timelines are realistic. Examples include information regarding in-country infrastructure, mine threat and hazardous areas, soil and vegetation, local counterparts and subcontractors, local laws, national mine action standards, time estimates and procedures for importation and customs clearance, necessary permissions and authorisations and more.

Transportation of demining machines in country can be an unexpected additional cost if not properly researched during the site visit

Financial information that should be gathered during the field visit includes prices for items and consumables that can be locally purchased, the cost for customs clearance, transportation prices in country, salaries for local female and male staff, as well as local banking, internet and telephone charges. Such information is important when preparing the financial component in order to achieve an overall price that is realistic and competitive.

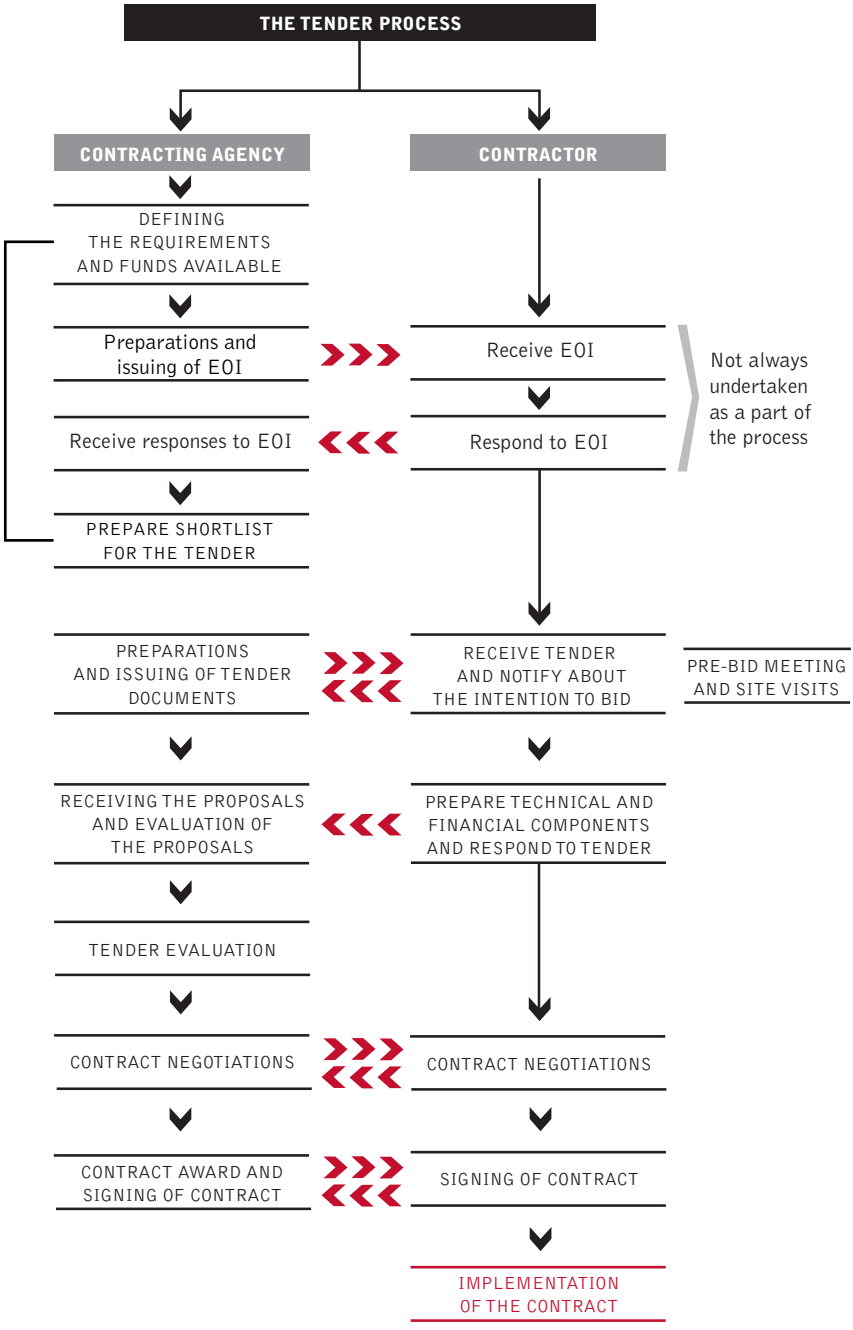
Transportation of demining machines in country can be an unexpected additional cost if not properly researched during the site visit

The contracting agency may assist and provide information during the field visit. In some cases, site visits are mandatory when preparing bids. In certain circumstances, the contracting agency may specify the number of staff the bidder is allowed to send on a site visit. The contracting agency may provide a representative to accompany the bidder on the visit. The cost for such site visits is normally borne by the bidder.

It is important to research the price of fuel and the cost associated with transportation of fuel

> Storage of arriving goods can be expensive
> Charges for customs clearance must be taken into account
> Poor road conditions can delay deployment under a contract

The tender process



The tender process | Description

To the left the typical tender process and the actions and interactions between the contracting agency and contractor are described.

Initially the contracting agency together with a client (if one exists and is involved in the process) will define what is required under the contract in terms of capacity and output. The expected cost is also compared to the funds available.

In some cases an Expression of Interest (EOI) will be prepared and submitted to potential contractors. The EOI will briefly outline the services required and contractors will have to respond with information regarding their company and whether they are willing and capable of participating in a tender.

Based on the responses from the EOI a shortlist of contractors for the tender will be prepared.

The tender document is normally prepared well in advance and the tender is then issued to the contractors on the shortlist. Once the tender has been issued the contractors normally have a limited period to respond to the contracting agency whether they will submit a bid or not.

Based on the tender document the contractor will prepare and submit a proposal that normally will consist of a technical and financial component.

The contracting agency will receive the proposals and carry out a tender evaluation.

In some cases the tender evaluation will be followed by contract negotiations with the winning contractor.

The contract is awarded to a contractor and signed by both parties. Copies of the contract are retained in original by both the contracting agency and the contractor.

After the signing of the contract the contract is implemented in adherence with the contract document.

BID/PROPOSAL OPENING

The opening of offers must be handled transparently in order to ensure that only valid offers are evaluated, and to ensure the fair and non-discriminatory treatment of suppliers. The purpose of the opening is to verify that all formalities indicated in the tender documents are met, such as timeliness of the receipt, their sealed condition, completeness of the documentation required, etc. Invalid offers shall be eliminated from further and more detailed consideration. Normally, offers should be opened immediately after the deadline for submission, or shortly after (a few hours).

Contracting agencies have different procedures for bid openings. In some cases, bidders or their representatives are invited to attend the bid opening, while in other cases, they are not invited. Offers should be opened by a bid opening panel consisting of authorised personnel designated by the contracting agency. There should be a minimum of two individuals; one individual should have no involvement in the subsequent stages of the procurement process, in order to ensure impartiality of the bid opening process.

At the bid opening, the panel should identify and make public any omissions or defects in the offers immediately detected, and all omissions and defects should be recorded in the bid opening report. In any event, a report of the proposal opening should always be completed. The report must be signed by each member of the panel, and kept on file for future reference. Sample bid evaluation forms can be found on the World Bank webpage[2]. A sample is also attached in Annex 9 to this guide.

The contracting agency should prepare a checklist in order to assist the proposal or bid opening. The checklist should be filled out for each proposal during the bid evaluation. If a bid has been withdrawn, it should normally be returned to the bidder but not until the authenticity of the withdrawal notice has been confirmed. Normally no bids should be rejected at the bid opening except those received after the deadline for receipt of bids. Such bids should be returned unopened to the bidder. A sample checklist is attached in Annex 8 to this guide.

TENDER EVALUATION

Evaluation is the process of assessing and comparing offers in order to determine which offer best complies with the evaluation criteria stated in the tender documents. The evaluation of offers must be conducted according to the evaluation criteria and method defined during the preparation of the tender documents and clearly established in these documents. The evaluation criteria cannot be modified during the evaluation process. A change of evaluation criteria during evaluation would jeopardise the transparency of the procurement process and conflict with the principles of fair and equal treatment of suppliers.

Tender evaluation

Evaluation criteria are normally divided into three categories: formal criteria, technical criteria and financial criteria.

Formal criteria

Offers are checked for their compliance with any formal criteria stated in the tender documents. Examples of formal criteria are:

- offers have been properly signed
- offers are accompanied by the required securities, if applicable
- supplier is eligible, eg duly registered if pre-registration is a requirement
- offers are accompanied by the required documentation
- offers are complete, etc (solicitation documents must clearly state whether partial bids for a given component or lot are accepted)

Offers not meeting the formal criteria are rejected. It is therefore important to carefully consider the formal criteria before issuing the tender documents; it is undesirable to conduct a tendering process in which no supplier or service provider can meet the formal criteria.

Technical criteria

Technical evaluation criteria are derived from the specifications, TOR or SOW. Depending on how clearly the requirements are defined, offers are evaluated on compliance/non-compliance or a weighted scoring (see evaluation methodologies below). When using the weighted scoring methodology, technical evaluation criteria are related to the approach and methodology that are proposed in order to achieve the expected results or solve the identified problem as described in the requirement definition (TOR or SOW). Technical criteria can also include requirement to the supplier such as:

- previous experience in similar fields and with the same type of requirements
- experience in the region
- available capacity and equipment to undertake the assignment
- qualification and experience of proposed personnel

Financial criteria

Price is an important evaluation criterion but the weight of the price depends on the chosen evaluation methodology. It is important to clearly state in the tender documents which price factors will be included in the price used for evaluation. Various factors such as freight cost, operational costs, incidental or start-up costs, as well as life cycle costs could be taken into consideration.

EVALUATION PROCESS

The evaluation process comprises the following steps:

- establishment of an evaluation team
- receipt of opening report
- technical evaluation
- for two-envelope evaluations: completion of technical evaluation report
- opening of financial offers of those technically compliant
- financial evaluation
- clarifications if required
- identification of the winning offer
- evaluation report
- contracts committee review, if applicable
- negotiation, if applicable

Evaluation of offers should be undertaken by an evaluation team normally consisting of two to five members, depending on the nature, complexity and value of the procurement activity. The purpose of the evaluation team is to verify that the bidders and their offers satisfy the requirements of the tender documents, and to evaluate the offers according to the predefined evaluation criteria.

The evaluation team members should provide objective and independent advice and knowledge on the specific subject matter. The evaluation team should be chaired by an experienced individual. The team members should understand that the deliberations of the evaluation committee are strictly confidential. Finally, team members must be instructed to immediately indicate if they have a potential conflict of interest with one of the bidders (eg owning shares in a supplier company, familiar relationship with suppliers, etc); in such cases they should ask to be replaced. In some contracting agencies, members of the evaluation team will be asked to sign some type of "no-conflict" affidavit. In particularly complex contracts, the contracting agency may decide to contract external subject matter experts to assist in the evaluation process as one of the team members.

EVALUATION METHODOLOGIES

Depending on the type of competitive bidding process followed, ie Request for Quotations, Request for Proposals or Invitations to Bid, different evaluation methodologies employing different criteria may be chosen.

The evaluation methodologies used for the methods of solicitation listed above are as follows:

- RFQ: 'lowest priced, most technically acceptable offer' methodology
- RFP: 'cumulative analysis' methodology
- ITB: 'lowest priced compliant offer' methodology

SCORING SYSTEMS | AN EXAMPLE[3]

In the case of mine action contracting, an RFP is normally used for the tendering process. The method requires a two-envelope procedure where bidders are requested to submit their technical and financial offers separately in two sealed envelopes. The evaluation of the technical offers is completed prior to the opening and evaluation of the financial offer.

The tender documents must state the number of points available for the technical proposal and the financial proposal respectively. The technical proposal is to be evaluated using predefined evaluation criteria. The evaluation criteria are to be defined in the solicitation documents together with information about the number of points assigned to each of these criteria.

The total number of points available for the technical proposal is normally higher than the total number of points available for the financial proposal. An example would be where the number of points given for the technical proposal is 100. These points are usually divided among three different technical criteria: reputation and experience of the firm; approach and methodology to the SOW or TOR; and the quality and experience of the firm's personnel.

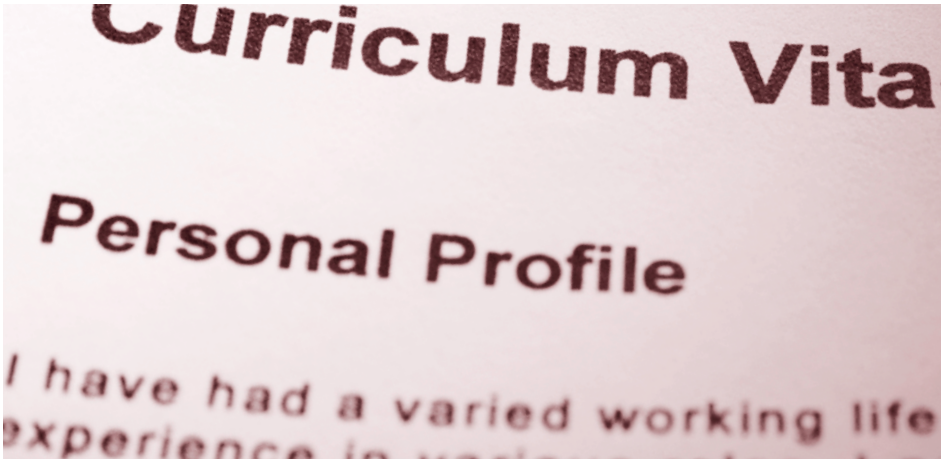
The financial proposal could then be given 25 points. The financial offer would be opened only for those offers where the technical evaluation scores above a stated threshold, usually above 75 percent. For those offers where the technical proposal does not reach the minimum specified score, the corresponding financial offer is not eligible for further consideration. The financial proposal should be returned to the supplier unopened, accompanied by a letter notifying the bidder that the technical proposal did not meet the minimum number of points required.

The maximum number of points assigned to the financial proposal is allocated to the lowest priced proposal. All other price proposals receive points in inverse proportion according to the following formula:

$$\text{points for the price component of a proposal being evaluated} = \frac{[\text{maximum number of points for the price component}] \times [\text{lowest price}]}{[\text{price of proposal being evaluated}]}$$

In the example given above, the total number of points for both the technical and financial components combined is 125.

The proposal with the highest score after adding the score of the technical proposal and the financial proposal is the proposal that is selected by the contracting agency.



Curriculum Vitae of suggested project staff

CONTRACTS COMMITTEE

In most public procurement organisations, there is some type of contracts or procurement review committee which has the authority to review the procurement process of goods, services and works and recommend award to the Chief Procurement Officer (CPO) of the organisation. Normally this committee will review submissions higher than a certain threshold. In some organisations the threshold is US$100,000 and in others it is higher.

The purpose of this review is to ensure that the procurement process was carried out in accordance with the organisation's procurement policies and procedures and was done fairly and transparently. No members of the review committee can participate in the review of a case in which they had some participation or have a vested interest in the outcome. The minutes of the committee's deliberations and its recommendations are then submitted to the CPO. The CPO has the authority to award proposed contracts and purchase orders.

NOTIFICATION AND FEEDBACK TO BIDDERS

Once a contract or purchase order has been awarded, it is standard procedure for the contracting agency to advise all bidders in writing of the outcome of the tendering process in a timely manner. The policy of providing or not providing feedback on proposals to bidders varies between different contracting agencies. If it is not outlined in the tender documents, bidders should request feedback on their offers in order to submit better proposals for future tenders.

ENDNOTES

1 An example on how to prepare a prequalification document can be found at: www.siteresources.worldbank.org/INTPROCUREMENT/Resources/harmpqw-ev1.doc#_Toc124570042

2 www.worldbank.org

3 This scoring example derives from UNOPS

THE CONTRACTING PROCESS AND LEGAL ISSUES

INTRODUCTION

Whilst it is possible to enter into a verbal contract to clear land mines, most international organisations and donors use a written document to evidence the agreed rights and responsibilities of the parties. The name given to the written document often varies and can include "contract", "agreement", "memorandum of agreement", "memorandum of understanding", "letter agreement" and "grant".

This chapter will refer to it as "the contract" and "contracting", though the principles are equally applicable irrespective of the description of the written document. It is the substance of what has been agreed between the parties that counts.

Contract negotiations

CONTRACT NEGOTIATIONS

Contract negotiations often take place after the contracting authority has provided a draft contract and scope of the work on which they have invited bids. Typically, negotiations will be undertaken only once a preferred contractor has been selected, with representatives of the contracting authority and the successful bidder.

The negotiations often focus on the prices of the various elements. Often, the contracting authority is unable to make substantive changes to the type of activities that are to be carried out under the contract. However, it can reduce the total number of teams deployed or request the contractor to eliminate some equipment or minor staff, as long as the overall scope of the work involved under the contract does not change.

CONTENT OF MINE ACTION CONTRACTS

The contract usually includes the following basic information and terms:

- full legal name of contracting authority
- full legal name of contractor
- the scope of the contractor's work (which is often included in a SOW)
- the standard of performance required of the contractor
- starting and completion dates for the contractor's work
- terms allowing for suspension of the work and force majeure
- the price for the work, whether a fixed lump sum or time and materials (and, in the case of the latter, whether there is a cap)
- payment schedule
- terms allocating risk
- insurance
- performance bonds or guarantees (if applicable)
- termination
- reporting requirements
- governing law
- dispute resolution mechanism (ie, court or arbitration)

In addition, in order to reinforce the important role of national mine action authorities, it would be beneficial for national mine action authorities to require that the clauses listed below are included in all mine action contracts:

- the contractor recognises the [name of the authority] as the national authority for mine action in country
- the contractor will carry out all demining work in compliance with the regulations of [name of authority]
- the contractor agrees that all demining assets will be subject to the [name of authority] accreditation and licensing and all demining work will be subject to quality assurance/control inspections by the [name of authority] quality assurance (QA) monitoring teams
- the contractor will cooperate with the [name of authority] on any accident investigation
- the contractor will submit all documentation to the [name of authority] as required
- the contractor will attend all technical working group meetings, quality assurance meetings and any other meetings as the [name of authority]

APPLICATION OF IMAS 07.20

In an effort to provide guidance on mine action contracting, an international mine action standard was developed - IMAS 07.20, "Guide for the Development and Management of Mine Action Contracts."

The standard outlines the basic principles and considerations that should be included in mine action contracts. Its objective is to promote a common and consistent approach to framing and managing contracts. IMAS 07.20 applies to all contractual agreements, regardless of the size or experience of the organisations carrying out the work, and even when the work is carried out under an arrangement such as a letter of agreement rather than a formal contract.

DRAFT CONTRACT AND CONTRACT CHECKLIST

In order to assist parties entering into mine action contracts, the Geneva International Centre for Humanitarian Demining (GICHD) has developed a standard contract and checklist form which is available at on the GICHD webpage.

This standard contract is not necessarily appropriate for every contract, and parties will have to tailor it to meet their own particular requirements. The standard contract, checklist and guidance provided in this chapter are designed to help parties better understand these issues and develop workable contracts to meet their own requirements, with the minimum of time and costs. Some of the specific mine action contracting issues are considered in more detail below:

1. Role of the national authority

The contract should require the contractor to exercise reasonable skill and care in performing the work. It may go further and specify precisely how the authority requires the contractor to carry out specific tasks, for instance in relation to the mine clearance methodology to be employed.

In addition, the contract should specifically include a reference to the International Mine Action Standards (IMAS) or the national standards of the country where the work is being carried out. If the mine-affected country does not have complete national standards, then IMAS should also be included in the contract. Since both IMAS and national standards are too voluminous to attach to the contract, they should be incorporated by a reference indicating the website where the most recent version can be found.

2. Equipment use and ownership

If any equipment is to be purchased under the contract, the contract should clarify ownership and responsibility for its maintenance during the life of the contract and upon termination. Under mine action contracts, there are many different options for ownership and management of demining equipment. The four main options are:

- using equipment that has previously been purchased by the contractor; throughout the work and upon completion of the project the contractor retains ownership of the equipment
- using equipment that has been purchased by the contractor with an option for the contracting agency to purchase it upon completion of the contract - at this point the contractor will either retain ownership of the equipment, or it will be sold to the contracting authority
- equipment is purchased by the contracting authority and loaned to the contractor as part of the contract; the contracting authority retains ownership of the equipment throughout
- the equipment is purchased by the contractor with funds provided under the contract, the contractor has custody of the equipment during the life of the contract and must maintain it; it is then handed over to the contracting agency at the end of the contract

The reason for the variety of approaches is that equipment can be expensive to purchase and to transport, and can therefore make up a high proportion of the costs of the project. A contractor may not be prepared (or able) to finance the acquisition of expensive equipment in a particular region for a project of limited duration. The "correct" approach therefore depends very much on the nature of the project and its particular equipment requirements.

Many contracting authorities prefer the contractor to provide the equipment (option 1 above). In this arrangement, the contractor will often charge a certain amount per month for each piece of equipment as a part of the contract. From a legal perspective, this approach is straightforward and the preferred approach. It should only be departed from where commercial considerations dictate that this is not possible.

3. Payment provisions

Payments under lump sum contracts are usually made when specific milestones have been achieved. In the case of a contract where a specific area is to be cleared, the payments should be made against achieving specific targets, ie clearing 25 per cent, then 50 per cent, then 75 per cent and finally 100 per cent of the area.

If there is not a specific area to be cleared, and the contractor is being tasked by a representative of the contracting agency or the national authority, the milestones can simply be when monthly operations are completed and monthly progress reports submitted. The payment instalments would then be divided into equal monthly or quarterly payments.

The contracting agency will also often make a payment upon signature of the contract to assist the contractor with the mobilisation phase. If the contractor needs a large advance payment prior to the commencement of services to cover mobilisation costs (such as airline tickets, purchase and shipment of equipment and office rental or residential accommodation), the contractor would normally have to do the following:

- justify the request for an advance payment in its financial proposal
- submit documentation in regard to its financial status, such as audited financial statements to ensure its solvency
- depending on the amount, the perceived risk profile of the contract, and the contracting authorities internal requirements, the contracting authority may also require an irrevocable bank guarantee for the advance

It is essential that all invoices for payment are verified, to ensure that all invoiced services have been satisfactorily performed in accordance with the terms and conditions of the contract. The monthly payments are normally released, once the monthly progress reports have been reviewed and accepted by the contracting agency, to ensure that the contractor is in compliance with the contract.

The contracting authorities may also require that a percentage of the total amount of the contract is retained until the end of the contract and paid against receipt and acceptance of the final technical report. This is normally in the region of ten per cent of the total contract value. If equipment has been loaned to the contractor or purchased by the contractor to become the property of the contracting agency upon completion of the contract, the final payment should be withheld until the equipment has been handed over to and inspected by the contracting agency.

4. Risk Management

It is important that the mine action contract clearly allocates the risks between the contracting parties, as the parties can then both obtain appropriate insurance and avoid becoming embroiled in expensive and time consuming litigation.

The instances of high value litigation in mine action contracting have, to date, been limited, but the case of Fantham v Ronco Consulting (April 2011), which was filed before the United States District Court for the District of Columbia, serves as a useful illustration and reminder of those risks:

Ronco was hired by the World Food Programme to clear landmines in Southern Sudan. Mr Fantham is a citizen of New Zealand, a resident of Australia and an employee of the UN. Following the clearance, Mr Fantham was undertaking quality assurance work when he stepped on a land mine triggering an explosion, instantly amputating his right foot and part of his right leg. Mr Fantham claimed US $10,000,000 for his personal injuries and Mrs Fantham claimed US $5,000,000 for the injury to their conjugal relationship including love, affection and companionship. The claim was promptly settled out of court for an undisclosed sum. It is beyond the scope of this chapter to explain how a New Zealand national, resident in Australia but working in South Sudan for an international organisation came to put a claim before the US Courts, but this case illustrates the size of the liabilities that exist in mine action.

While it is ultimately up to the parties of each contract to allocate risks as they consider appropriate, it is suggested that an appropriate risk-allocation mechanism in mine action contracts is as follows:

- the contractor accepts the risk of personal injury or death to any of the contractor's employees (and its subcontractor's employees)
- the contracting authority accepts the risk of personal injury or death to any of the contracting authority's employees (or its other contractor's employees)
- the contractor accepts the risk of loss or damage to its property (including its vehicles and the equipment hired for the project)
- the contracting authority accepts the risk of loss or damage to its property (including its vehicles)
- the contracting authority accepts the risk of personal injury to third parties after completion of the contractor's work and handover of the cleared area back to the contracting authority, except where the contractor has been negligent, or has acted in breach of contract.

5. Insurance

It is important that the contract requires the contractor to provide adequate medical, life and disability insurance for its personnel. Most of the personnel carrying out the actual demining operations will be national staff. If they are hurt, disabled or killed in a mine action incident there needs to be protection for the health and livelihood of the individual and his/her family.

It is also important that the contract requires the contractor to have adequate third party liability insurance in the event that the contractor causes damage to property or other parties during its demining operations.

Some contracting entities like the UN have added several clauses, in an attempt to further limit the UN's liability and exposure under the contract. Even though many of the liability issues are contained the UN's general conditions, they are also included in the main text of the contract, in order to emphasise them. A more elaborate discussion on insurance issues is provided in the chapter on Insurance Notes

6. Penalties/Liquidated Damages

In order to help ensure that the contractor complies with its technical proposal and meets its performance targets, many mine action contracts include liquidated damages provisions, ie, provisions requiring the contractor to pay a specified sum in the event of default under the contract.

The inclusion of liquidated damages provisions should be disclosed during the tender process; the contractor must be aware that liquidated damages will be used in the contract, so it can take this into consideration when developing its proposal. In the past, some contractors have underestimated the timeframes required for mobilisation and shipment of equipment, in order to win the contract, but were then unable to meet their own targets. The use of liquidated damages encourages contractors to be more realistic in their proposals, and pushes them to meet the targets ultimately agreed to in the contract.

7. Task implementation plan

Many mine action contracts do not specify the area(s) that need to be cleared, surveyed or marked in precise detail. In these cases, the contracting authority is paying the contractor to provide a certain number of qualified teams to work for a specific number of hours per week. The contract will normally indicate the targets for performance of a manual demining team, a mine detection dog team and a mechanical ground preparation system, but it is sometimes difficult to measure if a specific team is productive or not due to the terrain, contamination level, etc.

One way to try to help ensure productivity and value for money is for the contracting authority to require that the contractor develop a task implementation plan for each task or cluster of tasks. The task implementation plan would:

- show a sketch of the site
- designate the number and mix of assets that would be used
- estimate how long it would take to finish the task

The technical staff of the national authority would review these plans and approve them, based on their own reconnaissance and survey of the area(s). The contract would then stipulate liquidated damages for each day that the contractor fails to complete an implementation plan for a specific task, unless the national authority agrees that due to unforeseen circumstances, the duration should be revised.

By introducing this kind of system, the contractor would be encouraged to use the most efficient mix of assets to address a task and to complete it in the agreed upon time period, hopefully increasing overall productivity. It is essential for the successful implantation of such a contracting strategy that appropriately trained and experienced personnel from the contracting authority are actively engaged on site in order to gain the targets and monitor performance.

8. Reporting Requirements

The reporting requirements under a contract are normally outlined in the contract document itself and reporting will be on a weekly or monthly basis or a combination of the two. A final report will also be required and is often a prerequisite for the final payment. Reports from contractors will include, but are not limited to, the following:

- productivity for each demining capacity during the reporting period
- type of training given, if applicable
- shortage of staff and equipment
- problems encountered

Typically, the report is subject to approval before any payments are made. In cases where the contractor has failed to provide the services of staff and equipment as described in the contract, the contracting agency can reduce the instalments, based on what is outlined in the contract. The reduction will take into consideration the cost of the shortfalls, until such time as the contractor provides what is required under the contract.

9. Bank guarantees

A bank guarantee is a document from a lending institution, ensuring that the liabilities of a debtor will be met. In other words, if the debtor fails to settle a debt, the bank will cover it. As indicated above, bank guarantees are sometimes used by contracting authorities, to provide security against the default of the contractor where an advance payment has been made. They may also be required, if the contracting entity is not well established or resides in a jurisdiction where it is likely to be difficult to enforce a claim. Please find a Sample Bank Guarantee in Annex 9.

10. Performance bonds

A performance bond is a surety bond issued by an insurance company or a bank, to guarantee satisfactory completion of a project by a contractor.

For example, a contractor may require a performance bond to be issued in favour of a client for whom the contractor is constructing a building. If the contractor fails to construct the building according to the specifications outlined in the contract (most often due to the bankruptcy of the contractor), the client is guaranteed compensation for any monetary loss, up to the amount of the performance bond.

Performance bonds are commonly used in the construction and development of real property, and may also be requested in large contracts other than civil construction projects. They are generally issued as part of a *Performance and Payment Bond*, where it guarantees that the contractor will pay the obliged labour and material costs.

In the case of mine action, a contracting agency may require a performance bond from the contractor, if the financial proposal of the contractor is low, and there is a concern that the contractor may not be able to complete performance under the contract. The performance bond is usually for a certain percentage of the total contract price, for instance, 15 per cent. It can then be reduced or eliminated, once certain tasks have been completed. Please find a sample performance bond in Annex 9.

11. Suspension and force majeure

While the contract should include provision for when the work is to commence and be completed by, some flexibility is required. The contract should also have a provision which allows for suspension of the contract, in the event of force majeure. Force majeure is defined by the UN General Conditions as;

> *"acts of God such as a natural disaster (ie, flooding, earthquake, mudslides, etc) or a change in the security situation in country, invasion or war (whether declared or not) and other hostilities, revolution, rebellion, industrial disturbance, except where solely restricted to employees of the contractor, or other act, event or circumstance of a similar nature or force, arising from circumstances beyond the control of the parties or which the parties could not reasonably be expected to have taken into account at the time of the conclusion of the contract which, makes it difficult or impossible, wholly or in part for the contractor to carry out the activities under the contract."*

The contract should clearly state the responsibilities of both parties in the event of a force majeure. Normally the contractor is required to notify the contracting agency as soon as possible after the occurrence of an event constituting force majeure which renders the contractor unable, wholly or in part, to perform its obligations and meet its responsibilities under the contract. The contractor should also provide the contracting agency with proposed steps to be taken, including any reasonable alternative means for performance that are not prevented by force majeure.

The contracting agency should not unreasonably withhold its acceptance of the existence of force majeure. Once it is accepted, the contract should provide that the obligations and responsibilities of the contractor should be suspended, until such time the contractor can resume its activities. During such suspension, the contractor should be reimbursed by the contracting agency for documented reasonable costs of maintenance of any of the contractor's equipment, and for reasonable allowances for the contractor's personnel rendered idle by such suspension.

In the event the suspension lasts more than thirty days, the contract should also provide for the parties to agree upon a reasonable reduction of the costs incurred, with respect to equipment and personnel, and a reasonable apportionment of such costs. If the extent of the occurrence makes it impossible for the contractor to perform for an extended period of time, then the contracting agency will normally have the right to terminate the contract under the termination provisions of the contract.

Since mine action contracts are carried out in emergency and post-conflict situations, it is possible that circumstances could arise making it impossible for the contractor to perform as per the contract. It is therefore very important that the contract have a suspension clause, so that the responsibilities and financial obligations of the contractor and contracting agency are clearly described, should these types of circumstances arise.

12. Termination

Mine action contracts should include provision in regard to termination. The parties may agree in a contract that it can be terminated in a particular way, such as one party giving the other party written notice that the contract is terminated. The period for such notice is normally outlined in the contract. It is typically a minimum of 30 days notice, or in many instances it is 60 or 90 days.

One of the reasons for terminating a contract is a breach of contract. Examples of this, that may justify an early termination can include, but are not limited to, the following:

- if the contractor stops work without justification and the stoppage has not been accepted by the contracting authority
- if the contractor fails to deploy the capacity or elements of the capacity outlined in the contract
- if the contractor does not adhere to the SOW
- if the contracting authority or the contractor becomes bankrupt or goes into liquidation
- if the contracting authority fails to make payments as stipulated in the contract
- if the contractor or contracting authority has engaged in corrupt or fraudulent practices
- if the contractor cannot perform its obligations under the contract

Unless the termination is due to breach of contract by the contractor, the contracting authority is usually obligated to reimburse the contractor for reasonable costs and expenses that were properly incurred, in accordance with the contract up to the date that written notice of termination was received by the contractor.

Reasonable costs also include forward commitments that the contractor cannot cancel or mitigate, such as amounts owing under employment contracts and rental agreements, etc. The contractor is also entitled to receive funds for the orderly termination of the services, including return travel of the contractor's personnel and return shipment of their personal effects and of the contractor's equipment.

13. Governing law and dispute resolution mechanism

Contracts should describe which governing law will be applied. This is especially important for contracts between two parties that are registered and based in different countries and performing work in a country where the laws and procedures may be unfamiliar to them.

Contracts should also specify how any disputes are to be resolved. Dispute resolution can be through a selected national court system or arbitration, and in the case of the latter, national or international arbitration rules may be incorporated by reference.

In all contracts issued by the United Nations, dispute resolution is provided through arbitration, in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), which are in force at the time of the dispute.

When agreeing on the use of arbitration rules in the contract, the parties accept to be bound by the arbitration award rendered as the final adjudication of any such disputes, controversy or claim. UN contracts also provide for amicable settlement of disputes by conciliation in accordance with UNCITRAL Conciliation Rules.

Aside from UN contracts, arbitration is a neutral venue in a well-respected dispute resolution mechanism. Its advantage is that that arbitration awards are typically more enforceable in many jurisdictions than court awards. Also, where the parties are international authorities, it is often desirable to resolve disputes outside of the local courts where the project is being performed.

CONTRACT MANAGEMENT

INTRODUCTION

Contract management is the management of contracts made with customers, vendors, partners or employees. Contract management includes negotiating the terms and conditions of a contract, ensuring compliance with the terms and conditions, and documenting and agreeing on any changes that may arise during the contract's implementation or execution. It can be summarised as the process of systematically and efficiently managing contract creation, execution and analysis for the purpose of maximising financial and operational performance and minimising risk.

Contract management also includes: monitoring contract relationships and addressing related problems; incorporating necessary changes or modifications in the contract through formal amendments; ensuring both parties meet or exceed each other's expectations; and actively interacting with the contractor to achieve the contract's objectives.

DOCUMENT MANAGEMENT

When managing contracts, it is absolutely crucial to have an efficient administrative system in place with formalised procedures for filing of documents related to the contracting process.

Examples of documents that should be kept on file to maintain a document trail of the entire process are as follows.

Tendering process:

- documentation related to Expressions Of Interest (EOI) including copies of internet postings and advertisements
- responses to the request for EOI
- copies of approved contractor short lists
- tender documents issued by contracting agency
- questions asked by the bidders and responses sent out during the tendering process
- print-outs of general e-mail correspondence with the bidders
- notes from pre-bid meetings and site visits
- notes from telephone conversations with contractors
- technical specifications for equipment suggested by the contractor
- receipts from proposals received

- original technical and financial proposals received from the selected contractor (some contracting agencies may have procedures requiring them to keep all of the proposals received, but normally after the contract is signed with the selected contractor it is not necessary to keep the other proposals)
- technical evaluation and financial evaluation reports signed by all members of the evaluation panel
- copies of notifications to bidders
- notes from contract negotiations
- amendments to the financial proposal of the selected contractor following contract negotiations

Contract management process:

- an original signed contract with all annexes and attachments
- original signed contract amendments
- progress reports from the contractor
- copies of invoices
- proof of payments and bank transfers
- documentation demonstrating insurance for the contractor's staff, equipment and third party liability
- copies of contracts between the contractor and any subcontractor
- all other documentation pertaining to the contract

Additional documents for the field file:

- minutes of meetings with the contractor in country
- QA/QC reports
- documentation regarding any equipment on loan to the contractor
- implementation plans if applicable
- weekly progress reports

It is highly recommended that all of the documents listed above, as well as any other relevant tendering or contract documents, are filed by the contracting agency and the contractor in hard copy together with the project files. It is also good practice to file scanned copies of the documents and ensure that there are adequate back-up files.

It is important to have a system in place so that it is easy to organise and find contract documents when needed later. It is suggested that a simple excel list with paper copies organised in binders or hanging folders and/or a data base with all scanned documents is used for storing the filing information.

The filing system should be well known within the organisation so that it enables any staff member to file and to find any documentation with a minimum of effort even if the responsible staff member is not in the office.

The security of documents needs to also be considered. Since contract documents may contain information of a sensitive nature, they should be protected from unauthorised personnel and also from fire and water. A regular backup of electronic documentation should also be in place and stored in a fire-proof safe.

The retention period for documents needs to be decided conjointly by the archivist, the management and the project managers. As organisations grow and regulations increase, informal guidelines for keeping various types of documents give way to more formal records management practices. Depending on the country and the type of organisation, there may also be a legal obligation to have a records management system in place. Furthermore, common practices or laws that determine the retention period for different types of documents will vary from one country to the other. For audit and traceability reasons, procedures should be in place so that it is clear when, where and by whom documents have been created and stored, even years after the document was created and the contract was completed.

An example of a filing system

Documents will sometimes be passed to staff within the organisation for review, editing, signatures and more. For this purpose, a workflow procedure should be established, either in a manual or an electronic format. Such a system is time saving and provides traceability of documents that are being circulated.

COMMUNICATIONS

When managing contracts, it is important to understand the need for clear and transparent communications between the contractor and the contracting agency and vice versa. Any conversations and correspondence, by any means of communication, should be written up as a note to the file for future reference and recollection. A telephone conversation or meeting between two or several individuals can be recorded through a note or through more formal minutes that are signed by all participants following the conversation or meeting.

A well managed system for recording and logging meetings and conversations is absolutely essential in contract management. Obviously post, cable, telex, fax transmission, e-mail or personal delivery of document is preferred but sometimes other, less formal, ways of communicating can, and will, be used; this is why the need for documentation is important. When sending and receiving documents related to tenders and contracts, it is recommended that the sender requests a receipt in order to have this on file.

Any changes to the contract or SOW should be done through a written amendment to the contract. It is not sufficient to have an oral agreement for this purpose. It can lead to misunderstandings and disputes over the final product and cost if it is not formally included as an amendment to the contract.

INVOICES

An invoice or bill is a commercial document issued by a seller to the buyer, indicating the products, quantities and agreed prices for products or services the seller has provided. An invoice indicates how much the buyer must pay the seller, according to the payment terms of the contract.

Commonly, an invoice must include a specific reference to the duration of the time being billed. Generally speaking, each line of an invoice will refer to the actual hours, days, weeks, months etc being billed.

From the point of view of a seller, an invoice is a sales invoice. From the point of view of a buyer, an invoice is a purchase invoice. The document indicates the buyer and seller, but the term invoice indicates money is owed or owing. A typical invoice contains:

- the word "invoice"
- a reference number (in case of correspondence about the invoice)
- date of the invoice
- name and contact details of the contractor
- tax or company registration details of seller
- name and contact details of the buyer
- date that the product was sent or delivered or type of services that were provided
- purchase order number (or similar tracking numbers requested by the buyer to be mentioned on the invoice) or date of contract
- description of the product(s) or services
- unit price(s) of the product(s)
- total amount charged (optionally with breakdown of taxes, if relevant)
- payment terms (including method of payment, date of payment and details about charges for late payment)

Invoice

In mine action contracts for services, the invoice will normally be accompanied by a monthly report that will require review and acceptance before the invoice is paid.

CONTRACT AMENDMENTS AND EXTENSIONS

Any modifications to a contract in terms of, for example, staffing, tasks, equipment requirements, duration, change in the SOW, legal provisions or value of the contract, should result in a formal contract amendment. A contract extension can be done through different methods. One way is for there to be a provision in the initial contract giving an option for the extension. The modalities used by contracting agencies for contract extensions vary. In some cases contracts will not be extended. This can happen for a number of reasons such as: the contractor for some reason does not wish to extend the contract; the contracting agency is not satisfied with the performance of the contractor and wishes to re-tender the contract; or the contract has led to the completion of a specific task and there is no need for a contract extension.

CONTRACT MANAGEMENT | THE CONTRACTING AGENCY

In addition to the general contract management issues described above, there are specific issues that the contracting agency needs to focus on when managing contracts. A few examples of these issues are described below.

General

Mine action contracts can be managed by the national authority, the UN programme if appropriate, or the donor's bilateral assistance programme. The person designated by the contracting agency to carry out contract administration should do the following:

- read and understand the entire contract, especially with regard to the obligations of both the contractor and the contracting agency under the contract; carry out the contract obligations related to the field
- at the beginning of a contract, review the entire contract with the contractor's staff in country to ensure that everyone understands their responsibilities under the contract
- discuss any deviations from the statement of work with the contractor in country, and if not resolved, inform the contracting agency's headquarters
- carefully review the contractor's monthly progress reports and final technical report and ensure that these reports contain all of the information required in the statement of work; notify the contractor if additional information is required in any of the reports

- certify monthly progress reports and the final technical report for payment only when satisfied that the requirements of the statement of work have been met
- ensure that the national standards or IMAS are being followed and report any breaches to the national authority and the contracting agency

Quality assurance and monitoring of performance

Typically, contractors are required to present their internal procedures for QA and QC as a part of their proposals. In addition, external QA and QC will normally be undertaken by the contracting agency. This can be done either by an external QA contractor or by the contracting agency's own QA staff. QA visits can be undertaken at various frequencies or a QA inspector can be continuously attached to a team or site until the contract has been completed (see the example from the ITF in Annex 3 to this guide). In addition to quality assurance, sampling can be undertaken on completion of tasks to confirm that the land has been cleared according to the national requirements.

There are many examples of how QA can be carried out, but in general it has been shown that the use of contractors for QA and QC has been less successful than establishing one's own capacity. The reason could be that most commercial entities bidding on QA contracts also bid for commercial clearance contracts in competition with companies they now have to QA.

No matter how external QA and QC are carried out, it is critical that the SOW clearly states whether IMAS and/or NMAS will be applied and that the contractor clearly understands what is expected and has easy and regular access to the NMAA or the UN programme team to discuss QA/QC issues.

CONTRACT MANAGEMENT | THE CONTRACTOR

The contractor also needs to manage the contract through each phase in order to fulfil its obligations under the contract. A few specific examples of how the contractor needs to manage the contract are described below.

Mobilisation phase

During the mobilisation phase, the contractor has to deal with the administrative and logistical issues for the contract, such as the purchase and transport of necessary equipment and the arrangements for travel and visas of its personnel.

Export controls and End User Certificates

Most countries have established strict export control mechanisms. The foreign trade of commodities with strategic importance, mainly weapons, armaments and dual-use items, is subject to control. Dual-use items are goods, software and technology that may be used for both civil and military purposes. As an example, a demining machine may be used for civil /humanitarian as well as military purposes. The export control bodies of an exporting country ensure that commodities from its country cannot be exported to countries facing international or national sanctions or embargoes. These export controls can pose problems for a mine action contractor that needs to bring dual use equipment into a post conflict country which may be under sanctions or embargoes.

In these circumstances, the contractor will have to submit an export application to the export control authorities in order to obtain an export license. An export license is a document indicating that a government has granted a licensee the right to export specified goods to a specific country. The contractor will have to enclose an End User Certificate (EUC) with the export license application. An EUC is a document used in international sales of weapons, ammunition and so-called dual-use goods to certify that the buyer is the final recipient of the materials, and is not planning on transferring the materials to another party.

The export authorities provide standard templates for different goods and purposes. In general, the end user uses this template with the firm's letterhead and confirms the relevant details of the contract; ie who the end user is, what the product is, what the product will be used for (end-use), any order or contract numbers, the quantities and an undertaking not to re-export the product. A sample EUC is attached in Annex 9. The process of obtaining an export license may take several months depending on the goods to be delivered and the country's specific situation.

Import licenses

The contractor will also have to obtain an import license for its demining equipment from the recipient country. The import license permits the importer to bring in a specified quantity of certain goods during a specified period (usually one year). There is usually a fee for this type of license.

Customs clearance

In addition to obtaining export and import licenses, the contractor will also have to pay customs duties upon arrival of the equipment in country. The contractor will hire a local customs broker to carry out the formalities of clearing the equipment and paying any duties owed. Customs brokers are firms that are specialised in the clearance of goods through customs barriers for various importers and exporters (usually businesses). This involves the preparation of documents and/or electronic submissions and the calculation (and usually the payment on behalf of the client) of taxes, duties, excises and other charges. The customs broker will also facilitate communications between the importer/exporter and governmental authorities as necessary. As a mine action contractor, it is often worth while using a customs broker for clearance of equipment, especially during mobilisation when much equipment is arriving and few staff are available in country. The cost for this service should be included in the financial proposal.

A customs broker can advise a contactor regarding the precise paperwork requirements for a shipment of demining equipment. Knowing the requirements for the import of equipment can help the contractor avoid costly delays or seizure of the equipment. Customs brokers can be located at inland ports to clear shipments, but are usually located at major airports and harbours with international traffic. They can normally arrange in-country transportation of cleared equipment through local transport companies. Customs brokers are not government employees and should not be confused with governmental customs agents.

Staffing

The contractor will also have to hire the personnel required under the contract and make arrangements for their travel to the country where the work will be carried out. The senior staff would have already been identified since their CVs were included in the contractor's technical proposal. Other staff, especially local staff, would need to be recruited. The contractor should try to recruit the most experienced and qualified people for the different positions required under the contract, but it is also important for the contractor to promote diversity and gender equality when hiring. When issuing vacancy announcements, the contractor should be careful not to include unnecessary requirements that may tend to cause discrimination in hiring. Women should be encouraged to apply in order to achieve gender balance and ensure a diversity of profiles under the contract. Recommendations on recruitment from the UN Gender Guidelines for Mine Action Programmes include:

- make vacancy announcements for jobs accessible to both men and women
- ensure that vacancy announcements clearly identify aspects of the job that might influence women participants such as travel requirements or provisions for lodging or childcare
- ensure that there are equal opportunities for training of men and women
- make all possible arrangements to meet the needs of both women and men within the work environment
- implement affirmative action employment and training strategies for women with disabilities
- prioritise the recruitment of male and female mine survivors in mine action programmes

Contractors should also consider the best places to post vacancy announcements in order to attract more women applicants. These venues will vary depending on the country.

Visa requirements

In most cases, contractors need to obtain visas for their international staff to travel and work in other countries. A visa (from the Latin charta visa, lit. "paper that has been seen") is an indication that a person is authorised to enter the country which issued the visa, subject to permission of an immigration official at the time of actual entry. The authorisation may be a document, but most often it is a stamp placed in the applicant's passport. The country issuing the visa typically attaches various conditions to the visa, such as the time that the visa is valid, the period that the person may stay in the country, whether the visa is valid for more than one visit, if the applicant is allowed to work under the visa and more. The possession of a visa is not in itself a guarantee of entry into the country that issued it, and a visa can be revoked at any time.

Visa and visa application form

A visa does not generally give a person any rights beyond the right to enter a country and remain there for a limited period of time. Anything beyond those basic entitlements requires special permits, such as a residency permit or work permit. Since the visa process can be lengthy, this needs to be taken into consideration when deploying expert staff under a mine clearance contract so that activities are not hampered due to staff waiting for visas. The cost for obtaining visas is most often small, but should still be included when preparing the financial proposal. Visas can become costly when staff must travel to a third country in order to obtain the visa and when passports must be couriered to have visas issued.

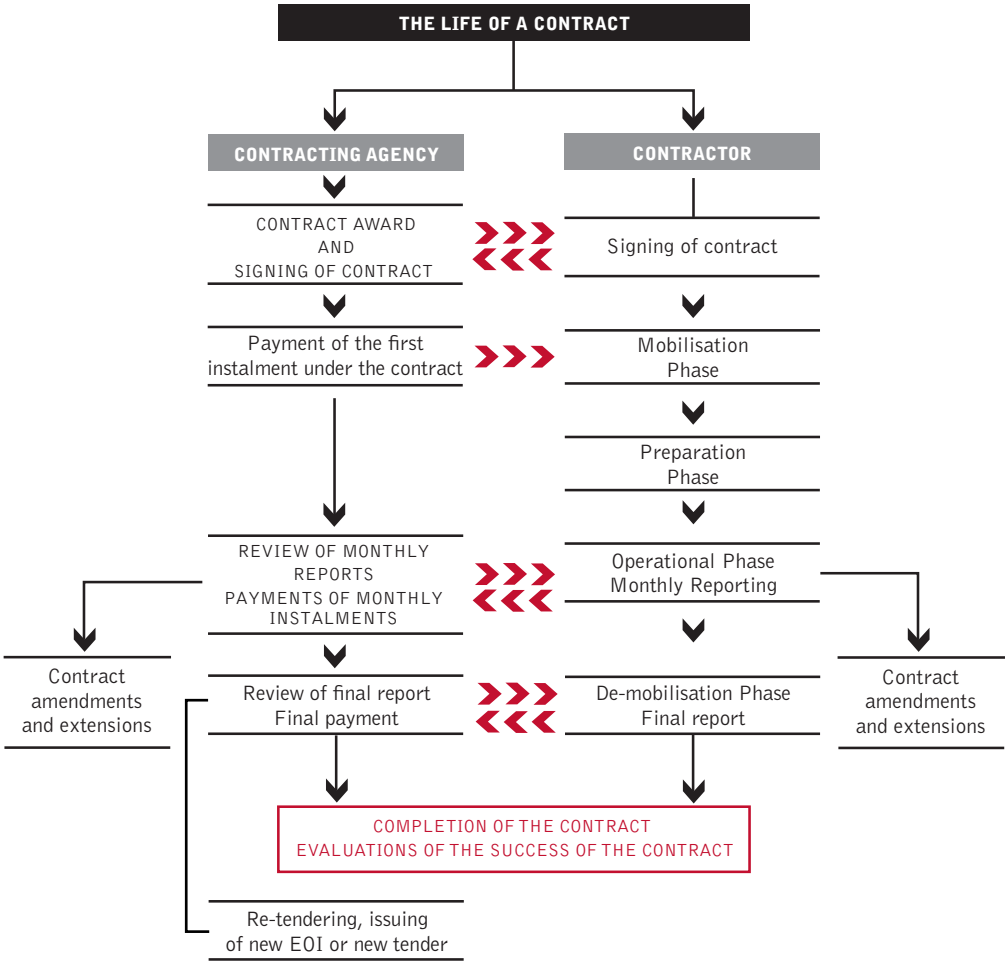
Mine detection dogs

In many cases, contractors need to transport mine detection dogs to the mine-affected country. It is important that the contractor investigates the rules and procedures of the recipient country with regard to the importation of dogs. There may be certain quarantine rules or documentation required showing that the dogs have had certain vaccines, etc. The contractor will need to research all of this in advance and prepare the necessary paperwork so that the dogs can be brought in country in a timely manner. In addition, the contractor needs to source local dog food or arrange for the importation of this food so that the dogs are well maintained during the life of the contract.

Internal quality assurance

As part of the contractor's responsibilities under the contract, it has to have a documented and effective internal quality assurance system in place. Although the contracting agency will be conducting external QA/QC of the contractor's work, it is essential that the contractor also carry out its own internal QA. The contractor's staff need to be fully versed in the internal QA procedures and there should be regular written reports on internal QA that are reviewed by the contractor's programme manager and headquarters staff. It is also important that there be regular meetings between the contractor and the contracting agency's representatives in the field to discuss QA issues and any conflicts that may arise.

The life of a contract



The life of a contract | Description

The contracting agency will receive the proposals and carry out a tender evaluation.

In some cases the tender evaluation will be followed by contract negotiations with the winning contractor.

The contract is awarded to a contractor and signed by both parties. Copies of the contract are retained in original by both the contracting agency and the contractor.

After the signing of the contract, the contract is implemented in adherence with the contract document. Contract amendments can be made during the duration of the contract in agreement between the contractor and the contracting agency.

Upon completion of the contract there is normally a demobilisation phase followed by a final report. Following the submission and approval of the final report a final payment is made and the success of the contract is evaluated.

Following the completion of the contract re-tendering can be done if the performance of the contractor was not satisfactory and it therefore was decided not to extend the ongoing contract.

PHASES OF A CONTRACT

The phases under a commercial mine clearance contract are normally structured as indicated below. Note that this is an example of a contract that requires importation and deployment from another country. Obviously the phases and the activities under each phase are different if the contract is issued to a contractor who is already present in the country where the contract will be implemented.

Phase 1 | mobilisation phase

This phase commences upon signature of the contract and includes all the preparatory activities and transport of the capacity and equipment to the country of operation (if the contract has been awarded to a contractor which is not local). Contractors are normally given a date when this phase is to be completed.

Phase 2 | preparation phase

This phase includes all preparations to become operational. This includes being accredited and carrying out all planning activities to develop a works programme for the operational phase to be approved by the contracting agency. This phase also includes training activities. The contractor will normally be given a date when this phase is to be completed. In addition, the contractor may be required to carry out the following during the phase:

- deploy an advance party followed by a main body
- meet with senior representatives of the contracting agency to review the SOW and the contract to ensure that both the contractor and the contracting agency are familiar and in agreement regarding the work to be carried out and the manner in which the services need to be provided
- amend the contractor's Standing Operating Procedures (SOP) to conform to NMAS if such are available
- complete all training of local and international personnel
- receive accreditation and undertake acceptance tests of equipment to become operational

- arrange for the reception of the mechanical systems and/or MDDs in country as well as the movement of equipment and personnel to the area of operations. These arrangements will normally include:
  (1) identification and establishment of suitable maintenance/repair facilities; the proposal should normally include an explanation how mechanical components will be maintained/repaired
  (2) recruitment and training of staff required by the contractor; a final date for this will normally be given by the contracting agency
  (3) preparation of a works programme through the identification of sites suitable for the deployment of the ground preparation teams

During the accreditation phase contractors might have to complete the accreditation of their clearance teams. This picture is from the accreditation of a BAC contractor in Lebanon.

Phase 3 | operational phase

During the operational phase, the contractor will be required to deploy operationally in accordance with the approved works plan. Failure to commence, or finish, with operational activities within the timeframes indicated in the contract will normally constitute a penalty.

Phase 4 | demobilisation phase

The contractor should plan time at the end of the contract for demobilisation. The period provided for demobilisation under the contract will vary but it is usually one to two weeks. Any activities that extend beyond this time period will normally be at the contractor's own expense. During this phase, the contractor must finalise all outstanding reports, including a final substantive report, and carry out a stock-take and handover of equipment to the contracting agency if this has been stipulated in the contract.

INSURANCE

INTRODUCTION

The purpose of this chapter is to provide a brief overview of just some of the numerous aspects of insurance relating to the contractual relationships and requirements of the mine action world.

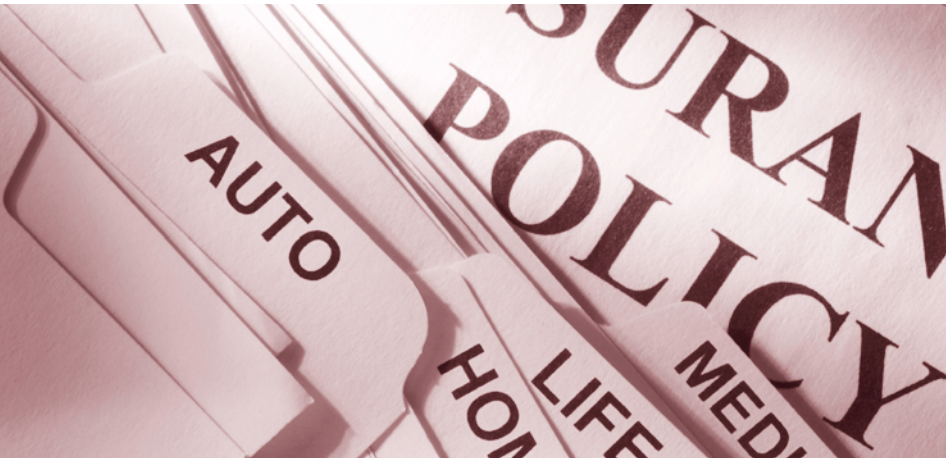
THE CONTRACT

In the most simplistic of terms, apart from the actual scope of work, there are three elements whose interests are fundamental to any contract:

- the contracting agency
- the contractor
- the 'rest of the community'

We should assume that the contracts under consideration will always be prepared by a contracting agency that is seeking specialist contractors to conduct demining or EOD work.

The primary aim of a contract will be to place the responsibility for the consequences of the activity with the organisation in control of the day to day events, and to protect the contracting agency from having to face any claims or financial losses which may arise out of such activities. To that end, in addition to imposing responsibilities on the contractor, the contract will normally incorporate minimum levels of insurance to be provided in support of such responsibilities.



Insurance documents

It must be understood that the limit of insurance requested within the terms of the contract will not necessarily be the limit of claim which could be made against the contractor and for which he may be responsible.

The contracting agency will draw up contract terms to reinforce those responsibilities and their accompanying liabilities. It will quite often incorporate terms which make the contractor accept more onerous and wide responsibilities than normal "legal liability" would demand.

The "liability" aspects of any contract are the most important sections for all parties to understand thoroughly. Over the years, the oil, energy and civil engineering sectors have developed armies of contract writers, negotiators and lawyers to create strong and well tried contract terms and conditions. All other organisations are now wary of the litigious world in which they live and aim to protect themselves. As a result of these changing times and the particular fears which surround EOD operations, we often find that sectors which may be less expert in establishing their aims and understanding are now imposing strongly worded contracts and sometimes indicating confusion in their own understanding of responsibilities and appropriate insurance requirements. It is in the resultant liability areas that the most contentious problems can arise.

Below are the principle aspects likely to be in a contract.

1) The contracting agency will aim to make the contractor responsible for all injuries or illnesses suffered by his employees and all the related costs in respect of treatment, support and movements no matter how they were caused.
   - Under this aspect, the contracting agency will establish a requirement for employers liability insurance applicable in countries or for nationalities where appropriate.
   - The contracting agency will also require personal accident coverage for all employees and personnel provided by the contractor plus adequate medical treatment and evacuation and repatriation coverage and management.
   - In some countries, "Workers Compensation Act" requirements may apply and need insuring locally; the cover may only make sense for local nationals but any such requirement needs to be clarified between contractor and principal.

2) The contracting agency will aim to deflect any responsibility for damage to the plant, machinery or any property owned by or under responsibility of the contractor. This may even include loss or damage actually caused by the actions of the contracting agency.

   > The insurers of such property must be made aware and waive subrogation rights if applicable.

3) The contracting agency may aim to make the contractor responsible for all loss or damage to the contracting agency's own property or injury caused to his personnel.

   > Any likely insurance coverage would only respond to "negligent acts"; contract terms should be negotiated accordingly.

4) The contracting agency will almost certainly aim to make the contractor responsible for any injury to third parties or damage to their property.

   > Under this aspect of the contract the principal is likely to stipulate third party liability coverage to specified limits of indemnity.

5) The contracting agency may incorporate many specific terms relating to this area of responsibility and insurance. For example, a common requirement will state that the contractor should: "hold harmless, defend and indemnify" the principal against all claims and ensure that insurers "waive rights of subrogation".

   > The "hold harmless" without the waiver can present major problems to the contracting agency. Similarly nothing other than a "mutual" hold harmless is very onerous for the contractor to consider and in some areas difficult to insure.

   > It is important to ensure that the responsibility is identified as relating to the contractor's specific scope of work and claims arising there from.

However, the area of contractual responsibility which holds the greatest likelihood for misunderstanding is "liability insurance".

LIABILITY INSURANCE

Liability insurance policy documents are seldom the same, even though they may have the same titles. Within each nation's insurance markets, policies may vary and will incorporate clauses, terms and endorsements which rule in or out vital elements of coverage. Clearly there will be even more differences in documents prepared by insurers in different countries.

Not only is a full understanding of coverage essential in terms of the adequacy of the protection provided but it is also necessary to ensure an even playing field for the tendering parties competing for a contract.

The subjects under this area of insurance are the most important from both the contracting agency and the contractor's point of view. They are also far too wide ranging to fully discuss in a few short paragraphs but the following few key points are worthy of note.

Liability losses or claims do not have a pre-determined "sum insured" as does property insurance. An insured machine has a known value which will be lost in the event of its damage or destruction, that amount will be the "sum insured".

Liability insurance has three basic elements:

- involvement of legal procedures
- proof of negligence by the insured organisation
- settlement of an award imposed by a court of law

The defence costs, expenses and the resultant settlement figure are unknown quantities and beyond the control of either the contracting agency or the contractor. That is why liability insurances do not have "sums insured" they have "indemnity limits".

"Indemnity limits" can vary, not only in chosen levels but whether, when chosen, they are "in the aggregate" or "any one occurrence/unlimited".

- Aggregate limits of indemnity provide the total amount claimable under the insurance whether from one or several claims. Any claim paid reduces the remaining cover in place during the policy period.
- Any one occurrence/unlimited (or words to that effect) means that the limit of indemnity can be repeatedly paid if more than one claim is made under the policy.

It is additionally vital to establish whether the policy wording states that the policy is written on a "claims made" or "losses occurring" basis.

- Claims made form of coverage will only pay claims which are made within the period of insurance. This is fine if a claims made insurance policy is purchased year after year for many years and a claim is made within an insured period. By their very nature, liability claims are often only made against an organisation long after the actual event took place which was the ultimate cause of the claim. This is particularly significant with regard to injury or illness claims.
- Losses occurring coverage ensures that any incident which may occur, but not necessarily produce a claim for a long time thereafter, will still be dealt with by the insurers of the insurance period in which the incident took place. This form of policy wording is particularly important for insurances which are placed for contract periods.

The potential for long periods of exposure to claims arising from events which occur during the contract work make the "losses occurring" wording the most appropriate and also reinforce the need for secure insurers to be demanded by both principal and contractor.

Many liability insurances exclude "war and terrorism" risks in very broad terms. As demining and EOD related operations relate to remnants of war and take place in areas susceptible to renewed conflict, such conditions could prove very significant in the event of a claim.

Liability policies tend to be very specific in terms of the "geographical limits" and "jurisdiction limits".

- Geographical limits relate to where in the world the activities of the insured organisation will be covered.
- Jurisdictional limits relate to the countries under whose laws and in whose courts the underwriters will defend and indemnify the insured.

These issues and particularly the country of origin of the insured organisation can restrict the ability of an insurer to provide the coverage required. The policy wordings presented for a contract must be appropriate to the location and contractual responsibilities.

Some countries will only accept domestic insurers and international companies may or may not be licensed in certain areas. This is a matter of some significance as a local insurer may be acceptable for some insurances but not appropriate or capable of underwriting all exposures.

The contracting agency imposing contractual requirements that demand appropriate liability cover should take into account the financial stability and location of the insurer. The contractor must also take this into account as they have contractual liabilities which will remain whether the insurance responds or not.

A significant disparity could occur in an international tendering process where strong insurance coverage may feature in one contractor's tender, but less reliable insurer's terms are used in another. This is an important element to be considered by the contracting agency as they may be exposed to an uninsured claim in the future.

It is wise for the contractor's basic liability exposures to be insured under a "combined liability" form of policy. The policy will provide indemnity for employer's liability for bodily injury or illness suffered by insured employees. The third party public liability section will cover injury or illness or property damage claims brought by any third parties.

The employers and third party liability insurance coverage must be designed to respond to the operations involved. Ideally, they should be placed within a combined liability insurance policy so there will be the same underwriting organisation for both aspects.

The essential features of such a policy are:

- liability coverage relies on negligence, which is defended and proven in courts of law
- it is fundamentally essential that adequate levels of indemnity are incorporated in the insurance policies and that the policies are written on a basis which will ensure cover remains available for incidents which actually occurred in the policy period but which do not manifest themselves as claims until sometime later
- the policy should respond to activities and resultant claims in the appropriate countries and likely jurisdictions (not necessarily the same)

- these insurances must match the contract terms; for example, insurers must agree such elements as hold harmless terms and waivers of subrogation and any other clauses which may take the contractor's responsibilities beyond common law liability
- if contractors are made responsible for all claims relating to specific property under the terms of a contract, eg plant machinery or the contracting agency's property, then specific "all risks insurance" may be required

This insurance relates to claims arising out of negligent acts incurred in the course of the actual work. It is unlikely to provide coverage for claims which occur after the contract work has been completed, the contractor has left and the site has been handed over.

EMPLOYER'S LIABILITY INSURANCE

This insurance will cover the insured organisation's legal liability for illness or injury suffered by the employee in the course of his or her work, which is attributable to negligence on the part of the employers.

The insurance will have an indemnity limit within its terms and conditions. This will be a maximum amount which will be paid for defence costs and expenses and any award which a court may make.

Any award or defence costs will only be triggered when legal action is taken against the insured organisation within an insured jurisdiction. The amount of the award will be decided by the court and will not necessarily consider the limit of the insurance policy as a limit to the award. The indemnity limit in any insurance arrangements must be adequate for foreseeable settlements.

This insurance tends to be more appropriate to internationals and countries with active and appropriate legislative systems.

It is essential for both the contracting agency and the contractor to be aware of the extent of the coverage provided. The reliability of the insurer is also of immense importance as this coverage can be claimed upon in the future. There must be confidence that the insurer will still be there.

THIRD PARTY PUBLIC LIABILITY INSURANCE

Any person not involved in the work but who may be injured as a result of such activities is a "third party". The contractor owes a duty of care to ensure that the community at large is safe and not likely to be harmed by the work he is conducting.

Third party public liability insurance provides indemnity for claims in respect of bodily injury or property damage suffered by third parties that arise out of the insured's negligence.

It will cover the defence costs of the insured organisation for claims which are made against it and pay any damages awarded by the courts, subject to the indemnity limit.

PROFESSIONAL INDEMNITY INSURANCE

The standard form of this coverage is designed to indemnify professional advisors, experts, consultants and the like for claims which may arise for financial loss suffered by their clients.

The form of coverage was designed for professions such as lawyers, accountants, architects and many others whose work results in some form of advice, design recommendation or study for which a fee is paid and upon which clients will proceed. The potential of a claim arises from errors or omissions in such "work". It is not a guarantee of contract work.

Professional indemnity insurance policies normally specifically exclude any claims arising out of "bodily injury or property damage". In general, they have far more restrictive terms and conditions and lower levels of indemnity than the liability insurance arrangements.

Invariably, when this coverage is placed it is done so on a "claims made" basis and with an "aggregate level of indemnity" as described above.

The arrangement of professional indemnity insurance is inappropriate for any short period of actual contract work. When it is appropriate, it should be placed on an annual basis and replaced annually for many years.

In addition to the above, the following non "liability" insurance requirements will also enter into contract presentations.

PERSONAL ACCIDENT INSURANCE

This insurance will provide a previously agreed sum in compensation for pre-determined injuries without, as employer's liability requires, any proof of negligence or litigation to decide upon its payment. This may well be the only insurance which can effectively provide any compensation for injury to some workers in certain parts of the world where employer's liability coverage would not yet be effective.

In all other circumstances it is an essential element for any employee who travels the world in the course of his or her work.

The cover is not simply an "accidental death" benefit, it is more appropriate to think of it as a "damaged life" benefit.

If a person becomes disabled, whatever the cause may be, the financial consequences can be immense. In realistic terms, the personal accident sum insured should be set at an amount appropriate to a person's earnings. Underwriters normally accept between seven to a very maximum of ten times the annual earnings of the insured individual without a special underwriting agreement. In some situations, underwriters may only be prepared to provide maximum limits at the lower end of those multiples.

Cover must fully cater for the hazards in the work involved and the geographical and political risks which may feature. Terrorism and war exclusions in the coverage should be removed.

The average standard travel insurance package is unlikely to cater for the requirements of EOD operations or apply in the countries in which they may be called upon to work.

MEDICAL AND REPATRIATION EXPENSES

International travellers will need to be covered for all costs incurred relating to treatment for illness or injury outside their normal country of domicile and the costs of repatriation or movement to another country for treatment if necessary.

Local nationals may have more restrictive coverage; eg occupational risk-only personal accident cover and medical expenses following injury only incurred at work.

The 24 hour support of a well tried and tested medical assistance organisation should feature with this insurance coverage. Those who manage the contract programme should all be aware of the steps to be taken and contact requirements to handle a situation rapidly.

EQUIPMENT, MACHINERY AND PLANT INSURANCE

The equipment and plant which is employed in EOD and mine clearance will vary from handheld detectors to road going vehicles and multi-tonne flail systems. This subject may comprise another element of the contract with the requirement to insure under reference to "the contractor's property".

Exposure to loss can result from conventional losses in the course of shipment around the world. The exposure can also be compounded by extensions of maritime law which can involve the owner of cargo in contributions to General Average or Salvage Charges.

Cargo policies may cease on arrival at a port or work site. Cover may then be transferred to a site based policy; this could have limitations relating to operational risks in mined areas and war or terrorism losses. Such divides in cover not only leave obvious gaps but can also be the source of contention between insurers when damage has been caused but the actual event cannot clearly be identified.

Vehicle insurance can also be an issue. Despite accepting contractual responsibility to insure, the country in which the work site is situated may not have vehicle insurance. Conversely, it may insist on local coverage where it exists, but there may be a very uncertain insurance capacity.

INSURANCE

With more and more mechanical systems being deployed, the insurance of machinery and plant in operation becomes an increasingly significant issue. Many policies fail to cover the use of such plant when operating in a known mined area.

Basically, the insurance relating to the "contractor's property" should aim to provide "all risks of physical loss or damage" coverage, or as near to that as possible, and embrace all items of property under one cover. However, the insurance actually provided is often split over several policies such as marine cargo, transit risks, storage risks, operational risks, road risks and political risks; each of those policies may be limited to specific named perils. This multiplicity of policies results in the potential of claims falling between policies and insurers. In addition, the resulting complexity creates increased administration and expense and slow response times for the contractor.

It is possible to insure all the contractor's plant, machinery, vehicles and equipment for extremely wide ranging exposure under one policy on an annual basis. This all embracing cover can include shipments (including General Average and Salvage costs) land transits, storage risks and operational risks. It can also include war and terrorism at sea and on land under one programme. This reduces the cost and exposure to uninsured losses and more easily complies with related contract terms.

As each contract may differ, it is always advisable for a contractor to ensure that their insurers are made aware of the scope, area, value and likely hazard level of work involved and agree as appropriate to the terms and conditions of contracts.

No insurance will be totally free from clauses, conditions and limitations. It is essential that the contractor and contracting agency are both aware of the extent of cover being sought and secured from the point of tender. It must then be understood and agreed which areas of the contractual exposures, whilst accepted, are not insured or where renegotiation of the contract is appropriate.

CONTRACTING AND LAND RELEASE

INTRODUCTION

The term "land release" describes the processes of efficient survey and clearance in mine action. It is often used in the context of improving approaches and decision-making during surveys and operational planning, to better target clearance resources at locations within a hazardous area, where mines actually exist. In many operations, too much land remains subject to "full clearance", when significant areas may be cancelled or released through less expensive and more rapid non-technical and technical survey methods.

The introduction of the three land release International Mine Action Standards (IMAS 08.20 Land Release, 08.21 Non-technical Survey & 08.22 Technical Survey) in July 2009 provide operators, national authorities and donors with an appropriate reference to help address liability concerns and promote best practice in mine action efficiency.

The challenge is how to capture the opportunity to cancel land by non-technical survey, and release land through technical survey, through contracting mechanisms. While contracting for land release through clearance has been done before, the same level of experience and knowledge is currently not employed to effectively contract for the cancellation and release of land through the use of less costly non technical and technical survey techniques.

The most common contracting model in mine action is where the contracting agency arranges contracts for specific clearance assets, and then presents the contractor with exact areas for clearance, through tasking. The contractor has no scope or incentive to change the areas presented for clearance and is only compensated for the capacity provided and the exact area cleared. This method of contracting is particularly effective where the characteristics of mined areas are understood and clearly defined.

In many instances, mined or ERW-contaminated areas are not well defined or understood; they are only loosely described, and roughly delineated as suspected hazardous areas (SHA). In such instances, the effective management of land release usually requires flexibility, as operations facilitate an appropriate balance between land cancelled and released through survey, as opposed to clearance. Any provision of flexibility has clear implications in contracting.

THE IMPORTANCE OF LAND RELEASE TO CONTRACTING IN MINE ACTION

Land release is the process of making every reasonable effort to identify an area containing a hazard, and remove all suspicion of mines/ERW through non-technical survey, technical survey and clearance. The land release process generally commences with non-technical survey, before progressing onto technical survey and then to clearance only when the actual mined area has been defined.

The application of the full land release process to mine action provides greater efficiency, as it focuses on better defining the actual mined areas through survey efforts, before clearance assets are employed. Areas that are found to not contain a hazard during the survey process are cancelled or released from suspicion. Releasing these areas through improved survey contributes to considerable cost savings, as opposed to conducting clearance over entire areas.

Efficiency gain is the main advantage of applying the full land release process to contracting in mine action. Structuring contracts to allow the release of land through survey and clearance, provides better value for money for the contracting agent, and also allows the contractor to use their assets to their full capacity without financial disadvantage.

CURRENT CONTRACTING MODELS AND THE USE OF THE LAND RELEASE PROCESS

Current contracting methods, which provide a target of square metres or specific area cleared, offer little incentive for the contractor to more efficiently use their assets. In many cases, this will result in hazard-free land being cleared, and the contracting agencies and donors funds being wasted. As the contractor is being paid to "clear square metres", some will do just that, without determining whether or not a hazard is actually present in the suspected area.

Contracting options for the release of suspected areas through survey can allow contractors to more effectively use their assets to ensure that actual clearance is conducted as much as possible, on areas that genuinely do contain hazards. The challenge is how to ensure that the contracting method offered allows the contractor (and the contracting agency) the flexibility and the incentive to use all land release options available.

When there is flexibility in the contractor's operations, there is also a need for solid mechanisms in contracts to be put in place, to ensure that quality is maintained. An example of one such mechanism is approved SOPs, which outline in detail the operator's methodology for non-technical survey, technical survey and clearance. The SOP should comply with international and national standards, with adequate space in the scope of the contract, to allow this methodology to be used by the contractor. The contracting body should also have a detailed SOP on the land release process, as a requirement in the SOW.

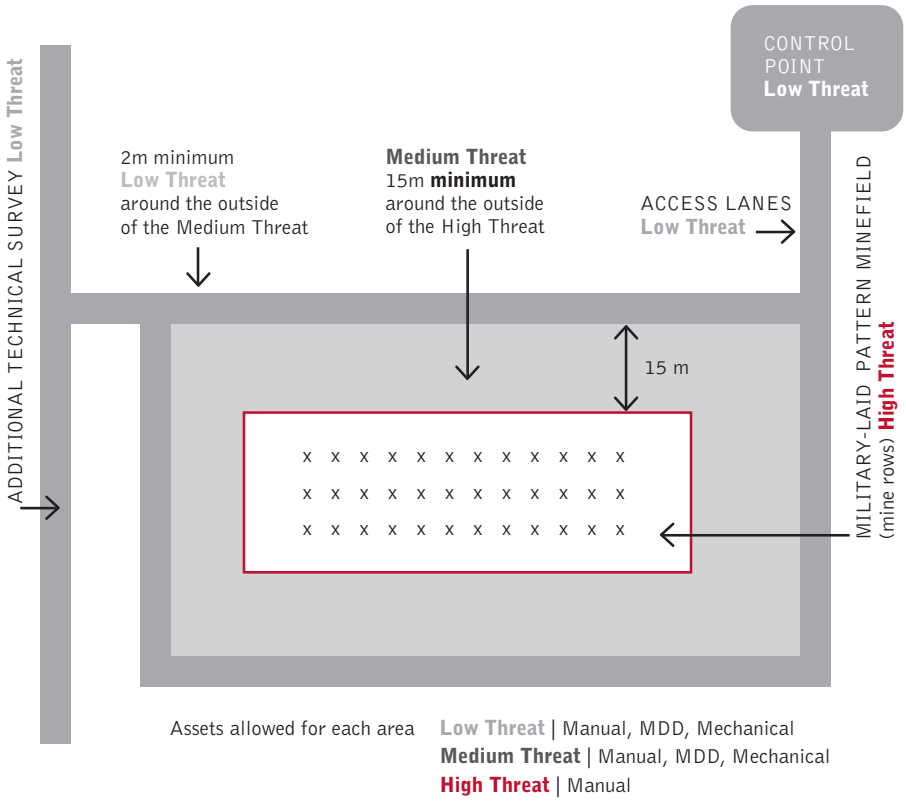
Another example of a contract is when the contractor provides a specific capability, and the contracting agent identifies areas for clearance. This alternative requires that the contracting agency has personnel on the ground capable of carrying out correct task assessments and tasking the contractor in such a way that non-technical methods are used as much as possible. Any type of contract, as stated above, would benefit from having a detailed agreed national standard and SOP on survey and clearance, to ensure that all parties are following the same minimum standard. Regardless of which mechanism is applied, a strong external quality assurance of the process will be needed.

RECOMMENDATIONS WHEN CONTRACTING FOR LAND RELEASE

When contracting for land release, the challenge is to ensure that the contract mechanisms give the contractor the option of cancelling and releasing land through survey, and that they are provided with incentive to do so where and when appropriate. Some basic principles are discussed below:

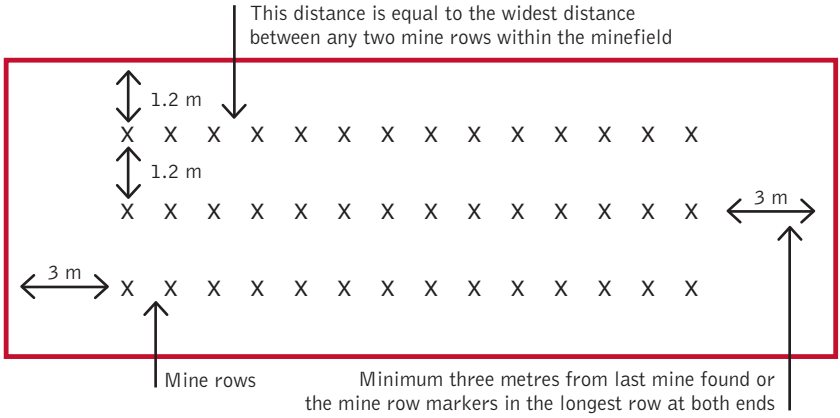
1) **Policy and standards**: all NMAAs should develop policy and standards relating to the full land release process. These minimum standards should be referred to in the contracting of any organisation to conduct survey and clearance. If no such standards exist, then the land release process should be given in detail in the statement of work in the contract.

Figure 1 | Example of a detailed land release methodology, as described in a national standard | Military-laid pattern minefield with no fence around the minefield



The above figure illustrates an example taken from the Lebanese national standards. The methodology is used on pattern minefields which were laid by the military, without fencing. It provides very precise guidance on the areas to be cleared or technically surveyed, and on which assets are to be used where. This standardised approach helps ensure that operations are conducted in a timely and cost-efficient manner, wherein assets are used effectively, and only mined areas are fully cleared.

Figure 2 | Enlargement of the High Threat Area for a Military-laid pattern minefield (mine rows) in Figure 1



2) **Criteria**: the basis for all land release is set criteria for the cancellation and release of land. The criteria must be developed and detailed in the NMAS of the country in question, and in the SOW section of the contract. Criteria should, for example, be developed for:

   a) When to cancel areas with no evidence of explosive hazard through non-technical survey (areas defined through previous surveys eg, a Land Mine Impact Survey (LIS))

   b) The creation of a new hazardous area through non-technical survey. What evidence and information is required?

   c) When to start and stop technical survey and clearance in a hazardous area

3) **SOP to include detailed chapters for non-technical survey, technical survey and clearance**: another vital requirement is that the contractor has a fully developed SOP on the land release process. This chapter should reflect the NMAS, and outline in detail:

   > how the contractor is to carry out survey and clearance activities

   > the requirements for the cancellation and release of land at all stages

   The methodology should also clearly describe the decision-making process, use of assets and the documentation requirements that will be applied to the process of survey and clearance. The contracting agency's methodology for scoring and proposal evaluation should take into consideration how land release aspects have been incorporated in bidders' technical proposals.

4) **SOW to allow for change in methodology**: The structure of the SOW is important, in that it needs to allow the contractor to change operations from survey to clearance in a flexible manner. A sample of contract documentation (SOW) reviewed for this study does not allow sufficient flexibility for contractors to independently shift between methods during operations.

   An example of a flexible SOW could be as follows: A contractor is contracted to conduct clearance of a suspected area. If the contractor has not located any evidence of explosive hazards after completing a large part of the task, there should be an option in the contract agreement of amending the original implementation plan. If considered appropriate, the contractor should have the option of switching from clearance to technical survey or to cancel the remaining part of the area. Such an amendment of the implementation plan should be done in close cooperation with the NMAA or their representative.

5) **Decentralised decision-making**: lprovide for decentralised decision-making in the contract with regard to land release so that the contractor has flexibility to use their assets in the most efficient way. The assets that are to be used must also be evaluated and accredited, to conduct land release through survey. The way that assets or a combination of assets may be used should be stipulated in detail in the contractor's SOP. Further guidance on this can be found in the IMAS land release series.

6) **Liability**: liability issues, as they relate to mine action, need to be concretely addressed in NMAS and contract documentation. The documentation should cover not only land release through clearance, but also land cancelled and released through survey.

   The NMAAs should have well-established standards for cancelling land through non-technical survey, and for handing over land released through technical survey and clearance. Such standards should define at what exact point the responsibility of the operator is handed over to the authority. The basis of dealing with liability and land release is that if a contractor fully complies with their approved land release concept outlined in their SOP, and the appropriate national standards, then the liability related to any incident should not fall on the contractor. Further guidance on liability can be found in IMAS 08.20.

7) **Incentives to releasing land through survey**: in order to allow the release of land through the most efficient method, the contract needs to be structured in order to provide the same incentive for cancelling and releasing land through survey as releasing land through clearance. If there is no incentive to cancel or release land through survey, then the

contractor will in most cases focus their operations on only releasing land through clearance. Financial incentives are normally not the ultimate solution to encourage contractors to improve survey and clearance concepts. Financial incentives are also hard or impossible to implement for most agencies, due to existing rules and regulations for procurement. A more realistic approach to provide incentives to contractors is to:

> clearly define procedures for survey and clearance in the NMAS

> provide SOW, which reflects the NMAS, and have clear requirements on the documentation of the operational decision-making process

The contracting agency's methodology for scoring and proposal evaluation should take into consideration how land release aspects have been incorporated in bidders' technical proposals.

8) **Quality assurance**: this is of vital importance in ensuring the effective cancellation and release of land. The contract should detail the internal quality assurance and quality control process. The requirement for external monitoring by the NMAA, as well as the review of all documentation and decision-making relating to the release of land, through survey and clearance, should also be included.

CONTRACTING OPTIONS FOR LAND RELEASE

The most suitable contract model for allowing land to be cancelled or released through survey, as well as clearance, will depend largely on the structure and capacity of the contracting agency, and the contract monitoring mechanisms available. Common contract models currently used in mine action can be generally split into two groups:

1) **Contracts that define exact geo-referenced areas for clearance**: these areas have generally come from some form of previous survey, or from direct requests and information from impacted communities or authorities. The contractor has no scope or incentive to change the areas presented for clearance through the use of survey techniques, and is compensated for the exact area cleared, or for the capacity provided, during the time of the clearance. In many cases, tasks are poorly researched or defined, and clearance activities include the targeting of sizeable hazard free areas.

2) **Contracts that specify a target in square metres cleared**: in this model, the area to be cleared may not be linked to a single task or predetermined set of tasks. Again with this model, the contractor is rewarded only for "clearing" square metres and there is no incentive to use survey to release land.

The challenge therefore is to provide a contract model that encourages the cancellation and release of land through survey and clearance, and provides incentives for both methods when appropriate.

Some possible alternative models that encourage the full land release process are discussed below:

a) Contractor tasked with undertaking both survey and clearance

A method currently in use in some countries is where an organisation is being contracted to conduct survey and clearance over a large area that has had no previous survey, or where the previous survey has been assessed as no longer valid. In this case, the contractor must prepare and present a methodology for approval by the contracting agency, of how they will conduct the survey, and also how they will assess which areas can be cancelled by non-technical survey and released by technical survey and clearance.

> Advantages

The required management effort of the contracting agency is limited, after the initial approval of the methodology. The monitoring of the process is largely managed through the NMAA's quality assurance process.

> Disadvantages

At the commencement of the contract, it is not known how much land can be cancelled and released through survey as opposed to clearance, and as such, it may be difficult for the contracting agency to compare the costs of different organisations that may tender for the contract. Here, the process of selecting a winning tender should focus on the effectiveness and validity of the land release methodology presented.

b) Specific capacity for a specific period of time

Another model that allows for land cancelled through non-technical survey and released through technical and clearance activities, is where the contractor is tasked and coordinated by a Mine Action Coordination Centre (MACC), which also represents the contracting agency on the ground. Under this model, the contractor provides a specific capacity for a specific period of time and the MACC provides management, planning and coordination.

> Advantages

The MACC controls the use of the assets and assesses each task. In most cases, an "implementation plan" for operations on each site is developed by the contractor. This implementation plan will then be assessed and approved by the MACC. Any proposed deviation from the implementation plan by the contractor is required to be reviewed

and approved by the MACC. This system allows land release decisions to be coordinated and approved by the MACC, ensuring quality and consistency in land release decisions.

> Disadvantages

The MACC has to be capable of providing a competent planning and management capacity for the contract, and this is not always possible. Also, it can be difficult for the contracting agency to measure efficiency in the field, making comparisons between organisations difficult. As such, the tender selection process will normally be based on the price of providing the capacity for the required time period, as opposed to how efficient the organisation is operationally.

c) Square metres cancelled and released through survey

If there is not a strong MACC or equivalent available to manage the contract in the field, a simple contract model that can be used is to provide a target in "square metres cleared" for the contractor. As discussed previously, this basic model often leads to large areas of hazard-free ground being "cleared", as there is no incentive for the contractor to cancel or release land through survey, even if they are capable of doing so.

One simple change to this model that allows land to be released through survey, and provides an equal incentive for it, is to split the contract target between "square metres released through survey" and "square metres released through clearance". Providing both options to the contractor provides them with both the opportunity and incentive to cancel or release land through survey, where appropriate. The contracted organisation will need to develop a land release methodology to be included in the contract and approved by the contracting agency.

> Advantages

The model is simple and places a limited management requirement on the contracting agency.

> Disadvantages

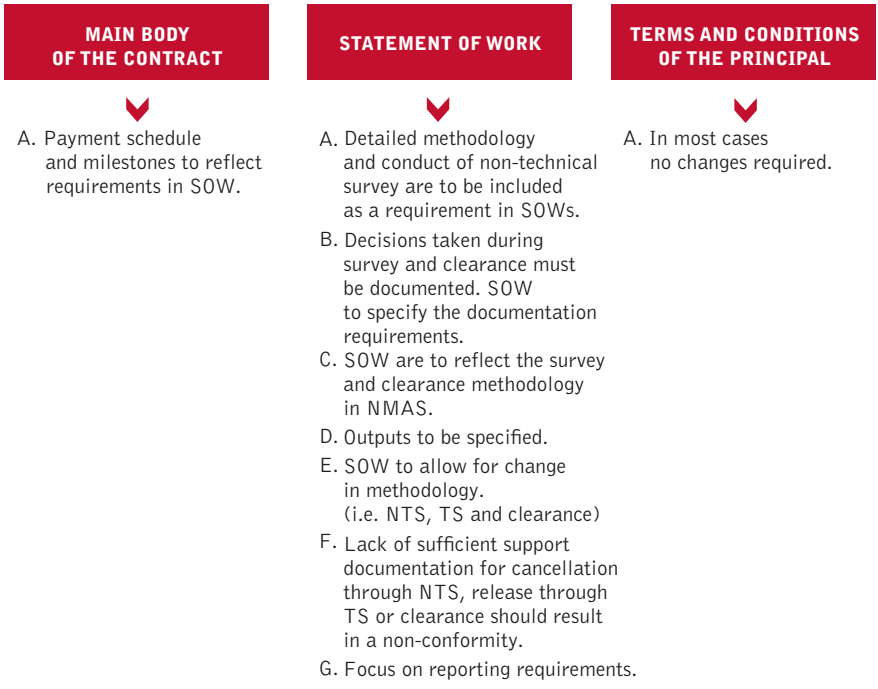
Striking the right balance between the two targets might be challenging. To overcome this, it may be necessary to provide scope for movement in both figures (eg, an allowable percentage of deviation from each target) and/or allow for a regular reassessment of the contract progress, which allows the targets to be reset, if necessary. Another disadvantage may be the challenge of maintaining the quality of the output. This challenge may result in the need for the contracting agency to contract an external quality assurance element, well practiced in the release of land through survey, to oversee the process.

LAND RELEASE DURING THE TENDERING PROCESS

The contracting agency should take land release into consideration as early on as in the tendering process, to ensure that the contractor will conduct survey and clearance in a cost-effective manner, in order to get maximum value for money. The following points should be taken into consideration:

- submission and evaluation of SOPs for non-technical survey, technical survey and clearance, included as a requirement during the tendering process
- a detailed methodology and conduct of non-technical survey are to be included as a requirement in the SOW
- the chapters related to land release in NMAS are to be reflected in the SOW, with minimum requirements clearly specified
- pre-accreditation of contractors is preferred, in order to have a shortlist of contracts who have previously implemented land release concepts successfully under contracts

Figure 3 | Example of how land release, through increased efficiency during the survey and clearance process, can be incorporated into the contract documentation



RECOMMENDATIONS

A summary of the recommendations for contracting for land release:

1) Any contract model must allow for land cancelled and released through survey, as well as clearance, and provide an incentive for both methods
2) Policy and national standards for land release should be developed by the National Mine Action Authority and referred to in any contract
3) SOPs on non-technical survey, technical survey and clearance, in accordance with national standards, should be developed by the contractor, and approved by the contracting agency
4) Submission and evaluation of SOPs for non-technical survey, technical survey and clearance should be included as a requirement during the tendering process
5) The statement of work needs to be flexible, in order to allow the contractor scope to change their method of operations
6) Wherever possible, decision-making should be de-centralised
7) Land release liability issues should be understood and referred to in the contract
8) Documentation requirements of the land release process must be described in the contract documents
9) A strong internal quality management system, together with a external quality assurance process must be in place to ensure the quality of all land released

CONSIDERING GENDER WHEN ISSUING MINE ACTION CONTRACTS

OVERVIEW

Gender considerations can encounter considerable resistance from mine action actors and especially from commercial demining companies. Some of the misconceptions are that:

- gender is a *soft* issue that is not relevant in a technical field such as demining
- gender only targets and benefits women
- the inclusion of gender considerations creates additional costs
- cultural or religious factors make it impossible to include women in demining activities
- the inclusion of women in demining teams reduces productivity

These arguments can be deconstructed as follows:

- Demining does not happen in a vacuum, but within a certain context and community where women, girls, boys and men are differently affected both by the mine contamination and by the demining activities. Therefore, gender considerations are not only relevant, but crucial if demining activities are to equally benefit women, girls, boys and men of the affected communities.
- The integration of a gender perspective in demining does not only benefit women, but all members of society. For instance, including women and children in the surveying activities can result in the identification of different mine-contaminated areas, due to their different knowledge, experience and mobility patterns, resulting in more complete and accurate information on mine contamination.
- It appears that cultural and religious obstacles are sometimes used as an excuse to justify the lack of gender analysis and involvement of women in demining in certain countries, especially by expatriates. However, empirical research demonstrates that there are successful experiences of women employed in demining activities in the same countries.
- The full involvement of women in demining could create some additional costs, such as those generated by the need to set up separate camps for female and male deminers, the provision of different protective outfits for women, or the coverage of maternity leave for female deminers, but these are often costs that only need to be covered once and should not be a reason to discriminate against women when recruiting. Donors/contracting agencies should clearly indicate their willingness to bear the possible additional costs.

> Data on productivity of entirely female or mixed teams is scattered and anecdotal. However, firsthand sources in some countries report that female demining teams are more accurate and meticulous, and that all female and mixed teams are more productive[1]. Although some argue that female deminers are less productive due to more frequent absences from work; to take care of sick relatives or due to difficulty dealing with heavy equipment; this anecdotal evidence contradicts these concerns. Contractors should not discriminate against women, but offer equal opportunities sustained by proper gender-sensitive human resource policies, as highlighted below. It is also worth mentioning that employing women in demining increases income levels for them and their families, and can improve their status within the community, ultimately leading to an improvement of life conditions for mine-affected communities.

Female deminers preparing for work in Somaliland

GENDER-SENSITIVE RECRUITMENT

A gender-sensitive and gender-equitable approach to recruitment contributes to the reduction of disadvantages for women, and helps to promote gender balance and a diversity of backgrounds. Diversity is a crucial issue in technology development and technical culture. Mixed teams can be an advantage by emphasising the different needs of the different target groups, namely women, girls, boys and men in the mine-affected communities. Diversity improves research activities, by incorporating people with different perspectives, ways of thinking and capabilities.

To ensure gender-sensitive recruitment, job titles and descriptions have to be open to both women and men. Discriminatory elements such as physical strength or military background as professional requirements should be avoided. Gender-sensitive human resource policies, such as flexible working arrangements and provisions for parental leave and childcare, could be highlighted to attract more female candidates. The vacancies should be advertised in a way to make sure that both women and men are reached. Transparent appraisal systems should be in place to ensure equal opportunities for staff development and promotion for everyone.

CODE OF CONDUCT

Contracting agencies should demand that the contractors adopt a code of conduct that regulates interaction within local communities, especially condemning any illegal or unethical activity (sexual, physical or psychological abuse, or exploitation, sexual harassment, trafficking, use of drugs/alcohol, corruption, use of child labour, environmental and property damage etc). This code of conduct should include disciplinary and financial measures to be applied in case of any breach of the code by its staff. The code of conduct should form a part of the contract.

RECOMMENDATIONS FOR THE DEVELOPMENT OF STATEMENTS OF WORKS

The contracting agency should present background information on the location and type of contamination collected from women, girls, boys and men in mine-affected areas. All data on mine-affected people, victims, survivors and the internally displaced must be disaggregated by sex and age. A gender and diversity-sensitive description of the problem, and an analysis of its impact should be included.

The most significant gender issues to be considered during contract implementation can be identified by asking the following questions:

- What are the differences in how women, girls, boys and men are involved in or affected by the context or work to be undertaken?
- In what ways are these differences important factors in the implementation of the contract?

The statement should describe how these concerns will be addressed in any competitive solicitations financed under the activity, such as RFPs, call for EOI or ITB.

When the SOW for a contract solicitation identifies gender issues or considerations as part of its requirements, the contracting agency should include an evaluation criterion to address this requirement[2].

The actual project (subset of the contract) should be managed and implemented in a gender-sensitive way throughout its life cycle.

In the requirements for reporting, the contracting agency should indicate that data must be presented in a sex and age-disaggregated way when appropriate, and that relevant gender issues should be highlighted.

THE BENEFITS OF INCLUDING GENDER CONSIDERATIONS IN CONTRACTS

There are several benefits of including a gender perspective in contracts, for both the contracting agency and the contractor.

For the contracting agency, it can be a way to demonstrate true commitment to equal opportunities and gender mainstreaming (Millennium Development Goal 3), and at the same time get better value for money. Evidence shows that diversity in staff composition and the inclusion of gender considerations improve the quality and impact of the activities, making interventions more efficient and effective, and therefore better value for money.

For a contractor, including gender considerations makes them score higher on technical evaluation criteria. This would happen both in the case where evaluation criteria include and give extra points to gender considerations, and when this is not the case, as the contractor will be showing a better understanding of the broader context of a task/project. As mentioned above, the quality, efficiency and effectiveness of activities would benefit leading to better results. This would in turn bring positive publicity, as the contractor is presented as a model for good practice, a better reputation and the possibility of being awarded more contracts.

USE OF GENDER-SENSITIVE LANGUAGE

While gender-sensitive language might at times seem heavy, it is important to unpack supposedly gender-neutral terms, such as *people*, *community*, *victims*, *staff* etc, into the different sex and age groups: *women*, *girls*, *boys* and *men or women* and *men*, as relevant. This helps us think about and tackle the different needs, interests and priorities that different groups might have. The use of male-based nouns as generics to indicate both women and men should also be avoided, for example, instead of using *manpower*, use *workforce*; instead of *workmen*, use *workers*, etc.[3] Possessive pronouns should either be neutral (its) or presented in an exhaustive manner (her/his).

This chapter was written by the Gender and Mine Action Programme.

ENDNOTES

1 Verbal reports from both commercial and non-commercial operators in Kosovo, Lao PDR, Lebanon, Mozambique and Cambodia affirm that women are as productive in demining operations as their male colleagues, and in some instances even more productive.

2 See USAID's "Evaluating Gender Issues in Competitive Negotiated solicitations" at www.usaid.gov/business/business_opportunities/cib/pdf/cib9913.pdf

3 www.unc.edu/depts/wcweb/handouts/gender.html: "There is a relationship between our language use and our social reality. If we "erase" women from language, that makes it easier to maintain gender inequality. [...] Words matter, and our language choices have consequences. If we believe that women and men deserve social equality, then we should think seriously about how to reflect that belief in our language use."

OBSERVATIONS ON CONTRACTING IN MINE ACTION

INTRODUCTION

The "contract", invitations to tender, requests for proposals, statements of work, bids and submissions, and the broader subject of contract management are an inextricably entangled combination of documents, policies, practices and attitudes. All of these come together to have a fundamental and often misunderstood effect upon the overall conduct of mine action operations. This chapter considers the underlying, and often less obvious, aspects of this subject, rather than the detail of contract clauses, applicable legislation and the other material which makes up the physical document called a contract.

THE INFLUENCE OF THE CONTRACT

The more the subject of contracts and contract management is considered, the more obvious the significance of it to mine action becomes; it needs more consideration, attention and inclusion in the training and development of mine action managers.

A contract has a life cycle: it is drafted, it is tendered, it is managed, there may be changes and it is shut down. The principles and observations set out below are relevant to all stages in the contract's life. It is important to recognise that the contract is not just the paper that comes out of the drafting process. The contract is all of the stages in the life cycle. The practical phase of the operation is still the "contract". It is not the case that the contract is signed and then the project starts; the project is a sub-set of the contract, rather than the other way round.

Mine action managers have mostly come through the field operational system and their focus, not unnaturally, is on the practical and political aspects of the operation. The contract is one part of their job. It sits in a filing cabinet and may be referred to from time to time, but it is in essence just a piece of paperwork that has to be dealt with in order to get on with the important bit: the clearance or other mine action work.

The difficulty with this approach is that it allows the contract to influence the project without active management, for good or bad. Everyone involved with the project needs to understand the fact that this influence exists and it needs to be harnessed and directed to help achieve the project's aims. In the absence of such awareness and active management, the contract can be a trouble maker; it is hidden away, influencing the attitudes of the parties to the work, creating pre-conceptions and encouraging assumptions.

The contract casts a powerful spell on its associated project. Those drafting contract related paperwork need to be aware of the implications of what they write. Those tasked with managing the contract need to be aware of the extent to which they can, or cannot, take control of that influence. In either case, if individuals are not aware of this side of the contract management process, then the spell will work in whatever way circumstances and human nature allow. Like any natural force at work, it will take the line of least resistance. Where human beings are concerned, that is rarely a path towards better things, but rather will tend towards areas where the fears and worries of individuals reside.

MANAGING RELATIONSHIPS

It is often said that a contract defines the relationship between parties in the way that it specifies the goods or services that one party will provide and the payment that the other will make when various conditions are satisfied. This is true, but the contract has a broader effect in defining, establishing and maintaining the relationship between the parties. It is closer to our understanding of a relationship between individual people. It is something more emotional that depends on the style and manner of the written material, as well as fundamental choices about the contracting route to use. It is not just the narrow detail of budgets and schedules.

Effective contracts and successful contract management typically depend upon:

- an open and honest approach
- mutual trust and respect for the capabilities of the other party
- a desire on both sides to work together for the benefit of each other and the success of the project
- a mutual understanding of the culture and objectives of each organisation
- assertiveness rather that aggression when it is necessary
- enthusiasm and attention to detail
- understanding what can and cannot be open to compromise
- effective interpersonal skills
- a “no surprises” culture
- involvement of, and access to, decision makers in each organisation
- a clear process for resolving difficulties

Few, if any, of these features will be openly stated in a contract, yet they can have just as much significance for the successful delivery of the project as any definition of goods and services. It is also true that few, if any, of these features will be fully and effectively evident in the conduct of typical mine action operations. Managers almost always embrace these principles as the way they would choose to operate, yet it rarely seems to work out that way.

OPENNESS, HONESTY AND TRUST

The reality is that managers often find it hard to be as open and honest as they would like. Organisations are fundamentally tribal entities encouraging distrust of outsiders and outside organisations. A good contract is a tool to help manage the more unhelpful aspects of human nature. A poor contract simply reflects those unhelpful aspects. The best contracting organisations are typically, but not exclusively, found in the larger commercial companies. They have experience of making contracts work by encouraging and enhancing positive human traits and they have managers who have been trained in contract management over many years and in major operations. The best of these organisations exhibit a readiness to be open with their contractors; flagging up potential problems early, agreeing on appropriate responses and treating the contractor as a reliable, professional service provider.

In contrast, some of the larger institutions and organisations in mine action exhibit a culture of defensive management. They have managers with little practical experience of contract management and without the confidence needed to work as mutually respecting partners. Under such circumstances a corrosive atmosphere begins to surround the day to day business of project management. Contractors fear too much liability and client managers look for ways to ensure that any failure can be blamed upon the contractor.

To illustrate how unusual this attitude is, compare the situation with another form of services contracting; that of hiring a lawyer or accountant. The lawyer is an adviser and you, as the client, are paying the bills. The relationship is founded upon the fact that the lawyer knows his or her job to a high standard and you are seeking their advice to help you achieve your aims or to deal with a problem.

It is rare to find such an attitude of respect in mine action. Adopting a position of relative equality and mutual respect requires maturity, confidence and knowledge that professional standards are consistently high across the industry. If you hire a qualified lawyer, you know that they must have passed some difficult exams and worked through a formalised professional development process.

Mine action lacks such a structured system. There is a rarely stated, but underlying assumption, that not all clearance organisations do actually meet basic standards and that when some standards are not reached, the industry finds excuses for the failure, rather than taking action. Irrespective of whether this is true or false, the effect is to create a climate of uncertainty. Client managers often do not have the experience to be confident in their roles. They exhibit an ill-defined suspicion about the practices and standards of many service providers. Conversely, contractors often have little respect for the managers they are dealing with.

The net effect is to create a set of circumstances where it is difficult to be as open, honest and trusting as we would all like. The trouble is that in the absence of such trust, it is even more difficult to apply any of the other desirable positive features of a contract management system.

WORKING AS A TEAM

The contract will work well when the contracting agency and contractor are working together towards common objectives. For that to happen there must be clear definition of the objectives and the two parties must see that there is reward for pursuing and achieving those objectives. It is worth considering how many major mine action projects do actually include clear objectives in their contract paperwork. Management advisers often talk about SMART (Specific, Measurable, Achievable, Relevant and Time bound) objectives; ones which everyone can understand and which lend themselves to active management, with monitoring of progress along the way.

Often the objective of a mine action contract is to provide specified resources for a specified period. The tasking of those resources will be determined later as part of a broader project management process. This is not an unreasonable approach towards the sourcing of people and equipment capable of carrying out mine action operations. Typically, the narrow time and material objectives are well defined, but if the broader intentions of the programme are not so clear, the relationship between the parties may suffer.

Under these circumstances, other major issues in contracting start to take on greater significance. The first of these is the balance between responsibility and authority. If someone is to be responsible for something, then they need to be given the necessary authority to carry out the activities associated with discharging that responsibility. You cannot give someone responsibility for doing something and then either fail to equip them properly for the task or choose to micro-manage them yourself. This is a difficult balance to achieve, especially in organisations which are strongly risk averse (in management terms). It is a balance that is often poorly managed in mine action.

Closely related is the subject of risk and reward. If the contracting agency wants the contractor to take some risks (normally financial ones), then the contractor will seek a reward, or at least a mechanism to manage that risk. This is typically done through a directly increased price or through increased costs resulting from the purchase of appropriate insurance. What is not reasonable is to encourage the contractor to take extra responsibility, and with it implied risk, but then deny them either the management freedom to respond to unfolding circumstances or the pricing mechanism that will reward them if they manage the risk well. It is human nature to object when the risk does not materialise yet the risk taker receives the reward, but that is the nature of the risk allocation process; understanding and accepting such a balance is fundamental to the way in which the contract is drafted and managed. The time and effort which big industry and government expend on this subject is indicative of its importance and difficulty. In most cases, the mine action industry is interested in the principles associated with risk and reward allocation and sharing, but does not have access to the skills and knowledge (both as clients and contractors) necessary to make it work.

Consideration of risk and reward issues naturally leads to consideration of contract penalty clauses, effective in the event of some failure on the part of the contractor. The overall balance of these features of the contract (responsibility and authority; risk and reward and penalisation) is important in defining the management parameters for the contractor when bidding for and then managing the project. But this balance also has an underlying influence on the contract: the subtle direction of the two parties towards their respective roles, the way in which the attitude of the client to the contractor is reflected in the text, the extent to which openness and honesty are encouraged and the level of trust which the two parties are prepared to offer to each other.

All these factors will help determine not just the shape and form of the operation, but also the manner in which the individual actors go about their daily business.

UNDERSTANDING, COMPROMISE AND DECISION-MAKING

However well written the contract, and however competent and sensible the various managers are, there will inevitably be problems. A British Prime Minister was once asked what he expected the greatest challenges to be during his premiership. "Events" he replied. The same holds true for any contract and project. Things will happen and managers will need to respond. When they do so, they will need to understand the implications of the situation for each other and be able to make compromises so that decisions can be taken to keep the project on track.

Commercial contract managers talk about a "no surprises" culture, one where potential problems are identified early and are brought to the attention of the other party. No one likes to find that they are suddenly presented with a major problem which has been brewing, out of sight, for a long period.

Creating a no surprises culture requires openness of the sort that has already been discussed. It requires the contractor to know that they will not be penalised for being open and honest. If they do fear such a situation, then they are more likely to keep things under wraps, hoping that they can find a solution without the client noticing. Mine action organisations do not have a very good track record in resolving such problems efficiently.

The negative attitudes embodied in organisational cultures are reflected in the way contracts and statements of work are written and will reinforce and perpetuate exactly those negative cultural aspects and features into future contracts and projects. Theoretically, contracts should also embody the more positive aspects of an organisation's culture, but in practice, negatives tend to be noticed and positives taken for granted. The contract is potentially a very powerful tool for managing inter- and intra-organisational cultural matters. It can be a powerful regenerative influence, embedding unhelpful attitudes into project management activities.

PERSONAL FACTORS

To add to the difficulties created by the way the contract is written and the effects of organisational cultures, all relationships, whether personal or corporate, are driven by the way in which people interact. The subject of inter-personal relationships is of universal interest and yet people continuously fail to be very good at them. The relationships created by contracts are no different.

Managing a relationship depends upon all the normal factors which determine whether individuals are good at relationships or not. Perhaps the most significant factor is that of the individual's attitude towards confrontation. Some people fear it while others revel in it. What is clear is that when one party to a contract wishes to raise a potentially difficult issue, it will be much easier to do so if both of the individuals concerned are able to treat the matter relatively unemotionally. Where emotions heat up and where individuals take any comment as a personal criticism, management of the low level events surrounding a contract will take on an unjustified level of significance. This will hamper not only the immediate resolution, but also any response to more serious issues as they arise.

TIMELINES, SCHEDULES AND CHOICES

The process of drafting and letting any contract, followed by the time to mobilise and complete operational activity, will require an appropriate amount of time. Mine action is a serious business and the consequences of poor contract drafting, letting and managing can be inefficiency and delay, but may also have more direct human impact if land is not made available or accidents occurs.

On that basis, it is surprising how quickly some contracting processes take place, especially where mobilisation is concerned. The details of the contract and its associated statement of work steer the contracting agency directly towards a certain sort of provider and will determine the extent to which it is possible to choose between rival bidders. In most selection processes in other sectors, the chooser wishes to highlight the differences between candidates to help establish which is the most attractive. The means of making the choice is generally the tender submission, which typically has a detailed scoring system to help the assessors bring a consistent and objective approach to making the choice.

There are two basic routes that a contracting agency can pursue in writing the contract and statement of work. Either they describe their problem and ask bidders to propose and cost solutions, or they describe a solution and

ask bidders to cost it. Both routes have their own merits, but it is evident that the first route is likely to offer more variety between bids, whereas the second is likely to be predominantly price driven. The second route also assumes that the client has selected the right solution. The service provider, supposedly an expert in its field, no longer has the opportunity to offer innovative or different options for achieving the client's overall aims.

Having chosen the contractor, the project must be mobilised, established and started. Mine action is a complex activity usually requiring a mixture of people and equipment, often with dogs and machinery and under difficult political conditions. The ambitious timelines often demanded of the successful bidder must increase risks within the project: risks that the bidder will be over-optimistic in its proposal, risks that the timeline will be missed and risks that the relationship between client and contractor will get off to a bad start. It is very rare for a contracting agency to ask the bidder to propose its project schedule. Instead a timescale is normally imposed; one that bidders typically regard as hard to achieve, if not impossible and one which frequently seems unjustified.

Once again, the terms of the contract and its statement of work will have an immediate effect upon the way in which the two parties view each other, the respect they show and the degree of honesty and openness which they will display.

CONCLUSIONS

The contract is not just some tiresome piece of paper. Its function goes beyond just a definition of who does what, when and what they get paid for it. It will influence and reflect every aspect of the way in which the participating organisations and individuals work with each other and achieve, or fail to achieve, the contract's stated aims.

There are no easy answers for how to draft, tender and manage contracts in mine action, but there is no doubt that it will be easier to manage contracts well if the totality of their role in mine action is understood and is actively managed.

Most importantly, the mine action industry should consider much more actively the way that contracts function, the wide range of influences that they have and the skills and experience necessary for the development of effective, professional contracts and contract managers.

PROCUREMENT OF MINE CLEARANCE EQUIPMENT

INTRODUCTION

In most cases, procurement of goods and services for mine action programmes follows normal procurement practices: an Invitation to Bid (ITB) for procurement of equipment and a Request for Proposal (RFP) for procurement of services or works.

Under an ITB, selection of the winning bidder is based upon the lowest price of those technically qualified bids. This means that once the bid is reviewed to ensure that it meets all of the specifications in the tender documentation, the lowest price bid will be selected.

Under an RFP, it is normally a two step process: first a technical evaluation and then a financial evaluation if the proposer has met the minimum number of points on the technical evaluation. The selected proposer is determined through a combination of the points received under the technical and financial proposals. Under this methodology, a proposer with a very superior technical proposal can still win the competitive bidding even if its financial proposal is not the lowest.

The procurement of mine action equipment can often have complex requirements. In many cases, simply using an ITB may not be sufficient to determine the quality and effectiveness of the item being procured. In these cases, the RFP process may be more efficient.

MINE DETECTORS

When procuring mine detectors, it may be difficult to measure how they will actually perform in specific field and soil conditions using an ITB process. In new programmes, it is probably worthwhile to use an RFP process and introduce some type of in country trial.

The ease of operation and maintenance will play a role in selecting the right mine detector for that specific programme. It should be included as criteria in the tender documentation and evaluated along with the technical aspects of the mine detector. If a mine detector is too difficult to use correctly or to maintain, then no matter how well it operates, it may not be the right choice. The cost of buying replacement parts and servicing should also be taken into consideration.

As they are such highly technical and important pieces of equipment, it makes sense to use an RFP and to include a trial of detectors in country. The RFP can specify a number of points for the technical component which would include the trial, operator ease and maintenance. In normal RFPs carried out by UNOPS, the technical component is worth 100 points and the financial component is worth 25 to 30 points. In an RFP for mine detectors, it may be a good idea for the technical component to be worth 70 points and the financial component to be worth 50 points. This means that quality and effectiveness are more important than cost; it is worth it to pay more for a product that will work well in the specific environment of the mine affected country. The evaluation criteria are normally disclosed in the tender document.

PROTECTIVE EQUIPMENT

Another example of where using normal procurement methods may not achieve the desired results is with personal protective equipment such as vests and visors. Again, these are important pieces of safety equipment which could mean the difference of a deminer surviving a mine accident or not.

Buying the lowest cost vest or visor will probably not give the type of protection desired or required for the deminers. It may fulfil a minimum requirement under the International Mine Action Standards or National Standards in country, but in order to provide additional protection, there have to be very good specifications. There should be an evaluation of actual samples of the equipment to see how it is made, how it fits when actually worn and how the visor and the vest work together (ie does the visor tuck under the collar of the vest or not).

An ITB or an RFP can be used for this type of procurement. If an ITB is used, it is important to ask for samples of the equipment and to clearly state in the tender documents that based on an evaluation of the sample, a bidder may be found not to be technically responsive.

DEMINING MACHINES

There are various ways in which a contracting agency can contract for the use of demining machines.

1) A machine can be commissioned through a lease agreement. Sometimes such an agreement can be made with an option to buy the machine after a period of time or upon completion of the lease.

2) A machine can be deployed as a part of a clearance contract containing other demining components. Under such a contract, the machine is normally rented to the contracting agency, but managed and operated by the contractor. The machine will normally be removed from the country upon completion of the contract.

Normally, contracting agencies prefer for the contractors to own the demining machines rather than rent them from a subcontractor. This obviously comes with a higher risk and cost. Since most commercial tenders are often issued with short response times, contractors may have a problem subcontracting demining machines in time for the tender deadline. As discussed under the section on subcontracting, many contractors will have stand-by arrangements with specialised firms so that they can subcontract on short notice.

COMPETITIVE SHOPPING

Another method for procurement of goods is referred to as shopping or competitive shopping. This method is based on a comparison of prices obtained from various potential suppliers and dealers. The prices can be received orally or in writing; it is recommended that they are in writing, but if received orally, a written note justifying the selection of suppliers as well as the price should be included in the project file. This method is appropriate for procurement of readily available commercial off-the-shelf goods or standard specification items and equipment with a lower value.

The shopping method can also be used for services at a lower cost where the requirements are clearly specified. Some examples of items that could be purchased in this way are excavation equipment, stationery, tools and marking equipment such as sticks and paint. Contracts using this method are commonly awarded to the supplier offering a product that complies with the specifications provided and offers the best value for money. This method is only recommended when the total value of the equipment to be procured is equal to or less than a few thousand US dollars.

REQUEST FOR QUOTATIONS

If the value of an item with specified requirements is higher, but still does not justify a full tendering process, the so called Request for Quotations (RFQ) modality can be an appropriate tool. With the RFQ modality, price is the most important factor and the supplier with the most competitive price will be awarded the purchase order or contract. The difference compared to shopping is that the RFQ modality normally requires that a certain number of firms are invited to bid (normally a minimum of three or four) and that the offers must be provided in writing.

When using the RFQ methodology, the deadline does not have to be strict and other possible suppliers can be added during the process. The process of opening the bids is also less formal and there is no requirement for an evaluation team to be convened. It is still a good idea for internal control purposes that the process of requesting the quotations and reviewing them is separated between different staff or that the review process is carried out by more than one person to ensure transparency and impartiality.

Some examples of items that could be purchased using this modality include mobile phones, GPS, camping equipment, IT equipment and other items, depending on the overall value of the goods being purchased. Most public organisations have thresholds that specify which procurement modality should be used. For example, an RFQ could be used to purchase computer equipment under a certain value, but an ITB would probably be used if the organisation needed to buy a very large quantity of computers which would exceed the normal RFQ threshold.

LONG-TERM AGREEMENTS

If there is an ongoing requirement for certain equipment over a longer period of time, a long-term agreement (LTA) can be established with suppliers. An LTA allows the contracting agency to enter into agreements with various suppliers of particular goods for a specific period of time at a fixed cost. For example, two years at a fixed cost for the primary item, as well as a fixed cost for any spares or maintenance that might be required over the period of the LTA. UNOPS, the ITF and other organisations active in mine action have well established procedures for procurement of equipment through LTAs.

The use of an LTA normally achieves the following:

- reduces the contracting costs associated with the sourcing, solicitation and bidding processes
- achieves lower costs through volume leverage
- reduces the end-to-end process time currently required to award the contract or purchase order
- identifies in advance suppliers with a with a capacity to respond in more than one country during emergency type operations

In order to establish an LTA with a supplier, the contracting agency issues an ITB or RFP with the expressed intention of setting up the LTA for a specific period of time for the purchase of one or more items. The ITB will state if the contracting agency intends to enter into more than one LTA or not. In some cases, the contracting agency will benefit from entering into more than one LTA for a similar product. For example, UNOPS had LTAs with several mine detector companies because different mine action programmes were using a variety of mine detectors due to the soil conditions and metal contamination conditions in their country. It was in the interest of UNOPS and the individual programmes to be able to purchase replacement or additional mine detectors at a lower cost obtained through the tender for the LTA.

Another example is in peacekeeping. The UN Department of Peacekeeping (DPKO) has missions all over the world and has to purchase similar items such as vehicles, office equipment and furniture, radios, phones, etc for each mission. Normally, DPKO is under intense pressure to establish a new mission very quickly. Through the use of LTAs, DPKO can quickly procure most of the equipment and vehicles needed for a mission in a very short period of time.

Most LTAs include the following features:

- specific product brand and model
- specific supplier
- specific period of time
- advantageous fixed price
- non-exclusive

The process of establishing an LTA is long and involved and must go through a rigorous review process by the contracting agency's procurement or contracts review committee, but it is of enormous benefit to the organisation once it is established.

DEMINING CONTRACTING IN THE OIL AND GAS INDUSTRY

INTRODUCTION TO THE INDUSTRY AND THE REQUIREMENTS FOR DEMINING ACTIVITIES

There are two major components within the oil and gas industry; upstream and downstream.

The process known as upstream has two constituents: extracting the oil and refining it. The commercial side of the business is known as downstream, which is the marketing and delivering of oil or gas to the end-users and buyers. However, in this chapter, we will be focusing on the upstream component.

Upstream

The results of the refining process of oil and gas are gasoline, jet kerosene, diesel fuel, fuel oil and lubricants. Refinery plants are usually located close to, or even inside, regional markets for petroleum products consumption. The extraction process has two major parts:

Oilfield services, including worksite preparations:

This is the exploration and extraction of oil and gas, worldwide.

Drilling services

This is when oil and gas are extracted, once the preparation of worksite oilfield services has been completed.

Oilfield services and worksite preparations can take place in mine-affected regions in a post-war situation. In these cases, demining and clearance as a component of worksite preparations are necessary. In such areas and settings, the role of demining organisations is:

- to support seismic surveys and clearance of:
  - mined oil well pads
  - shafts
  - any other areas required for the extraction of oil and gas
- to carry out clearance to support logistics field services such as:
  - line-up of pipeline transportation systems
  - establishing camps for oilmen
  - constructing worksites, well pads and more

Oil extraction

Legal entities of the oil and gas industry are usually registered and managed through one of the following forms of ownership:

- private
- joint
- public

There are international and national organisational and corporate structures. Independent of the form of ownership and incorporation, almost all major clients for mine action services use commercial firms to carry out oil/gas extraction operations.

The majority of world oil reserves and other minerals are owned by states or monarchies. There is a fundamental difference in the conditions of use of the existing oil reserves between private and national public companies:

- If the state or monarchy (which we will from now on refer to as *the state*) assigns the national state-owned oil/gas company (which we will from now on refer to as the *oil company*) to develop its own resources, the oil company has the exploratory rights for the development of resources within the allotted land, in the interest and on the behalf of the state.
- If the state permits its resources to be developed or extracted by private or international oil companies, such authorisation will be granted through a concession or a lease. The company obtaining a concession to the land for oil or gas extraction will pay a royalty[1] to the land's sovereign.

All mentioned below are mainly applicable to private and/or international oil companies.

PRE-TENDER AND TENDER PROCEDURES

Commercial demining entities tend to compete for demining services in support of oil companies. This is explained by more flexible and mutually acceptable management systems and cultures between commercial bodies. International non-governmental organisations have also chosen to bid on a number of occasions, but have historically been less successful in winning commercial contracts in support of the oil and gas industry.

PRE-TENDER PHASE

The period following the contracting agency's decision to start an oil or gas exploration in a region containing a suspected hazardous area, and before the granting of concession, is called the pre-tender phase.

Several possible causes influence the solicitation methods of the contracting agency's tenders. Commercial interests and national governmental requirements (including public procurement law and other governing legislation) lead the methods of contracting agencies.

The first initial solicitation may be issued in the form of a letter of interest (similar to a call for an expression of interest) to prospective demining contractors without a specific commercial opportunity, but including information on what kind of contractors the contracting agency may be looking for in the future. The contracting agency distributes a letter of interest to a limited number of potential contractors.

Contracting agencies use the pre-tender phase to collect and analyse information for any future required expenditures, recourses or timeframes for site-preparation works, including mine action services. Prospective demining contractors should ensure that they have professional demining and EOD competencies to support site preparations for oil and gas extraction, and focus their activities on developing methodologies to shorten the service timeframe as much as possible. Fast clearance and meeting of deadlines is essential to not slow down surveying or oil and gas extraction operations.

During the pre-tender process, the contracting agency will sometimes contract, without a formal tender, an organisation or a mine action expert to conduct the initial non-technical survey. Depending on the results of the non-technical survey, the advice given by the consultant and their compliance with the budgeted and scheduled recourses needed for preparation works, the contracting agency may also contract this organisation /expert to initiate and facilitate the tender process.

If contracted services for non-technical survey and the consultancy have been completed, the contracting agency may cooperate further with the demining organisation until the concession for oil/gas in the suspected hazardous area is granted. In this case, the demining organisation is requested to adhere to a confidentiality agreement, and to refrain from distributing any information of the work done for the contracting agency. The contractor may also be requested to be ready to provide further assistance in formulating and issuing tenders, if requested by the contracting agency.

The contracting agency will often strictly prohibit the demining organisation under penalty of fine, and as part of the contract, to share any data concerning the contracting agency's intentions or approaches to business development for any site. In most cases, the pre-tender phase documents, such as contracts, reports, estimated accounts, proposed methods, optimal timeframe and other documents, are considered as *commercial in confidence*.

TENDER PHASE

For the last fifteen years, a significant portion of mine action contracts has been managed through various competitive tendering processes. But the tendering for demining in support of commercial oil and gas companies remains screened, and is accessible to only a few shortlisted bidders.

The tender phase is a part of each oil exploration project. This phase starts with the submission of proposal requests to shortlisted bidders, and continues during the various stages, until such a time when a contract is awarded. There is not any specific adapted international standard for the tendering undertaken by commercial firms. It is regulated by national laws such as procurement laws, corporate statutes, owners' solutions and/or the decisions of board's.

Commercial oil companies may tender for a project, combining all services and works in one or several separate projects, with different contractors for:

- non-technical survey
- technical survey
- demining and EOD clearance
- mine risk education
- quality control and quality assurance

Contracting agencies may contract a demining organisation without a tender process. Normally this can only be done if the total budgeted contract cost is expected to be less than a predetermined amount, according to corporate rules and regulations for that specific type of work. For example, statutes of some oil companies allow for non tendered services and works, when the total amount is less than $100,000 or the equivalent.

In practice, contracting agencies prefer to tender for three types of contracts as follows. Contracts for:

- technical survey along with demining, EOD and MRE, if required
- quality control
- quality assurance and non-technical survey (if it was not complete before)

Every company has incorporated standards and guidelines for all types of activities, including the work of the company's tender committee. A tender committee will normally consist of authorised members from the company. When tendering for demining support, a tender committee may have exceptions to this rule and may include mine action experts. Experts are usually trusted individuals, consultants or representatives of a demining organisation previously contracted for non-technical survey during the pre-tender phase.

The tender committee normally requires bidders to submit proposals in two, three or four separate envelopes and in the official language of the state. The first two envelopes are normally used for the technical and financial components. The third envelope is for, but not limited to:

- un-priced commercial offers
- the bidder's requirements for payment conditions
- the bidder's agreement with all general terms and conditions of the contracting agency
- the bidder's acceptance that the local national jurisdiction of the state is competent to settle any disputes which may arise between the contracting parties
- the bid bond as a bank cheque, certified by the bank of the state

There is not a single valued extent for the bid bond for every case. It might be either a predefined amount or a percentage of the overall proposed value of the contract. On average, the bid bond value is approximately 0.5 per

cent of the total bid price and depends on the contracted works and services. The bid bond is used when the contracted demining operation involves expensive mechanical demining systems or other specific and high-value technologies. The bid bond cheque is to be returned later to non-awarded bidders. Some contracting agencies may request a bank guarantee from bidders which is valid for several months after the bid submission date.

The fourth envelope is for all other supporting documents as follows:

- the firm's proven qualifications in demining and EOD, and other required qualifications as per the tender documentation
- legal and financial documents, according to the prevailing laws of the state
- commercial registration
- registration certificate from the Chamber of Commerce
- working permission from the state
- proof of tax payment
- financial status of the last three years, etc

The tender committee will evaluate the bidders' proposals, according to the predetermined criteria, and in accordance with the company's standards, taking all financial and legal aspects of the bids into account. The participating mine action expert will evaluate only the technical proposals, and prepare an evaluation form, including comparing technical competencies of all bidders for the tender committee. The expert will also estimate the approximate cost of each bidder's proposal.

The final decision on the award of a contract will be made by the tender committee. The manager or director of the contracting agency is usually the authorised person who signs the contract with the demining organisation for survey/demining/EOD works, in support of the seismic survey, camp/worksite construction and any other site preparations.

PAYMENTS

Budgeting for demining in support of the oil and gas industry is one of the most important and distinctive features of the contracting process. Managers of demining organisations frequently underrate the importance of correct, realistic and detailed budgeting.

Pre-tender phase work and services are usually paid for with accumulative, innovative or other funds from the contracting agency. These funds are invested at the expense of certain deductions from net profit of other projects. Contracting agencies make an effort to keep these funds continual and to operate within predetermined and well-defined budgets. Payments for demining projects during and after the tender phase can have completely different sources. The main source for the cost of survey, clearance works in support of seismic surveys, and the engineering capacity of the contracting agency, normally comes from royalties.

There are various types of royalties, depending on individual agreements between the landowner issuing the royalty and the oil company obtaining the same.

Most oil companies with the intent of exploring and extracting oil for the first time in mine-affected regions are mitigating possible risks through the establishment of unique royalty agreements. Such agreements enact a landowner to be in charge of additional and non-direct commercial benefits, no longer useful to the oil company, but originating from its operational activities.

Royalties obliging landowners for extra expenditure are sometimes called *Freehold Royalties* or *Overriding Royalties*. The main idea of both types of royalties is based on the proceeds from gross production of crude oil, and is free of any costs associated with capital, environmental, or land released. These types of royalty agreements are mainly effective as follows:

- Firstly, the oil company is granted concession rights after paying the landowner a total capital cost. After the oil company has commissioned capital assets such as buildings, compounds, transportation systems, or released land, the landowner goes through a financial audit and subsequently reimburses the oil company for any corresponding expenditures. Reimbursement of expenditures here means that the landowner gains the rights of the capital assets that were acquired and constructed by the oil company.

> The second type of royalty agreement is when the oil company obtains the concession after paying a capital cost, minus the estimated expenditure for capital assets. The validity of this concession is limited until the time of the landowner's financial audit process. If the financial audit confirms the data provided by the oil company, the landowner will prolong the validity of the concession and acquire rights on the capital assets. If not, the landowner suspends the power of the concession and requires the oil company to pay extra, which had been deducted earlier.

Pipelines

Demining services are considered a support element or a part of site preparation during the initial stages of creating capital assets.

Demining contractors release land through clearance, technical or non-technical survey operations. In order for the contracting agency to carry out further operational activities, drilling rigs and other facilities are sometimes constructed. Oil companies may pay the contractors for this service from the royalties.

The initial source of funds for this purpose is the landowner, ie, in most cases, the national governing authority of the state. The capacity of the state funds is always predetermined, limited, and may have sourced funds from donors such as international organisations, other countries' governments, etc.

In most cases, a demining contract in support of the oil and gas industry will assist national authorities indirectly, since released land also creates direct and advantageous conditions for developing the state's economy and the nation's prosperity.

DEMINING IN SUPPORT OF SEISMIC SURVEYS

Seismic survey measures the earth's geophysical properties, through seismic waves.

The oil and gas industry uses several different computerised methods of seismic survey, which vary, depending on:

- types of waves and oscillation frequencies
- geophysical properties
- the stage of:
  - the exploration process
  - assigned tasks
  - geographical, climatic and surface conditions
  - resources
  - the technical methods used most often by the oil company

The methods of seismic survey are normally referred to as 1D, 2D, 3D, 4D:

- 1D is a one-dimensional seismic survey of the earth's properties, around a single vertical wellbore[2], where exciting/receiving points[3] are located within the area, according to specific requirements and geophysical formulas.
- 2D is a two-dimensional straight line seismic survey. This method is used to search new hydrocarbon reservoirs. Preparation work for carrying out this method consists of placing on the surface exciting/receiving points along a straight line. The results reflect a number of surveyed kilometres of stripes.

- 3D is a three-dimensional volumetric seismic survey. There are few variants of this method. The objective is the same as 2D – to search for new hydrocarbon reservoirs. The difference is that the receiving points of the 3D survey are placed on the surface by the grid or rectangle (perimeters) principle. The result reflects the size of the surveyed area in square kilometres.
- 4D is a time-laps seismic survey that involves the acquisition and interpretation of seismic waves repeated periodically over a hydrocarbon[4] field. The objective is to determine the changes that occur in the reservoir as a result of hydrocarbon production.

Acoustic energy is normally provided through the detonation of explosive charges or through the use of large vibroseis[5] trucks. Explosives are used for 1D and 4D methods. Oil companies will only use explosives during 2D and 3D surveys for small areas of broken terrain, or in conditions of dense vegetation, and areas where vibroseis trucks cannot be operated. Demining services are often required by oil companies to support preparation works for 2D or 3D seismic surveys, in confirmed hazardous areas.

DEMINING IN SUPPORT OF 2D SEISMIC SURVEY | REQUIREMENTS

Demining services in support of seismic surveys are different to what is described in IMAS. Limited time and vast areas needing demining means that one objective is prioritised; to ensure that the seismic survey team and its logistics support team can work safely.

Clearance operations do not need, nor ensure complete clearance or the formal handover of cleared confirmed hazardous areas (CHA) to communities or local authorities. Typically, demining organisations are only tasked to provide technical survey, demining and EOD tasks within the assigned CHA stripes only.

In most cases, the contracting agency does not know the demining organisation's requirements. Before commencing the demining phase of the project, managers of the contracted demining organisation must coordinate with the contracting agency and its representatives, who are responsible for the organisation and fulfilling of 2D seismic surveys and all other related issues. These are things which may otherwise affect the quality and timeframe of the demining services.

Contracted managers have to be assured that, at least, all the information listed below is supplied by the contracting agency:

- The geographical position of the areas to be seismically surveyed.
- The precise details of all CHA stripes.
- The contact details and means of communication with the topographical team and the seismic survey team, so that the sequence of survey and adjustment work can be communicated on an ongoing basis.
- Type, number, overall dimensions, weight, power and frequency of acoustic energy (vibration) of vibroseis trucks.
- The amount of vibroseis trucks driving simultaneously along each stripe. This quantity may vary and depends on earth properties, terrain and vegetation conditions.
- Contact details, ways and means of communications with the logistics support team. This in order to plan locations for refuelling and main tenance. and means of communicating with the contracting agency's paramedics and health treatment capacity, including means of transportation.
- Contact details, ways and means of communicating about local authorities and other partners of the contracting agency.

Clearance operations procedures of seismic survey stripes under desert conditions are quite similar to road clearance, as there is no vegetation and a minimal amount of natural, smaller obstacles, such as pebbles. In all other cases, technical survey and further demining/EOD tasks are complex, and may include extra equipment and mechanical means otherwise not commonly used, such as grass mowing machines or equipment, excavators, bulldozers, etc.

Seismic survey stripes do not cross each other, but are not parallel to each other either. Depending on the terrain conditions, they can twist, come abruptly to an end or be quite short. Some can continue for many kilometres over bushes, forests, streams and other obstacles which the vibroseis trucks will have to cross. There is only one rule for the seismic survey teams: the worse the terrain, the narrower the stripe.

At the drafting stage of technical proposals for demining projects supporting seismic survey, in addition to the contracting agency's requirements and along with those of IMAS and NMAS, managers of demining organisation should foresee that:

- The width of stripes has a direct impact on the number of deminers, as safety distances must be adhered to.
- The vehicles used by demining subunits should be equipped with means for self-recovery. The optimal number is one vehicle per stripe, as in some cases there is not enough space for two. A recovery plan should allow for one more vehicle, which should be on duty outside the confirmed hazardous area.
- There should be one paramedic for each stripe and at least one safety vehicle should be equipped with a trauma kit and stretcher.
- Mechanical demining systems are normally only used if most stripes are passing through impenetrable bushes or low forest that requires clearance. The final decision is made by the contracting agency.

During operation phase, in addition to requirements outlined in the SOW, site managers and demining supervisors should also organise and pay particular attention to ensure:

- Close cooperation with the topographical team marking the stripes for seismic survey, so that topographers follow the demining team at a safe distance.
- Coordination with the logistics team supplying vibroseis trucks. This team may provide support for demining subunit too, if agreed beforehand.
- While working on narrow stripes, a demining subunit should prepare "emergency side pockets" at suitable intervals. These pockets will be used in accidents and emergencies, and will allow other vehicles to bypass obstacles.
- Emergency helicopter pads as required; in case of long, narrow stripes, or if a worksite is located far from a hospital.
- Manoeuvring zones for the vibroseis trucks and logistics support vehicles. These should be at the ends of stripes. Areas to permit u-turns should be prepared, as well as refuelling points and daily maintenance places. The points where the stripes bend should be made larger.

DEMINING IN SUPPORT OF 3D SEISMIC SURVEY | REQUIREMENTS

Seismic survey, using the 2D method, has been widely used in oil exploration since the 1950s. 3D survey was introduced only in the 1980s. This new method gave more information on subsurface structural conditions, unobtainable with the 2D method.

The cost of implementing the 3D method is five or six times more expensive than the 2D survey method. However, the percentage of drilled oil wells that turn out to be profitable are also five to six times higher with the 3D method.

There are several ways to establish the layout of receiving points, a net of electrical cables, normally referred to as geophones. The layout can be done by placing lines of geophones orthogonally in stripes, along which the vibroseis trucks travel and take their measurements.

Another method is to lay the lines of geophones orthogonally to each other to form a grid of receivers. There may be exit points along the line and vehicles might have to move along the line. A widely implemented variant of the 3D method is an allocation of perimeters made up of geophone cables.

Deciding which method is to be used depends on the geophysical properties of the earth and the existing terrain conditions. For example, if the method of establishing perimeters has been completed in an area with swampy terrain, or in an area with water pools or small lakes, the perimeters of the geophones must go around the impassable plot of terrain. This is to avoid the use of acoustic sources inside of this plot.

Vibroseis trucks

Vibroseis truck maintenance

Preparation work and coordination with the contracting agency and other related professionals involved in conducting and supplying the 3D survey should be organised within the demining organisation in a manner similar to that of the 2D survey described above.

There is however, a significant difference in the size of the areas to be cleared. Demining for 2D involves clearing stripes which are used for both the vibroseis trucks and the receiving points where cables have been laid. Demining for 3D also involves clearing all stripes, but every pass for geophone cabling must be cleared as well.

In 3D therefore, the total area of surveyed and cleared areas will be considerably larger than for 2D. At the drafting technical proposal stage for demining in support of 3D survey, in addition to the considerations that must be made when clearing both a 2D and 3D survey, managers must foresee and plan for the following:

- The total number of deminers involved in the project, which should correspond to all SOW requirements, and which is likely to be higher than those involved in a 2D survey.
- Using mine detection dogs may be advantageous for clearing narrow passes.

In addition to this, during the operational phase, site manager and site supervisors should pay additional attention to:

- How demining tasks are organised, which should be in such a way that when one subunit is surveying/demining a pass for further laying of geophone cables, it crosses the itineraries of other subunits. These cross points will be used as "emergency pockets".
- How deminers clear passes. They may use a vehicle from the group from the seismic survey team that is laying out cables, if previously agreed. The seismic survey team consists of groups responsible for the following:
  - laying out geophones
  - collecting geophones
  - operating the vibroseis trucks
  - recording of acoustic signals
- If, during the clearance in support of the seismic survey team, additional parts of the CHA are cancelled if mines/UXOs are not found in some areas.

- If demining managers and supervisors use IMSMA through the appropriate national authorities. Demining in support of a 3D survey creates favourable conditions for further successful, prompt and quite cheap land release of areas demined in the interest of the oil/gas industry.

CLEARANCE OF WELL PADS AND VENTILATION SHAFTS

The explosive ordnance disposal clearance of well pads and ventilation shafts can be one of the most technically complex and demanding operations EOD technicians in support of oil/gas industry have to carry out.

It requires developing safe procedures, along with a detailed understanding of the design and make up of well and shaft systems, and it should only be undertaken by appropriately qualified EOD personnel. It is not a task for deminers or other field staff. Main functions, methods and approaches to clearing wells and shafts correspond with contracting agency guides on clearing structures or heavy vehicles. The GICHD Technical Note on Clearance of Armoured Fighting Vehicles may be used as a general reference.

The key differences between clearing wells/shafts and dispersed constructions or heavy vehicles, are the organisational specifics of the processes and their probable consequences, which can be significant. Customers requesting the clearance of wells will want to prevent unrecoverable damage to the wells and surrounding equipment. Demining wells is a specific task, not regulated by IMAS or NMAS. This issue of EOD work at well pads and ventilation shafts is considered to be an "anti-terrorism task" and is regulated by various departmental standards.

The process of drilling new wells is expensive, and newly drilled wells may be defective, because of bad quality, low pressure, small capacity or an absence of oil/gas. The result can be the disposal of the encountered explosive ordnance in-situ, which will have a negative environmental impact and will mean changing the scheduled plan of extracting and transporting the oil/gas.

As well as causing financial repercussions, it will also have an affect on:

- the various features of oil engineering construction
- unscheduled non productive time
- the length of lease agreements

DEMINING CONTRACTING IN THE OIL AND GAS INDUSTRY

The oil and gas industry has analysed the average time it takes to extinguish fire in an oil well as close to one week, and the restoration period as up to four weeks. This loss of time is expensive and loses the oil company income. The risk of destroying the existing well must be balanced against the cost of establishing a new well with ventilation shafts.

Contracted demining organisations are commonly requested to:

- assess and technically survey all possibilities of clearance
- reduce the contracting agency's expenditure and time for the restoration of the well

Specialist EOD tasks are normally organised and conducted, following the approval of, and in close coordination with, oil engineers. EOD specialists should prevent unexpected mine or other explosive ordnance detonations and should also ensure safe working conditions for oilmen operating within the effective casualty radius.

A contract for clearing the well or shaft should, among other features, include:

- a timeframe, including the period of constructing extra outlets and preparing preventive measures
- an engineering assessment of the effective casualty radius above the ground surface, and the destructive radius below the ground surface, which could destroy underground parts of the well/shaft
- an engineering evaluation of numbers, diameters and slopes of all extra outlet tubes
- planning and approval of suggested operational activities with oil engineers
- specific risk education for oilmen working in dangerous areas and their surrounds
- a fire-fighting team that may be contracted by the contracting agency independently, or subcontracted by the demining organisation
- expenditure for life and disability insurance against mine accidents for all personnel, including oilmen involved in the work within the danger area and it's surrounds
- additional detection technology, such as in-shaft laser and telescopic detectors, cameras and more

Contracted EOD works of wells/shafts normally consist of three subphases. The first is technical survey, along with submitting the proposed engineering assessment and evaluation; the second is provision of safe works for preparing preventive measures. The third is the disposal of the explosive ordnance, in combination with effective fire-preventive measures, and a plan for fire extinguishing.

The total cost of a contract for clearance of wells/shafts is uncertain in the initial phases. Planning and fulfilment of every subphase of such a contract depends on the results obtained in the previous subphase. It is therefore proposed to conclude a contract stipulating piecework payments for every subphase, which is a non-fixed price contract where the contracted work is divided into phases that are individually paid for.

TIME ASPECTS

Continuity resources of all commercial companies are under pressure due to market conditions, competition and operational requirements. The time aspect is of the highest importance and must be aligned with current market requirements. Commercial operators must have a full understanding how the oil and gas industry works, what drives it, and the requirements for timely delivery of demining services.

Oil prices are set by current petroleum stocks, and depend on the oil supply in the upstream sector of the industry, and the consumers' demand. The majority of oil supply contracts are paid for in advance.

Time delays and non-delivery have severe consequences for the oil companies. Negative information may provoke stockbrokers to hold up trading with the oil company and draw their attention to other companies on the market. Non-conformance with the oil company's public business plan may very well lead to the loss of the company's consumers. In other businesses, such as the wheat or real estate market, profit is directly dependent on when buying and selling takes place.

On the contrary, the oil business is quite flexible and oil products can be sold at any time. However, the level of income depends directly on continuous and non-stop trading. Low prices one day will be reimbursed by high prices another day and vice versa.

DEMINING CONTRACTING IN THE OIL AND GAS INDUSTRY

Oil companies assume liability for an uninterrupted and continuous supply of petroleum. The majority of oil company requests demining services proposals do not contain a defined requirement of time for a project. The timeframe for preparation works in support of exploration, and the start of extraction of oil, are given the highest priority out of all other components of the oil extraction. This is the most prominent difference between humanitarian demining projects contracted by NMAAs, and demining projects which are carried out in support of the oil and gas industry.

During the preparatory phases of oil extraction, the oil companies will conceal their intentions and plans. But once the concession is granted, they often exaggerate the options as regards:

- prices, scales and quantity of future contracts
- quality of exploring reserves
- the company's production capacity
- time schedule, etc

Subsequently, the oil companies will seek to start the extraction of oil as soon as possible after the concession has been granted. This to uphold their own competencies and promises against the requirements and expectations of the market. Bidders are often required to assess and evaluate the minimal time needed to complete the requested services. The best combination of time, price and technical competencies will be awarded the contract, with the most important aspect being time.

SPECIFICS FOR DEMINING CONTRACTS IN SUPPORT OF THE OIL/GAS INDUSTRY

Oil companies are assumed to be free to enter into contracts with demining organisations. Every such agreement is implicated as a business contract with inherent terms and definitions, and can be full of the legal jargon of the industry. The below is not supposed to explain this jargon, but a few very important terminologies should be mentioned to aid a better understanding.

For example a contract may be concluded with a landowner, a lessor, a lessee or a landman, and all of these may act as the contracting agency (see descriptions of these below). The design of contracted projects, as well as the amount and schedule for payments and quality control, depends on the liability and responsibility of each contracting agency. All contracting agencies have different business objectives, approaches and power.

1. A **landowner**, in most cases is the state granting concessions for the land to lessors. Demining services contracted by the landowner in support of the oil/gas industry is very rare.
2. The **lessor** is the juridical entity that owns, through a concession, the oil and gas in the area in question, but may not be the owner. The lessor pays royalties to the landowner and issues the lease to the lessee. This is a document which permits exploration, development, drilling and extraction of oil/gas. The majority of contracts for site preparations and services including demining are signed with the lessor.
3. The **lessee** is the oil company with the opportunity to explore, develop, drill and extract oil/gas. The lessee pays a rental fee to the lessor for the privilege of exploring and developing the lessor`s land for oil and gas production. This rental amount is usually on a per acre basis. The lessee may be refused permission to carry out exploration for oil in mine-affected areas, if the lessor did not carry out earlier clearance of this area.
4. The **landman** is a juridical entity brokering[6] between the landowner, lessor and lessee. The landman negotiates the oil/gas permit. This term is subject to a contract and therefore may be bargained for. For instance, the parties may have bargained for rental or for a royalty. The landman may initiate site preparations including demining. Usually such contracted services are concluded by a tripartite contract, where the landman is to pay to contracted companies and to require reimbursement from the landowner, lessor or lessee. Typically, a broad spectrum of penalties beneficial to the contracting agency will be stipulated through the contract in case of breach. The most complicated requirements for contracted demining organisations may be contained in tripartite contracts.

The carrying out of quality assurance (QA) and quality control (QC) may be warranted by more then two external inspection bodies: representatives of the landman, representatives of the lessor or lessee, and another independently contracted demining organisation for QA/QC. Approval of survey/clearance reports requires approval by all bodies, which all have different methodologies and approaches to assessments and evaluations. If one of the inspection bodies is not satisfied with the executed services it will affect the work schedule, may disturb the time balance and as a result, affect the amount and timeliness of payment.

Demining organisations involved in business contract negotiations can achieve far better results if they have a thorough understanding of what the contract actually means. Some agreements should be signed as 'Cost Plus Contract' with defined minimum (and possible maximum) amounts of payments for each phase and/or piecework. Such contracts are not widely applicable in humanitarian demining projects contracted by international organisations, but this type of agreement is well fitted to services in support of commercial entities, where the assignments are several, or where different tasks are dependent on one another as regards time and the financial performance of the contracting agency.

LIABILITY

There are three main liability categories for oil companies:

- Spot liabilities are commitments for purchased goods or contracted services that must be paid for by the company within a month
- Current liabilities are commitments that will be paid by the company in one year or less
- Long term liabilities are commitments that will take longer than 12 months to pay off

Some oil companies have an organisational form of limited liability companies (LLC) or Ltd. LLC and Ltd have much more flexibility than corporations or incorporated companies as they have varying forms of managing and distributing profits. The main distinctive feature of LLC and Ltd is the limited number of owners, often only one individual.

Owners of such companies cannot be held personally responsible for debts, unless they have signed a personal guarantee certified notarially. LLC and Ltd may be dissolved if the owner dies or goes bankrupt. Before bidding proposals are sent to LLC or Ltd, mangers of the demining organisations should be aware of the level of liability of the contracting agency's company, and how they do business.

ENDNOTES

[1] Royalties (sometimes, running royalties, or private sector taxes) are usage-based payments made by one party (the "licensee") to another (the "licensor") for the right to the ongoing use of an asset, sometimes an intellectual property. Royalties are typically agreed upon as a percentage of gross or net revenues derived from the use of an asset or a fixed price per unit sold of an item of such, but there are also other modes and metrics of compensation.

[2] A wellbore is any hole drilled for the purpose of exploration or extraction of natural resources such as water, gas or oil where a well may be produced and a resource is extracted for a protracted period.

[3] An exciting/receiving point is the location where specific devices are used to create a vibration through explosions or the use of a vibroseis system. This is also referred to as vibroseis excitation.

[4] An area where oil and or gas is located under the earth's surface.

[5] Also referred to as seismic vibrator. This is normally a truck-mounted device that is capable of injecting low-frequency vibrations into the earth. It is one of a number of seismic sources used in reflection seismology. Seismic vibrators are used to perform about half of all seismic surveys on land.

[6] A broker is an individual or party (brokerage firm) that arranges transactions between a buyer and a seller, and gets a commission when the deal is executed. A broker who also acts as a seller or as a buyer becomes a principal party to the deal.

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CONTRACTING GLOSSARY

The glossary below has been compiled for the purpose of this guide and in order to streamline the contracting terminology within mine action contracting.

Acceptance	The formal acknowledgement by the sponsor, or the sponsor's nominated representative, that the equipment meets the stated requirements and is suitable for use in mine action programmes. An acceptance may be given with outstanding caveats.
Accreditation	A process in which certification of competency, authority, or credibility is presented. In mine action: the procedure by which a demining organisation is formally recognised as competent and able to plan, manage and operationally conduct mine action activities safely, effectively and efficiently.
Advance payment guarantee	A guarantee that enables a buyer to recover an advance payment made under a contract or order if the supplier fails to fulfil its contractual obligations.
Affidavit	A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.
Agreement	An alternative term for a contract. An agreement includes all the crucial elements of a contract.
Arbitration	Method to resolve a contract dispute by submission to one or more arbitrators for a binding judgment; arbitration is normally used to avoid litigation, ie court procedures (see also Litigation).
Audit	An assessment of the adequacy of management controls to ensure the economic and efficient use of resources; the safeguarding of assets; the reliability of financial and other information; the compliance with regulations, rules and established policies; the effectiveness of risk management; and the adequacy of organisational structures, systems and processes.
Audit, Financial	A financial audit, or more accurately, an audit of financial statements, is the review of the financial statements of a company or any other legal entity (including governments), resulting in the publication of an independent opinion on whether or not those financial statements are relevant, accurate, complete and fairly presented.
Award	Acceptance of an offer with the intention of contracting.
Beneficiary	A natural person or other legal entity who receives money or other benefits from a benefactor.

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Best value — Lowest price is not necessarily the most important criterion in the procurement of goods and services. The concept of best value takes a range of criteria into account to select the optimal solution to a specific need.

Bid — Formal response from a bidder.

Bid Bond — A bid bond is issued as part of a bidding process by the surety to the project owner, to guarantee that the winning bidder will undertake the contract under the terms at which they bid. The cash deposit is subject to full or partial forfeiture if the winning contractor fails to either execute the contract or provide the required performance and/or payment bonds.

The bid bond assures and guarantees that should the bidder be successful, the bidder will execute the contract and provide the required surety bonds.

Bidder — Potential supplier submitting a bid.

Bidding — Bidding is an offer (often competitive) of setting a price one is willing to pay for something. A price offer is called a bid. The term may be used in context of bids for mine clearance contracts.

Bid evaluation — After the submission deadline, the process of opening, examining, and evaluating bids to determine the bidder's responsibility, responsiveness, and other factors associated with selection of a bid for contract award.

Bid form — Standard printed form provided to bidders so that they may submit the information required for evaluation of the bid, in the correct format and sequence.

Bill of Lading (BoL) — The document under which cargo is carried on board vessels; may be defined as a receipt for goods, signed by a duly authorised person on behalf of the ship-owner. It constitutes a document of title to the goods specified therein.

Bill of Quantities (BoQ) — A list of priced items, usually accompanies a SOW or RFP as one of the solicitation documents when contracting works.

Bond — In finance, a bond is a debt security, in which the authorised issuer owes the holders a debt and, depending on the terms of the bond, is obliged to pay interest (the coupon) and/or to repay the contracting agency at a later date, termed maturity. A bond is a formal contract to repay borrowed money with interest at fixed intervals.

Borrower — The party in a loan agreement which receives money or other instrument from a lender and promises to repay the lender in a specified time.

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Budget — Refers to a list of all planned expenses and revenues. It is a plan for saving and spending.

Cartels — A small group of producers/suppliers of a good or a service who agree to regulate supply in an effort to control or manipulate prices.

Client — Recipient of procurement services, normally the requisitioner of the goods and services to be procured. In mine action the client can also be the manager of the funds or the donor.

Closing date — The deadline for all bid/proposal submissions.

Collaboration — In the context of mine action equipment procurement, the term refers to an activity which applies solely to the procurement of common equipment by two or more organisations.

Commercial off the Shelf (COTS) — In the context of mine action equipment procurement, the term refers to any equipment that is available direct from the manufacturer and requires no further development prior to introduction into service apart from minor modifications.

Commonality — In the context of mine action equipment procurement, the term refers to a state achieved when groups of individuals or organisations use common procedures and/or equipment.

Compatibility — In the context of mine action equipment procurement, the term refers to the capability of two or more components or sub-components of equipment or material to exist or function in the same environment without mutual interference.

Consignee — In a contract of carriage, the consignee is the person to whom the shipment is to be delivered whether by land, sea or air.

Consultant — A professional who provides expert advice in a particular domain or area of expertise.

Contract — An agreement that is legally binding, especially one that is written. Latin **contractus**, past participle of **contrahere**, to contract, from **con-** + **trahere** (''to draw'').

Contractor — Any organisation (governmental, non-government or commercial entity) contracted to undertake a mine action activity. The organisation responsible for the conduct of the overall contract is referred to as the ''prime contractor''. Other organisations or parties the prime contractor engages to undertake components of the larger contract are referred to as ''subcontractors''. Subcontractors are responsible to the prime contractor and not to the principal.

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Contract amendment An agreed addition to, deletion from, correction or modification of a contract.

Contract dispute A matter of dispute in respect of a contract that cannot be resolved between the supplier or its representative and the contracting agency.

Contracting authority The State or the legal person governed by public or private law which concludes the contract, or on behalf of which the contract is concluded.

Contracts committee Committee reviewing procurement processes verifying whether procurement has been undertaken in accordance with established procedures and in line with the existing rules.

Creditor A creditor is a party (eg person, organisation, company or government) that has a claim to the services of a second party. It is a person or institution to whom money is owed. The first party, in general, has provided some property or service to the second party under the assumption (usually enforced by contract) that the second party will return an equivalent property or service.

Debtor An entity that owes a debt to someone else, the entity could be an individual, a firm, a government or an organisation. The counterparty of this arrangement is called a creditor. When the counterparty of this debt arrangement is a bank, the debtor is more often referred to as a borrower.

Donor Donor refers to any agency acting as a source of funding, including the government of mine-affected countries. In some situations, the term "client" may be more appropriate, but for consistency within IMAS, the term "donor" is used. Unlike normal commercial contracting, where the client is often the beneficiary of the contract goods or services, in humanitarian mine action the donor is rarely the beneficiary. The donor may be the contracting authority, or may pass responsibility to another national or international agency. The donor can also be referred to as the client.

End user Ultimate beneficiary/user of the goods and services being procured under a procurement activity.

End User Certificate An End User Certificate, or EUC, is a document used in international sales of weapons and ammunition to certify that the buyer is the final recipient of the materials, and is not planning on transferring the materials to another party. EUCs are required by many governments to restrict the flow of the materials to embargoed states.

EOI Expressions of Interest. Suppliers express interest in supplying to a contracting agency through an expression of interest.

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Fixed price The term "fixed price" (or lump sum) means an all-in contract price which shall cover the whole of the works, supplies and services which are the subject of the contract. This fixed price cannot be varied or revised, unless otherwise stipulated in the special conditions of the contract.

Force Majeure This is a common clause in contracts which essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime or act of God (eg flooding, earthquake, volcano), prevents one or both parties from fulfilling their obligations under the contract. However, force majeure is not intended to excuse negligence or other malfeasance of a party.

HQ Headquarters

INCOTERMS INCOTERMS are international, commercial trade terms defining the obligations of the buyer and the seller relating to the shipment of goods published by ICC's (International Chamber of Commerce). Also see: http://www.incoterms.tk/

Insurance A form of risk management primarily used to hedge against the risk of a contingent loss. Insurance is defined as the equitable transfer of the risk of a loss, from one entity to another, in exchange for a premium, and can be thought of as a guaranteed small loss to prevent a large, possibly devastating loss. In mine action, insurance should include appropriate medical, death and disability coverage for all personnel as well as third party liability coverage. Such insurance need not necessarily have to be arranged through an insurance broker or company, unless otherwise required by contractual arrangements. Self insurance (under-writing) schemes, provided they are formally constituted on accepted actuarial principles and provide adequate cover, may be an acceptable alternative.

Insured A person or entity buying an insurance. Also referred to as the policyholder.

Insurer A company selling insurances.

International Chamber of Commerce (ICC) A non-profit, private international organisation that works to promote and support global trade and globalisation. The ICC serves as an advocate of some world businesses in the global economy, in the interests of economic growth, job creation and prosperity. ICC delegates are business executives and not government officials.

ITB Invitation to Bid, a method of solicitation of offers.

CONTRACTING GLOSSARY

Lawsuit In law, a lawsuit is a civil action brought before a court in which a party (plaintiff) has claimed to have received damages from a defendant's actions; the plaintiff, seeks a legal or equitable remedy.

Lease A lease is a legally enforceable contract which defines the relationship between an owner (the lessor) and a renter (the lessee). A typical lease spells out all of the terms involved in a rental agreement, including the length of time a lessee may use it and what condition it must be in upon return to the lessor. The amount of payments and any financial penalties for late payments may also be included in a lease contract.

Letter of agreement A simpler form of contract that states the essentials of the agreement without including all the detail. It may be used as a precursor to a formal contract or, in some cases, may be used in place of a more formal contract.

Liability The condition of being actually or potentially subject to an obligation, a condition of being responsible for a possible or actual loss, penalty, evil, expense or burden.

Liquidated damages Contract provision used when the time of delivery or performance is of such importance to the buyer that the buyer may expect to suffer damages for non-performance. Under such provision the contractor may be required to pay damages, eg for each week of delayed delivery.

Litigation Law suit, legal action, including all proceedings therein.

LTA Long Term Agreement, agreement between an organisation and a supplier valid for an indefinite quantity of products or services over a defined period of time. Orders are placed by issuing call off orders against the LTA.

Lump Sum See Fixed Price.

MOA Memorandum of Agreement (also referred to as cooperative agreement).

MOU Memorandum of Understanding.

Offer Reply (bid or proposal) received as a response to an invitation to offer presented in the solicitation documents issued by a contracting agency to the suppliers. Constitutes a firm offer from the potential supplier to furnish deliverables fulfilling the requirements set forth in the solicitation documents. The offer can be in the form of a quotation, bid or proposal, depending on the type of solicitation document issued.

CONTRACTING GLOSSARY

Parent company guarantee For use where a company entering into a contract is required by its client to provide a guarantee of its performance from its parent company. This document, while fairly balanced, is drafted from the parent company's perspective and the wording makes it clear that the parent company's liability only arises if its subsidiary commits a breach of its contract and fails to rectify the breach. Also, the liability of the parent is limited so that it will be no greater than that of the subsidiary under its contract with the client.

Power of attorney A power of attorney (POA) or letter of attorney in common law systems or mandate in civil law systems is an authorisation to act on someone's behalf in a legal or business matter.

Principal In commercial law, a principal is a person, legal or natural, who authorises an agent to act to create one or more legal relationships with a third party. In mine action, it is the entity that contracts another entity to undertake the required mine action activity. The principal may be a donor, an NMAA, an organisation acting on behalf of the NMAA, a commercial organisation or any entity that desires mine action to be conducted and engages a mine action organisation to do so.

Procurement The process of research, development and production or purchase which leads to an equipment being accepted as suitable for use, and continues with the provision of spares and Post Design Services (PDS) throughout the life of the equipment.

Product The use of the word 'product' in the context of this guide is used to cover goods, works and services.

Project An endeavour in which human, material and financial resources are organised to undertake a unique scope of work, of given specification, within constraints of cost and time, so as to achieve beneficial change defined by quantitative and qualitative objectives.

Project management The process by which a project is brought to a successful conclusion.

Proposal Formal response from an offeror in response to an RFP, offering a solution to the problem, requirement or objective in the request.

Remedy The means by which a contractual right or obligation is enforced or the violation of such a right is prevented, reduced or compensated.

Renting A system of payment for the temporary use of something owned by someone else; the payments are typically referred to as "rent".

Requisition Formal request to initiate the procurement of goods, works and services.

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Requisitioner	Anyone initiating a request for goods, works and services.
Res judicata	The Latin term for "a matter already judged". It may refer to two things: in both civil law and common judgment and is no longer subject to appeal. The term is also used to refer to the legal doctrine meant to bar (or preclude) continued litigation of such cases between the same parties, which is different between the two law legal systems, a case in which there has been a final legal systems.
RFP	Request for Proposal, a method of solicitation.
Security	A security is a fungible, negotiable instrument representing financial value.
Segregation of duties	Internal control mechanism to ensure that one individual does not participate in all operational steps in the procurement process.
Signature	A handwritten (and sometimes stylised) depiction of someone's name that a person writes on documents as a proof of identity and intent.
Signatory	The writer of a signature is a signatory.
Solicitation	Process of inviting suppliers to submit offers.
Solicitation document	Package of documents used when soliciting offers from suppliers. An RFP is one type of solicitation document.
Solicitation method	The method used to solicit offers from suppliers. An RFP is a shopping method of solicitation.
Sourcing	The process of identification of suitable suppliers.
Specifications	Requirement definition to a product. Usually referring to the defined requirements for goods, but can also relate to the requirements for services (Terms of Reference), or works (Statement of Work).
Statement of Works (SOW)	The requirement specifications for works assignments.
Subcontractor	An individual or business that signs a contract to perform part or all of the obligations of another's contract.

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Submission	Reply received as a response to an invitation to offer presented in the solicitation documents issued to the suppliers. Constitutes a firm offer from the potential supplier to furnish deliverables fulfilling the requirements set forth in the solicitation documents. The submission can be in the form of a quotation, bid or proposal, depending on the type of solicitation document issued.
Supplier	Any potential legal entity, commercial firm or non commercial provider of goods/services/works.
Surety	A surety or guaranty, in finance, is a promise by one party (the guarantor) to assume responsibility for the debt obligation of a borrower if that borrower defaults. The person or company that provides this promise is also known as a surety or guarantor.
Tender	To present to another entity an unconditional offer to enter into a contract.
Tender Process	The process of calling for and evaluating tenders to select a preferred contractor.
Terms of Reference (TOR)	The requirement definition for services or goods.
UNGM	United Nations Global Marketplace. Internet portal used by 16 UN agencies. Includes, among other types of information, an inter-agency vendor roster. See www.ungm.org.
Unit rates	The term refers to the rates agreed and accepted for priced activity, items and quantities stated in the contract.
Vendor	A potential supplier of goods/services/works.
Voucher	A bond which is worth a certain monetary value and which may only be spent for specific reasons or on specific goods.
Waiver	In a procurement context, a waiver refers to the process of selecting a supplier without conducting a competitive bidding exercise. Often a waiver of competitive bidding will lead to negotiations directly with one selected supplier (sole sourcing).

ANNEX 2

UNOPS AND MINE ACTION
AN EXAMPLE OF UN PROCUREMENT AND CONTRACTING

The following pages describe the procedures used by the United Nations Office for Project Services (UNOPS[1]) Mine Action Unit (MAU) for procurement and contracting of mine action capacities.

UNOPS AND MINE ACTION

UNOPS is a principal service provider in mine action. It offers project management and logistics services for various mine action projects and programmes managed or funded by:

- the United Nations (UN)
- international financial institutions
- regional and sub-regional development banks or host governments.

UNOPS works with United Nations Mine Action Service (UNMAS), United Nations Development Programme (UNDP), United Nations Children's Foundation (UNICEF) and others.

UNOPS provides its clients with services; such as planning, implementing, managing and monitoring mine action projects and programmes. The projects are normally funded by UNMAS and UNDP managed donor funds. UNOPS charges a service fee corresponding to a certain percentage of the overall project budget. This is currently referred to as the project support cost (PSC).

UNOPS services include human resources management, contract administration, and may extend to planning and managing an entire operation, including complex contracting of demining capacities and recruitment of expert mine action staff. Examples of where UNOPS is managing complete operations are Sudan, Afghanistan and South Lebanon. UNOPS can sometimes also support more specific aspects of mine action, such as mine risk education.

Project management is a core UNOPS service line. UNOPS responds quickly and appropriately to diverse client needs around the world. UNOPS mine action personnel can be deployed for short term missions to assess specific country needs. UNOPS can also draw on a roster of local and international mine action experts to help deliver client projects. Furthermore, UNOPS can carry out the advertising, recruitment, contract administration and training of project personnel.

UNOPS can assist clients to establish Mine Action Coordination Centres (MACC), and contract and deploy specialised demining firms and NGOs to the field in short notice. Such contracts can include:

- landmine impact and emergency surveys
- mine risk education

- integrated clearance, using manual demining, mechanical demining and mine detection dogs; road clearance
- explosive ordnance disposal work
- victim assistance
- evaluations
- mine awareness
- advocacy campaigns

UNOPS can also, on behalf of clients, purchase specialised mine clearance equipment such as protective equipment, demining machines, mine detectors and other assets. This is sometimes done through the use of UNOPS long term agreements (LTA) with various manufacturers of mine clearance equipment.

ACCREDITATION OF SUPPLIERS FOR MINE ACTION SERVICES

The UNOPS mine action unit MAU has an accreditation system for mine action suppliers. To be eligible to be invited to tender and/or bid against certain RFPs and ITBs issued by the UNOPS MAU, suppliers must complete their registration on the UN Global Market place (www.ungm.org), and also undergo a registration/prequalification with the UNOPS MAU located in the north American office.

The registration/prequalification with the UNOPS MAU involves a desk accreditation process. Suppliers are requested to indicate the services they can provide, together with supporting documents, proving that the supplier can indeed provide the services stated. Suppliers must also inform UNOPS what type of contracts they wish to be considered for and provide supporting documentation to support their submission. Typical contract areas include:

- manual clearance
- mechanical demining
- mine detections dogs

Other information that must be submitted to the UNOPS MAU includes:

- an audited financial statement
- insurance information
- joint venture proposals
- resources in terms of personnel, equipment and facilities and subcontracts
- geographical and project experience

- ongoing relevant projects
- SOPs for proposed activities
- specialised equipment

Once all documents have been provided, the UNOPS MAU, through the UNOPS accreditation board, carries out a desk assessment accreditation. The accreditation board will approve accreditations based on the following:

- organisational and management structure
- formal qualifications
- personnel competence and human skills
- Safety & occupational health (S&OH) policy
- equipment capability and suitability
- insurance
- Standard operating procedures (SOPs)
- quality management policy
- record of operations

Once accredited, the supplier will receive an accreditation letter from UNOPS.

THE UNOPS TENDERING AND CONTRACTING PROCESS

Expressions of Interest (EOI)

An EOI is a notice which provides general information on the requirements for goods, works or services of upcoming solicitations. Suppliers are requested to express their interest before a fixed deadline by submitting detailed information, demonstrating experience and qualifications in the provision of the relevant goods, works or services. The information provided by interested suppliers is assessed, and suppliers are considered for inclusion on the shortlist of companies to be invited to submit detailed offers/proposals.

UNOPS uses the EOI modality to search for and identify suitable suppliers. The EOI modality requires more time for sourcing as suppliers need to have sufficient time to respond. Depending on the nature of the goods, works or services to be procured, at least two weeks is normally provided for responses. UNOPS internal rules recommend that an EOI is normally undertaken for all tenders above US$ 250,000. EOIs are posted on the UNOPS and UNGM websites and distributed as widely as possible through other websites, radio, newspapers and specialised magazines.

UNOPS AND MINE ACTION
AN EXAMPLE OF UN PROCUREMENT AND CONTRACTING

Prequalification

Compared to other market research tools, prequalification is a formal process, where supplier appraisal and background checks are done prior to issuing the solicitation documents. If prequalification is conducted for a specific procurement activity, all suppliers that submitted an application which meets the pre-qualification criteria will be invited to tender. Prequalification does not preordain a contract.

The process ensures that solicitation documents are only issued to suppliers with adequate capabilities and resources. The period between the notice of invitation to prequalification and the deadline for submission of applications is normally no less than three weeks.

Prequalification notices are posted on the UNOPS and UNGM websites and distributed as widely as possible through other websites, radio, newspapers and specialised magazines.

Solicitation methods

Open (international or national/regional) tendering is the method which UNOPS considers to best satisfy the principles of transparency, fair competition and integrity of the sourcing process, since it is open to all interested suppliers.

This method includes advertising in appropriate media, depending on the nature of the requirements. When using an open tender, no shortlist is established. Advertisements most often result in more extensive evaluation processes, due to the high number of offers received. However, in most cases, the benefits of a broad and open competition outweigh the additional burden of a higher number of offers.

REQUEST FOR PROPOSAL (RFP)

An RFP is used for the procurement of services (such as demining), works and goods, when requirements cannot be quantitatively and qualitatively expressed in the specifications at the time the solicitation is issued. An RFP requests a technical proposal that offers a solution to the technical requirements specified in the solicitation document, as well as a separate detailed financial proposal that indicates all costs associated with carrying out the work described in the technical proposal.

The RFP requires suppliers to submit the technical and financial proposals sealed separately, in a so-called two-envelope system. The financial proposals are opened in a separate opening session after the completion of the technical evaluation. The purpose of the two-envelope system is to ensure that the

technical evaluation can be undertaken, focusing only on the contents of the technical proposals without considering their financial aspects. An evaluation, comparing all factors, both technical and financial, of the proposal is then completed.

The proposals received are evaluated, ranked and awarded according to the cumulative analysis methodology, defining best value as the most important overall benefit when considering both technical and financial aspects. The evaluation criteria are described in the RFP, by identifying the technical and price evaluation factors, indicating and highlighting the key areas of importance that will be considered and evaluated during the evaluation process. The ratio between technical and price components can differ from one RFP to another. In most RFPs, technical quality is weighted more heavily than price considerations. The weightings need to be considered on a case by case basis to achieve the appropriate balance. The right balance between the various evaluation criteria must be established before the RFP is issued, and expressly stated in the RFP.

For UNOPS, it is important to uphold the principle of segregation of duties during the entire procurement process, in order to ensure fairness and transparency. The procurement entities within UNOPS are organised according to an administrative structure, based on the segregation (in some cases also separation, where the various functions are performed by different individuals) of responsibilities for the various steps of the procurement process.

OPENING OF PROPOSALS

Since UNOPS uses a two-envelope system in which financial proposals are not to be opened without the completion of a technical evaluation, there is no requirement for a public opening of proposals received. In the case of an RFP, the technical proposals are opened first while the financial proposals are kept sealed. A separate opening of the financial proposals is carried out following the completion of the technical evaluation by the evaluation team. Invalid offers are rejected by the evaluation team at this stage.

The opening of technical proposals is recorded in a report containing the following information:

- bidder's name and country
- comments on incomplete proposals or other matters observed by the bid opening panel
- bid security, if requested
- date and time of the opening
- names of the UNOPS individuals comprising the bid-opening panel

EVALUATION CRITERIA

Evaluation criteria are normally divided into the following categories:

- formal
- technical
- financial

FORMAL CRITERIA

Offers are checked for their compliance with any formal criteria stated in the solicitation documents. Examples of formal criteria are that offers have been properly signed and are:

- accompanied by the required securities, if applicable
- from a supplier that is eligible, eg duly registered if pre-registration is a requirement
- accompanied by the required documentation
- complete

Offers not meeting the formal criteria are rejected. It is therefore important to carefully consider the formal criteria before issuing the RFP documents, as it is undesirable and time consuming to conduct a tender process in which no supplier can meet the formal criteria.

TECHNICAL CRITERIA

Technical evaluation criteria are derived from the specifications in the RFP (the SOW). Depending on the nature and complexity of the procurement to be undertaken, technical evaluation criteria may be summarised in a few sentences, or consist of a long and precise description of the services required, including detailed specifications and timelines. Depending on how clearly the requirements are defined, criteria are developed for evaluation according to compliance/non-compliance or a weighted scoring.

For demining RFPs the weighted scoring is more common. When using the weighted scoring methodology, technical evaluation criteria are related to the approach and methodology proposed to reach the expected results or solve the identified problem, as described in the requirement definition in the SOW. Technical criteria can also include requirements for the contractor, such as:

- previous experience in similar field and with same type of requirements (for instance survey, mechanical demining or MDD)
- experience from the region/country
- available capacity and equipment to undertake the assignment
- qualification and experience of the proposed project personnel

FINANCIAL CRITERIA

Price is an important evaluation criterion, but the weight of the price depends on the chosen evaluation methodology. It is important to clearly state in the solicitation documents which price factors will be included in the price used for evaluation. Various factors such as freight cost, operational cost, incidental or start-up costs, as well as life-cycle costs must be taken into consideration. For services and works, a template for breakdown of costs should be provided. Normally for mine clearance contracts, the breakdown of cost will be according to the different phases of the contract, ie mobilisation, operations and demobilisation phases.

EVALUATION PROCESS

Upon receipt and opening of offers, the evaluation of offers must be conducted according to the evaluation criteria and method defined during the preparation of the solicitation documents, and clearly established in these documents. Under no circumstances can new or revised evaluation criteria be introduced during the evaluation of offers nor can the method of evaluation be changed. This provides the basis for an objective and transparent evaluation process.

The evaluation process comprises the following steps:

- establishment of evaluation team
- receipt of opening report
- preliminary evaluation
- technical evaluation

For two-envelope evaluations, completion of the technical evaluation report and opening of financial offers includes the following steps:

- financial evaluation
- clarifications, if required
- identification of the winning offer
- evaluation report
- negotiations, if applicable
- background check

ESTABLISHMENT OF AN EVALUATION TEAM

In order to conduct a fair and unbiased evaluation, an evaluation of offers is undertaken by a team of two to five members. The composition depends on the nature, complexity and value of the procurement. The evaluation team members are appointed, in writing by a duly authorised individual, to provide objective and independent advice, based on their knowledge of the specific subject matter.

The evaluation team verifies that the suppliers and their offers satisfy the requirements of the RFP and evaluates the offers according to the predefined evaluation criteria as per the RFP. The discussions of the team are strictly confidential; information about the content of the submissions or the evaluation process will not be revealed outside the evaluation team.

Team members are instructed to immediately indicate if they have a potential conflict of interests with one of the suppliers. If this is the case, that individual will be replaced. In particularly complex procurement processes, external experts may be contracted to assist in the evaluation process as one of the team members.

Representatives from the funding source or the client organisation may participate in the evaluation as observers only, unless explicitly stated otherwise in the legal agreement with the client, or specific approval is granted by the UNOPS Executive Director. However, requisitioners can always participate as evaluation team members, provided UNOPS maintains the majority vote in the team. All observers or participants in the evaluation team who are non-UNOPS personnel are required to sign confidentiality and no conflict of interest statements prior to the evaluation. For most mine clearance RFP evaluations a representative from UNMAS participates. UNOPS often ensure that a representative from the field participates in order to guarantee technical knowledge as well as knowledge of the local conditions within the evaluation team.

TECHNICAL EVALUATION

Technical evaluation involves detailed analysis of each offer against the predetermined evaluation criteria. It first establishes whether the offer is compliant or non-compliant. It then allocates a score to each offer for each criterion, based on an assessment of the extent to which the offer satisfies the criteria. Results of the technical evaluation are always documented in an evaluation table and summarised in an evaluation report. When a two-envelope system is used, the technical evaluation is always completed before the eligible financial proposals in envelope number two as described below.

FINANCIAL EVALUATION

Financial evaluation is the process of comparing the offers with the financial criteria stipulated in the solicitation document and determining the price on which to base the evaluation. During this step, prices will be reviewed as to whether they are correct and realistic, considering prevailing market conditions, and whether they are reasonable in view of the requirements. When using the cumulative analysis evaluation method (described below), the score of the financial proposal is calculated based on the formula for point allocation.

CUMULATIVE ANALYSIS METHODOLOGY (RFP)

When using the cumulative analysis method, a total score is obtained based on the combination of the weighted technical and financial components of the proposals. The offers are evaluated and points granted based on how well they meet the criteria defined in the solicitation documents.

This method of evaluation is used by UNOPS when offers have been solicited on the basis of an RFP and it is necessary to undertake a more complex evaluation, based on a number of variables of differing importance. The method is typically used for the procurement of services, such as mine clearance, where the importance of each evaluation criterion needs to be weighted.

The method requires a two-envelope procedure where suppliers are requested to submit their technical and financial offers separately in two sealed and marked envelopes. As already mentioned, the evaluation of the technical offers is always completed prior to the opening and evaluation of the financial offer.

The solicitation documents will state the number of points available for the technical proposal and the financial proposal respectively. The technical proposal is to be evaluated using predefined evaluation criteria, which are defined in the solicitation documents, together with information about the number of points assigned to each of these criteria.

The financial offer is only open for offers where the scores in the technical evaluation meet or exceed the stated threshold. Where the technical proposal does not reach the minimum specified score, the corresponding financial offer is not further considered; the financial proposal will be returned to the bidder unopened, accompanied by a letter notifying the bidder.

UNOPS AND MINE ACTION
AN EXAMPLE OF UN PROCUREMENT AND CONTRACTING

The maximum number of points assigned to the financial proposal is allocated to the lowest priced proposal. All other price proposals receive points in inverse proportion according to the following formula:

$$p = m \times l/c$$

where:

p = points for the financial proposal being evaluated
m = maximum number of points for the financial proposal
l = price of the lowest priced proposal
c = price of the proposal being evaluated

Example

The following three firms have provided three price components as follows:

Firm A:	US$	1,101,000
Firm B:	US$	1,200,000
Firm C:	US$	1,050,000

During the technical evaluation of the technical components the firms were given the following technical scores:

Firm A:	80
Firm B:	77
Firm C:	89

Using the above equation this gives the following scores for the price component:

Firm A:	23.8
Firm B:	21.8
Firm C:	25

Adding the scores for the price component to the scores for the technical component this gives the following final result:

Firm A:	23.8	+	80	=	103.8
Firm B:	21.8	+	77	=	98.8
Firm C:	25	+	89	=	114

NEGOTIATIONS OF OFFER RECEIVED

Negotiations with the supplier(s) are carried out according to certain procedures, depending on the method of solicitation. Where offers are selected based on the cumulative analysis methodology (RFP), negotiations may only be conducted if it is provided for in the solicitation document, and only with the supplier presenting the winning proposal.

The purpose of negotiations, after a formal solicitation based on the cumulative analysis methodology, is to ensure that the technical proposal complies with the requirements, and that the financial proposal is competitive.

Generally, negotiations are not conducted when formal methods of solicitation are used, unless there is due cause for conducting the negotiation, such as:

1) insufficient budget to purchase the items offered
2) additional services which are not required in the solicitation document
3) travel expenses and allowances are higher than standard rates

The negotiations also provide an opportunity to clarify any ambiguities with the supplier. However, no changes to the terms of reference, specifications, statement of works are permitted. If the requirements are changed, the competitive process will be cancelled, and a new tender process will be initiated on the basis of the revised requirements.

UNOPS AND MINE ACTION
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LESSONS LEARNT FROM UNOPS MAU RFPS AND EVALUATIONS

Common pitfalls/mistakes made by bidders:

- bidders fail to read the RFP
- bidders do not seek clarification of the RFP when they are unclear about its requirements; the result is a proposal which addresses what the bidder believes is required, rather than what is actually being requested
- bidders do not actually meet the requirements outlined in the RFP, in particular (but not exclusively) regarding:
  1) methodologies
  2) equipment
  3) personnel
  4) timelines
  5) unrealistic pricing

Common failings in submissions:

- badly presented, scruffy and poorly collated proposals
- attempts to baffle logic with irrelevant information
- incorrectly marked bids
- bids missing information
- bids lacking specific information outlined in the RFP
- bids that ignore requirements outlined in the RFP
- bids that do not indicate that the RFP has actually been read
- late bids (the bid will not be accepted)

Ways to improve the chances of a tender winning a bid:

- "experience to date has shown that the failure to carry out thorough logistical planning has been the single biggest cause of project failure" - address this statement in the proposal and it is more likely to win the bid
- ask clarification questions in order to remove doubt or misunderstandings
- prepare and send a proposal matching the requirements outlined in the

RFP and demonstrating clearly that the RFP was read and understood, as opposed to submitting something that is of no real relevance

- build a solid logical proposal with a clear explanation of the thought process used in putting it together along with the concept of operations during the project lifecycle
- use planning tools like log frames, flow charts and Gantt Charts
- produce a smart, tidy, well organised/laid-out proposal
- include equipment and personnel that meet or exceed the minimum required in the RFP
- prepare a good clear table of contents that is easy to cross reference, ie, tabs at the side and/or top/bottom of the proposal that indicate sections etc
- make sure the concept of operations actually matches what is asked for in the RFP
- conduct a thorough research trip to the proposed country/AOR
- attach clear CVs that match the skill sets required in the RFP
- in the CVs, highlight the skills and experience of the individuals that correspond to the position they are proposed to fill
- include CVs that are accurate and do not try to deceive the evaluating team
- make sure that CVs contain references from people from other companies, not just from the company proposing the individuals
- target CVs of individuals with a strong professional reputation within the industry
- make sure you have the right man/woman for the job - the project manager is the most important CV submitted
- clearly mark packages and proposals, stating the RFP, the closing date and the recipient (on all levels of wrapping/covers)
- conduct an evaluation exercise against the criteria in the RFP before submitting the bid and think whether or not it matches the requirements

UNOPS AND MINE ACTION
AN EXAMPLE OF UN PROCUREMENT AND CONTRACTING

Main causes for contractual non-compliance on UNOPS MAU contracts:

- failure to read and/or understand the contract
- failure to recruit/retain suitably qualified/skilled staff
- deployment of a programme/project manager who does not have sufficient experience
- failure to provide the project management team in the field with a copy of the contract
- failure to explain to staff/project manager their contractual obligations
- failure to conduct an adequate research trip to country
- lack of understanding of end user certificates and the transportation of dangerous/military goods
- failure to invest in training and development of staff
- mistaken belief that the contractor knows more about what the client wants than the client does
- failure to bid against what the RFP requested and so under-pricing the bid and not providing the services required
- failure to adequately plan logistics to support operations
- failure to purchase suitable equipment
- failure to understand customs clearance or registration processes
- poor time/resource planning
- failure to listen to the advice of programme staff
- submission of a low bid to win the contract with the expectation of subsequent amendments, which do not happen

ENDNOTES

[1] www.unops.org

ANNEX 3

ITF ENHANCING HUMAN SECURITY | AN EXAMPLE OF FUNDING AND CONTRACTING OF MINE ACTION ACTIVITIES

BACKGROUND

The International Trust Fund (ITF) Enhancing Human Security (renamed from the International Trust Fund for Demining and Mine Victims Assistance)[1] is a humanitarian, non-profit organisation devoted to the eradication of landmines and their impact in southeast Europe and other mine-affected regions in the world.

The ITF Enhancing Human Security was established by the government of the Republic of Slovenia in March 1998. Its initial purpose was to help Bosnia and Herzegovina in the implementation of the peace agreement, and to provide assistance and support in relation to post-conflict rehabilitation. However, the ITF has since augmented its activities to include rectifying landmine problems and helping landmine survivors with physical and socio-economic rehabilitation in Albania, Croatia, Macedonia, Montenegro and Serbia.

The European Commission acknowledged the ITF as the reference model of regional organisation in mine action. Therefore, the ITF was asked by mine-affected countries and donors to expand its operations to other mine-affected regions and countries, eg, Cyprus, the South Caucasus and Central Asia.

The mission of the ITF is to raise funds and administer donations made by public and private donors, for the implementation of activities related to mine action, by addressing the needs of mine-affected communities in accordance with the donors' interests.

Demining team funded by the ITF in Albania

ITF ENHANCING HUMAN SECURITY | AN EXAMPLE OF FUNDING AND CONTRACTING OF MINE ACTION ACTIVITIES

Since its inception in 1998, the ITF has gained extensive experience in the field of mine action, and played a vital part in the implementation of over 2,740 mine/UXO clearance projects, demining over 116 million square metres of land. It has also:

- rehabilitated 15 per cent of mine/UXO survivors in southeast Europe
- trained more than 850 experts in the fields of mine action management, demining and rehabilitation

Over 100 donors, including 28 countries, a number of international organisations, the European Union and UNDP, local authorities in mine-affected countries, private companies, non-government organisations, and individuals, have made donations to the ITF. Since its establishment, the ITF raised over USD 356,000,000 to implement mine action projects.

ITF projects are managed through:

- **Tailor-made projects**; when the donor decides which of the mine action activities being implemented in the region they want to directly support. In line with the donor's wishes, the ITF will then develop and submit a proposal for a project to be funded. Consequently, the project is designed according to the preferences of each individual donor (country, activity, etc), and also takes into account the wishes and needs of the mine-affected country and the local community.
- **Close coordination** with national authorities responsible for mine action programmes where the ITF is working, in order to ensure that the assistance provided is in fact needed, and that the programmes being implemented are consistent with the national plans..
- **Transparency:** tight internal financial management controls and external audits are carried out annually to ensure that the donated funds are properly accounted for. In addition, the tendering process adopted by the ITF for mine action projects, in particular in the field of humanitarian demining, serves to enhance the transparency of decision making, while also contributing to a cost-effective use of donor funds.
- **Visibility**: donors are assured of the visibility of their donations through ITF publications, reports, website, on-site signs, presentations and public media events.

ITF ENHANCING HUMAN SECURITY | AN EXAMPLE OF FUNDING AND CONTRACTING OF MINE ACTION ACTIVITIES

Underwater demining activities

- **A matching fund mechanism:** the government of the United States (US) has introduced a matching fund mechanism for southeast Europe, whereby every dollar raised by the ITF is matched by an additional dollar provided by the US government. These US funds can be spent on the same project as the original donation (if the project has been deemed to qualify for the matching fund by both the ITF and the US) or alternatively, the money in the matching fund is used to finance another mine action project in southeast Europe.
- **Monitoring and evaluation**: prior to conducting mine clearance, staff from the ITF implementation offices inspect potential demining sites to evaluate priorities of a given area. Relevant assessments and other reports must be submitted in writing, taking into account various factors. On the donor's request, the ITF also employs a monitoring firm to oversee and monitor the work of the demining contractor on a daily basis.

The purpose is to ensure that the removal of mines is being carried out in accordance with the applicable standards and safety requirements. The ITF has employed four monitoring firms to date. Monitoring firms are selected through a competitive bidding process for a period of two years. In addition, the ITF carries out post-clearance checks in order to determine and assess the results of mine-clearance activities. With minor modifications and tailoring, this model can also be applied to the evaluation and assessment of other mine action projects implemented by the ITF.

- **Active donor involvement**: the donor community provides guidelines and initiates proposals for further activities at meetings of the ITF board of advisors, where the ITF's operations and objectives are discussed.

THE ITF ENHANCING HUMAN SECURITY AND CONTRACTING IN BOSNIA AND HERZEGOVINA[2]

The ITF Enhancing Human Security typically issues very detailed procurement notices for mine clearance in Bosnia and Herzegovina. Contracting is project based, and contractors are invited to bid on specific projects under one procurement notice (tender). One contractor can only be awarded a maximum of two contracts under one procurement notice (tender).

The ITF tenders in Bosnia and Herzegovina are normally open on equal terms to non-governmental organisations (NGOs) and commercial companies, international and national, which possess the accreditation for humanitarian demining operations in Bosnia and Herzegovina, issued by Bosnia and Herzegovina mine action centre (BH MAC).

In order to be eligible for participating in these tenders, bidders must certify that they meet the accreditation conditions. This is done by providing copies of their accreditation documents for each of their demining capacities: manual, mine detection dogs and demining machines.

Their accreditation must be valid for the period of the tender through to completion of the project. Bidders can be declared ineligible if, for instance, they have previously been in breach of contract, or if they have serious financial problems. Contractors prove that they are eligible through submission of an affidavit statement.

Bidders may submit questions in writing up to seven days before the deadline for submission of tenders. The ITF will reply to all bidders' questions at least three days before the deadline for submission of tenders. If the ITF, either on its own initiative or in response to a request from a bidder, provides additional information on the tender dossier, it will send such information in writing to all bidders at the same time.

Mechanical demining

Normally, the procurement notice will include four volumes as follows:

VOLUME 1 | INSTRUCTIONS TO TENDERERS

Section 1 | Instruction to Tenderers

VOLUME 2 | ADMINISTRATIVE AND LEGAL CRITERIA

Section 1 | Form of Tender with Registration Certificate

Section 2 | Valid Accreditation for Execution of Demining/Technical Survey/ BAC Works in Bosnia and Herzegovina

Section 3 | Form of Affidavit Statement

Section 4 | Form of Power of Attorney

Section 5 | Form of Litigation History

Section 6 | Statement of Non-association

VOLUME 3 | FINANCIAL CRITERIA

Section 1 | Form of Tender Guarantee

Section 2 | Form Financial Identification

VOLUME 4 | TECHNICAL CRITERIA

Section 1 | Organisation Chart

Section 2 | Form Technical Qualifying Characteristics

Section 3 | Form Key Personnel

Section 4 | Form Curriculum Vitae

Section 5 | Descriptive Narrative Execution Plan and Programme

Section 6 | Further Information

VOLUME 5 | EVALUATION GRID
Section 1 | Administrative Compliance Grid
Section 2 | Evaluation Grid

VOLUME 6 | CONTRACT
Section 1 | Form of Contract
Section 2 | Conditions of Contract
Section 3 | Form of Performance Guarantee
Section 4 | Form of Advance Payment Guarantee

VOLUME 7 | PRICES SCHEDULE

ITF ENHANCING HUMAN SECURITY | AN EXAMPLE OF FUNDING AND CONTRACTING OF MINE ACTION ACTIVITIES

Volume one INSTRUCTIONS TO TENDERERS includes:

- General information about tender procedures (complete information about overall instructions, source of funds, eligibility requirements and minimum qualifying criteria, which documents to be supplied by the tenderer, only one tender per tenderer, tender expenses and site inspection)
- Tender documents (content, explanations, amendments, labour and law)
- Preparations of tenders (language, content and presentation of tender, preparation and signing of tender, tender prices, currencies, period of validity of tenders and tender guarantee)
- Submission of tenders (extension of time for submission of tenders, late tenders and tender alterations)
- Opening and evaluation of tenders (opening of tenders, secrecy of procedure, clarification of tenders, checking of compliance with requirements, evaluation and comparison of tenders and correction of errors)
- Award of contract (criteria for award, right of contracting authority to accept any tender and reject any or all tenders, notification of award, contract clarification, contract signing and performance guarantee, commencement of work, ethic clauses and appeals)

In Volumes 2 to Volume 7 are presented forms and other instructions which must be filled by bidder and submitted to the contracting authority.

Mine Detection Dog Team at work

ITF ENHANCING HUMAN SECURITY | AN EXAMPLE OF FUNDING AND CONTRACTING OF MINE ACTION ACTIVITIES

The ITF is using a two envelope system, where bidders are submitting one envelope with original documents and five envelopes containing copies of all technical documents. All six envelopes are submitted together in one larger envelope. The envelope with original documents contains two envelopes, where one envelope contains the administrative and technical parts, and the second inner envelope contains the price schedule for works and services.

Tenders are requested to remain valid for a period of 60 days after the deadline for submission of tenders indicated in the invitation to tender. In exceptional circumstances, the ITF may request bidders to extend the validity of tenders for a specified number of days, which may not exceed 40 days. The successful bidder must maintain its tender valid for additional 60 days from the date of notification of award. Bidders are requested to provide a tender guarantee that is valid for 60 days.

Unsuccessful bidders can complain about the decision of the evaluation commission in writing, from seven calendar days after receipt of the notification on unsuccessful tenders, and until the deadline written in the notification.

The evaluation of bids is based on a three stage approach, with an initial evaluation of the administrative documentation, followed by a second stage technical evaluation. In order to pass the first (administrative part) evaluation, the bidder must submit all requested documents and papers as per attached checklist from the tender documentation.

Subject to all documents submitted, the Evaluation Commission starts with second (technical part) evaluation, where the bidder should obtain a minimum of 70 per cent (and in some cases 80 per cent) of the obtainable score, in order to pass and qualify for the financial component to be opened. The second (technical) part of the evaluation is evaluating the following:

- corporate qualifications/experience and past experience;
- the bidders operational task assessment; and
- the general presentation

The evaluation committee normally consists of a representative from the ITF, representative of the mine action centre, the donor representative and technical experts, as required. In addition, there is a secretary participating. The donor can either participate as an observer or an actual evaluator during the evaluation process itself.

The third stage (financial part) of the evaluation process is the opening of the price component. Presented price will be included into cumulative analysis formula, where price will present 75 per cent and technical part would present 25 per cent of the final decision.

Once a contractor has been selected, the contract is issued and the contractor is expected to commence work 14 days after the signature of the contract.

The quality assurance (QA) of the ITF contracts is carried out by both the ITF, who has separate companies contracted for constant onsite monitoring, and by the MAC. Between 60 and 70 per cent of all ITF contracts have a permanent onsite QA monitor on each clearance site. In Bosnia and Herzegovina, five per cent of all clearance sites are also sampled upon completion.

The payments under the contract are normally made in two instalments. The payment system varies according to the policies of different donors. Usually, the ITF provides an advance payment of 20 per cent of the contractual value, which is transferred 14 days after the contract signing. The remaining 80 per cent of contractual value is transferred after the contractor has handed the ITF the MAC certificate of cleared area, the full narrative report and the payment bill.

Under the ITF contracts in Bosnia and Herzegovina, contractors are required to submit a written final report to the ITF with a copy to the BHMAC within two weeks of the end of the contract period. This report will at least include:

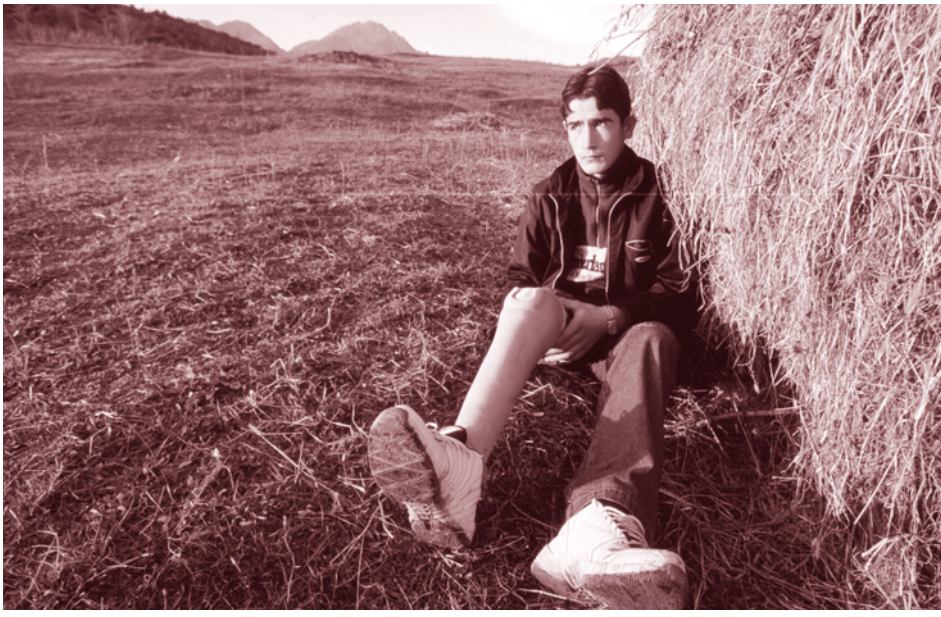
- a statement from the contractor's director, giving a guarantee that the works from Article 1 of this contract are done by IMAS and BHMAC standards
- information on timeframes of contracted works
- information on cleared areas
- information on clearance methods used
- information on the number and type mines and unexploded ordnance found and destroyed
- information on marking, geography of the orientation point of mine clearance area
- final working map
- information on possible incidents during the mine clearance

ITF ENHANCING HUMAN SECURITY | AN EXAMPLE OF FUNDING AND CONTRACTING OF MINE ACTION ACTIVITIES

The final payment will be conditional on the receipt of this report and on the issue of a final clearance certificate by the BH MAC

Equipment used under ITF contracts can either be supplied by the contractor as part of the contract, or purchased by the ITF for the purpose of the contract. Purchased equipment will remain the property of the ITF, who will seek advice from the donor on what to do with the equipment upon completion of the contract.

The ITF makes no reference to IMAS in the tender or contract documents, but the national standards are referenced.



Mine Victim in Albania

ITF ENHANCING HUMAN SECURITY | AN EXAMPLE OF FUNDING AND CONTRACTING OF MINE ACTION ACTIVITIES

Based on the ITF's experience in contracting in mine action, the following five conclusions and recommendations have been provided:

ITF LESSONS LEARNED FROM CONTRACTING AND TENDERING PROCESS

- The tendering system is the most important part of the complete project cycle in the implementation of a donation. Through the tendering system, all core ITF principles are reflected (holistic, transparent, sustainable, community-centred, and a partnership approach)
- Introduction of tendering process has greatly contributed to the cost-effectiveness of humanitarian demining, transparency of the selection of implementing agencies and enabled donor involvement in mine action process
- Through the tendering system in Bosnia and Herzegovina, the ITF played a supportive role in overall national institution building
- Based on extensive experience in tendering over the past 14 years, the ITF recommends an open tender procedure as the most transparent option in tendering process
- The ITF tendering system is under constant evaluation, in order to apply modifications and lessons learned.

ENDNOTES

[1] www.itf-fund.si

[2] The text under this section has been adapted from a procurement notice provided by the ITF.

MINE CLEARANCE IN SKALLINGEN, DENMARK | A LAND RELEASE PERSPECTIVE

PROJECT BACKGROUND

When the German minefields in Denmark were cleared following the Second World War, an area located on the Skallingen peninsula was left uncleared due to the difficult and technically demanding nature of the clearance. The area was the remnant of a larger mined area, which was cleared during the period 1945-47. Due to a very dynamic coastal environment, some 10,000 mines were left in an approximately 280 hectare area when the mine clearance was called off in 1947. Over the years, 90 hectares of the suspected area have been affected by erosion and have washed into the sea. In 2005, the Danish Government decided to clear and release the remaining 190 hectares for public use.

Fencing and mine warning signs in Skallingen in 2008

The Danish navy was tasked with clearing the seabed where the coast line had changed and the minefields were at sea. With regard to the contaminated areas on land, the responsibility of the clearance project was placed with the Danish Coastal Authority (KDI) which is a division under the Ministry of Transport. KDI's main field of operations is construction and maintenance of coastal protection and coastal areas. It owns large areas along the coastline in Denmark, including the mined areas at Skallingen.

MINE CLEARANCE IN SKALLINGEN, DENMARK | A LAND RELEASE PERSPECTIVE

The project was divided into three phases, reflecting three priorities based on the public use of the land.

- **Phase 1**: clearance of 18 hectares of beach and dunes at three 1st priority locations. (Phase 1 areas were completed in 2006 by the British contractor European Land Solutions (ELS)).
- **Phase 2**: clearance of 47 hectares of beach and dunes. (Phase 2 was initiated in 2007 and completed in 2008 by the Danish contractor Minegruppen).
- **Phase 3**: clearance of the remaining contaminated area at the southern end of the peninsula, approximately 120 hectares of marshland/dunes/beach.

Mine Clearance Procedure in the sand dunes | Safe top soil is removed down to the defined "Danger layer". This layer is excavated with armoured machines and then sifted through the sifter.

MINE CLEARANCE IN SKALLINGEN, DENMARK | A LAND RELEASE PERSPECTIVE

For the purpose of the project, KDI established a mine action office to develop standards, prepare tenders and monitor contractors. It also supported the contractors by analysing relevant finds, conducting threat analysis and coordinating relations between the contractors and various other stakeholders.

With a small office of only three staff, KDI procured many external services for the project. This included consultant services for executing the tender processes, advice in contract management, legal matters, environmental management and QA/QC management.

The project was dealt with like any other project involving a commercial contractor. The KDI consultant hired to conduct the tendering process was not experienced in mine action, but was a general specialist in tenders and commercial contracts. KDI believes that this was an advantage because it assisted KDI in shaping the process and the contract according to the paradigm normally used in client/contractor relations.

ELS was awarded the turn key contract for Phase 1 in 2006 after a competitive web based bidding process. Initially, 18 companies applied for prequalification and five were chosen to submit competitive proposals and bids. A total area of approx. 18.5 hectares was cleared and released in 2006. By the end of 2006, 67 mines as well as hundreds of mine components had been detected and removed or detonated. The majority of the finds had been rendered non-functional by the environment. A new tender process for mine clearance in 2007 – 08 was initiated late in 2006 and followed the same procedure as for the previous tender. The total area to be cleared was 47.5 hectares. The contract for 2007 – 08 was awarded to the Danish consortium Minegruppen. Work commenced in April 2007 and was completed in April 2008.

Intervention of Denmark, 19 November 2007 at the 8th Meeting of the State Parties of the Ottawa Convention, Jordan

TENDER PROCESS

KDI considered mine clearance to be a service (using EU terminology) and conducted the tender process in accordance with EU Directive 2004/18/EC.[1]

Prequalification for the project was announced for interested contractors via the EU database www.ted.europa.eu and via the Danish internet media Lambrech. From a wide range of applicants, KDI selected five firms that were considered suitable for the contract. The tender dossiers were made available to the contractors electronically on the web page www.docia.com. The contractors were asked to upload their proposals within the given time limit to this web page. By running the process electronically, KDI could easily supply additional information to the contractors simultaneously and delays in postal service did not affect the process.

In order to win the contract, the bidder had to present the most economically advantageous proposal to KDI. The contracts were guided by the General Conditions for Turnkey Contracts (ABT93), which was made available to the bidders as part of the tender dossiers together with the contract format.

Contract management during the operational phase was a question of monitoring the contractor with regard to quality and progress. If deviations from the proposal or the contract were required, KDI issued a site instruction on what should be done, and a variation order on the financial implications of the change would be agreed and signed by both parties.

Beach areas which have been searched from surface to -75 cm with the top layer removed, ready to be searched from -75 to -150 cm

QUALITY ASSURANCE IN SKALLINGEN

Quality assurance was conducted to assure that the contractor's process and product was in accordance with KDI's requirements as described in the tender documents. KDI supplied in the tender documents for Phase 2 a "Generic Quality Inspection Plan", outlining the minimum requirements for the contractor's quality management plan.

The Generic Inspection Plan describes:

- what will be subject to inspection
- reference to where the standard for each specific subject is described
- how the inspection will be conducted
- documentation requirements
- frequency of inspections
- acceptance criteria
- consequence of non-acceptance
- reporting requirements

In this way, the contractor could address all relevant issues in its quality management plan and its operational procedures. Having received these procedures and plans from the contractor, KDI could identify critical processes and target these in the QA inspections. KDI's QA inspections were random tests of the contractor's QA system and of the critical processes with potential quality implications.

Although the main focus was on the process, a number of random areas for sampling were chosen as a quality control (QC). This QC-clearance was conducted by the contractor's own deminers and equipment, but monitored by KDI's representatives present at the site to ensure that clearance was to the required standards and that there were not any missed mines.

A corner-stone in the QA process was to check whether the equipment's capabilities were in accordance with operational procedures and could meet the clearance criteria specified in the contract. KDI provided the clearance criteria to the contractor by indicating which items needed to be found and removed and in which defined three dimensional space. This information was determined by KDI based upon the information found in the old German mine maps. KDI also drew on the experience gained from technical surveys and previous clearance work.

MINE CLEARANCE IN SKALLINGEN, DENMARK | A LAND RELEASE PERSPECTIVE

KDI determined the space from which the mines should be removed by defining the 1944 surface in which the mines were laid and then adding the uncertainty of the method used for finding the old surface. At the beach, the old surface was of course irrelevant; instead, the space to be cleared was based on studies of the vertical transport of materials in this environment. Clearance criteria therefore varied in different sections of the minefield. For example, in some sections, the contractor was required to remove metal mines from the surface to 40 cm depth, while in another section, the contractor was required to remove wooden mines from a danger layer between 240 cm and 90 cm from the surface.

The various criteria for clearance called for different procedures and perhaps for different types of equipment or for different uses of the same equipment. It was important for the contractor to establish the ability of its detection equipment to find each relevant item. This was done through capacity tests of the different detection tools against the different items, establishing for example that tool X could find item A in 25 cm, item B in 80 cm and item C in 140 cm. The QA inspector would then check that these abilities were reflected in the operating procedures, ensuring that the tools were only used within their capacity.

KDI had external quality consultants attached to the project. For Phase 1, consultants from "Hedeselskabet" assisted in the monitoring process. In Phase 2, KDI contracted "Bureau Veritas Certification[2]" to assist in the monitoring and evaluation of the quality of the work. The QA contractor participated in the testing of the concept for clearance and the equipment used. The QA contractor carried out weekly field visits to clearance sites for onsite QA inspections. Any issues that were identified during such visits were reported to KDI to be discussed with the contractor. While Hedeselskabet attached a technical officer with some prior experience in mine action, Bureau Veritas staff had no knowledge of mine clearance when they started working on the project. The lack of prior experience in mine action did not cause a problem. The Bureau Veritas staff reviewed the tender documents and the contractor's SOPs and monitored that the work was done in accordance with these documents.

CONTRACTING AT SKALLINGEN | A LAND RELEASE PERSPECTIVE

Key factors in the Skallingen contract related to land release

The primary objective of land release is to better define areas that actually contain a threat from mines through non-technical and technical survey in order to focus expensive clearance assets on actual mined areas. The success of a project depends largely on how well the contract is developed and then managed. Below is a brief analysis of the contracting process at Skallingen where certain key factors related to land release have been identified and briefly described.

Desk assessment and non-technical survey

Over a number of years, the contracting agency for the clearance of Skallingen, the Danish Costal Authority (KDI), conducted a thorough desk assessment and non-technical survey (NTS) in order to accurately determine the mine situation within this area. The assessment gathered information from various sources such as historical archives, minefields records, interviews with former deminers, simulations of the changes in the topographic features (movement of sand and coastline) and digital terrain models developed by studying old air photos.

A thorough desk assessment and Non-Technical Survey provided the operator with an appropriate framework for a SOW to support operational planning.

MINE CLEARANCE IN SKALLINGEN, DENMARK | A LAND RELEASE PERSPECTIVE

Technical survey

In conjunction with the desk assessment and the non-technical survey, KDI conducted a limited technical survey of the identified areas through sampling using hand held detectors.

Through technical survey, additional information was gathered with a set target list with well defined boundaries. By "sampling", other important information was also collected such as data on metal contamination to be anticipated and appropriate clearance depth to be maintained across the site.

Technical assessments carried out throughout the project

As the work progressed, the contracting agency, together with the contractor, continued to thoroughly analyse and assess all new information gathered during the period of the contract in order to review and adapt the concept of releasing land.

Coordination body

The contracting agency, which was also the coordination body, worked closely together with the contractor throughout the project. This ensured that the contractual obligations were met, allowed for modifications to the plan based on any new information gathered during the life of the project and minimised the risk of misunderstanding.

External quality management component

KDI contracted a commercial company to conduct the external quality management controls (quality assurance and quality control) to ensure that the agreed procedures were maintained to a high standard.

A well developed Quality Management component will ensure the work is carried out as per agreed SOPs and that high standards are maintained throughout the life of the project.

ENDNOTES

1 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT

2 www.bureauveritas.com

BACKGROUND TO MINE ACTION IN BOSNIA AND HERZEGOVINA

As of September 2009, the mine problem in Bosnia and Herzegovina (BH) consists of a total suspected area of 1,589 km^2.

Between 1996-2008, 103km^2 was demined out of a total suspected area of 2,500km^2. The suspected area was further reduced by over 700km^2 through systematic and general survey.

From January to September 2009, 327 demining tasks were performed which reduced the suspected area by an additional 94.4 km^2. During this period, 1,390 AP mines, 112 AT mines and 608 pieces of UXO were found and destroyed.

Over the years, the general threat has been significantly reduced; however there still remain areas that require further reduction and the mitigation from the threat of mines. It is estimated that more than 220,000 mines and UXO remain scattered throughout the territory with over 100,000 people living in high risk areas.

At the state level, the BH Demining Law regulates a BH Demining Commission that is the central body responsible for the long-term conduct of mine action activities within the country. The Commission is located within the Ministry of Civil Affairs and Communications and is responsible to the Council of Ministers for its work. The Commission consists of three members who serve for a period of two years and are designated to meet on a monthly basis. The BHMAC is the technical body of the Commission and was established by the Ministry Council in 2002.

The BHMAC has two central main offices (Sarajevo and Banja Luka) and eight regional offices established throughout the country (Sarajevo, Banja Luka, Pale, Tuzla, Brcko, Mostar, Travnik and Bihac) allowing operational activities to be coordinated at the local level. Apart from survey, planning and accreditation of equipment and personnel, the BHMAC also conducts technical inspections of all demining activities. In addition to these inspections, the BHMAC carries out random sampling to confirm the quality of cleared land and issues certificates for cleared areas that conform to national standards.

The current accredited clearance capacity available in BH consists of 36 mine clearance organisations with assets consisting of 42 machines, 95 mine detection dogs, and 3,162 deminers with 1,528 metal detectors.

At the international level, a Board of Donors assists the Demining Commission and the BHMAC. Its members are from the Office of the High Representative (OHR) and other donor country representatives. The Board of Donors meets every six months with the Minister of Civil Affairs serving as the Chairperson.

The vision of the BHMAC is to be free of mines by 2019. In order to achieve this vision, the BHMAC estimates a need of approximately €40 million per year over the next ten years.

MINE ACTION CONTRACTING IN BH

Almost all 36 organisations conducting mine action in BH acquire their funding through competitive bidding, and this is predominately through the International Trust Fund (ITF). However two NGOs (Norwegian Peoples Aid and Intersos-Italy) are funded directly by their respective governments.

The vast majority of funding for demining in BH is contributed through the ITF. There is also some funding that is channelled through the European Union in the form of EC grants. These grants are typically a minimum of 12 months and a maximum of 24 months. However, only NGOs are eligible to apply for these grants and it can typically take up to three months before they are awarded. Many NGOs do not apply for the grants as they feel the tendering and contracting criteria is too complicated and stringent[1].

The ITF was initially set up by the Slovenian Government in 1998 to assist BH with its extensive landmine problem and to help landmine survivors with physical and socio-economic rehabilitation. The ITF is also now working in Albania, Croatia, Macedonia and Serbia and Montenegro. The United States Government has instituted a matching fund mechanism, whereby all funds raised by the ITF are matched dollar for dollar by the US Government.

ITF rules state that a minimum of two bids must be received for a tender to be eligible. If it is a public tender, it is advertised in newspapers as well as through the ITF website and is open to all organisations accredited by the BHMAC. However US Government contributions through the ITF are restricted tenders and only selected organisations are invited to bid. In general the minimum qualifying criteria for US Government tenders are:

- the clearance organisation is accredited by the BHMAC for the entire period of the contract
- key contracting personnel must have a minimum of two years experience within mine action in any country

- a bidder shall have completed as prime or subcontractor at least two projects of the same nature/amount/complexity comparable to the tendered works during the previous two years
- the organisation is to have similar experience in previous contracts, ie clearance, technical survey, etc and is to have had a minimum of double the square metres of experience in that particular line of work; for example, if the contract is for 200,000m^2 of clearance, then the organisation has to prove it has successfully cleared 400,000m^2 under another mine action contract

The US Government restricted tendering is either for NGOs only or for commercial organisations only and is generally never combined. This aims to ensure equal and fair competition between organisations. Government organisations such as the BH military are ineligible to tender; however, the ITF has provision to contract asset support to the BH military, such as contracting an organisation to provide mechanical assets to support BH military clearance operations.

Prior to submitting bids, all organisations have the opportunity to visit each site with members from the ITF and BHMAC in order to conduct an onsite assessment, to discuss each task and then collectively agree on an execution plan for each site. This onsite assessment aims to identify potential problems, allow all parties to voice their concerns, and seeks to avoid possible future misunderstandings.

The ITF uses a traditional two-envelope system for proposals consisting of a financial and technical component. All bids are evaluated by the Mine Action Evaluation Commission, which is a five member board whose purpose is to provide an unbiased and independent assessment of tender documents. The board consists of the following members:

- 1 x ITF | Chairman of the Board
- 1 x ITF | Member of the Board
- 2 x BHMAC | Members of the Board
- 1 x Donor | Member of the Board

There needs to be a minimum of three of the five members from the Mine Action Evaluation Commission present in order to evaluate tenders. Firstly, the technical proposals are opened and evaluated by the Commission. Each technical proposal is reviewed, discussed and then scored by the members of the Commission. In order for a bid to proceed further, the technical proposal must achieve a minimum score of 70% from the evaluation matrix in

order to be deemed technically compliant. If the technical proposal fails to achieve this threshold, then the bid is excluded and the financial proposal is not opened. The criteria selection of the most competitive bidder is typically the lowest price offered.

The majority of funding through the ITF is from the US Government and are restricted tenders; these are limited to invited bidders only and are not opened publicly. Funds from other sources through the ITF such as UNDP are typically open tenders and can be opened publicly.

Those contracts funded directly by the US Government through the ITF also include provision for direct monitoring. Generally 8% of the contract price includes funding for monitoring of these contracts. This monitoring is contracted by monitoring organisations through the ITF and accredited by the BHMAC. Presently, three monitoring organisations are contracted by the ITF to provide this service. These monitoring organisations also have a QC capability such as MDD or deminers that carry out a minimum 5% quality check of all work conducted.

BID SUBMISSIONS

For US Government contracts funded through the ITF, only those clearance organisations that are eligible are invited to bid. Of the 36 clearance organisations currently accredited by the BHMAC, 14 organisations are recognised as prime contractors with an additional 10 organisations recognised as subcontractors for US Government funded contracts. Prime contractors can only subcontract up to 30% of the total contract price. A contractor cannot subcontract without the prior written authorisation of the contracting authority and a signed pre-contract between the contractor and the subcontractor is to be submitted with the tender documents. Subcontractors must satisfy the eligibility criteria applicable for the award of the contract and the contracting authority has no contractual relations with the subcontractor under the contract.

For bid submissions, bidders must certify that they are duly accredited for the period of the contract and are to prove their legal and business eligibility through a signed affidavit. In part, the affidavit declares that the bidder is not bankrupt or having its affairs administered by the courts, or in an arrangement with creditors. It also declares that the bidder has fulfilled its obligations relating to the payment of social security contributions in accordance with legal provisions of the country where it is established. It also states that the bidder has not been in serious breach of previous contracts.

Bidders are to provide documents detailing their legal status. They must also provide a certificate (not older than 30 days) on settled pension and disablement insurance for the previous year, as well as a certificate with a list of current staff registered in a competent pension and disability fund. A certificate on tax settlement (not older than three months) issued by the Tax Administration is also required.

Bidders may submit questions in writing up to seven days before the deadline for submission of tenders. The contracting authority must reply to all bidders' questions at least three days before the deadline for receipt of tenders. Tenders remain valid for 60 days after the deadline for submission and the successful bidder must maintain its tender validity for an additional 60 days from the date of notification of award.

Unsuccessful bidders can appeal decisions of the Evaluation Commission in writing to the chairperson of the Evaluation Commission within seven days of notification of the unsuccessful bid. The appeal process costs the equivalent of €400 payable to the ITF. This amount will be refunded if the case is justified. If not satisfied with the response to its appeal, the bidder can submit a new appeal within seven days upon receipt of the answer to the first appeal to the director of the ITF. The decision of the ITF Director is final and there are no other legal means that can be undertaken.

PRODUCTIVITY

Contracts are awarded for tasks that typically include a number of individual clearance sites with defined areas represented as square metres. Bidders are invited to submit an execution plan with a price component that details how each task will be cleared, either with manual clearance, MDD, machines or a combination (the type of clearance asset to be used is agreed with the BHMAC prior to submitting the bid). The execution plan is accompanied with a price component that provides itemised costs for each task. The price component includes an intended start date and an intended completion date with a total number of working days for each task. The cost for each bidder will be determined on the clearance asset(s) to be used and the total number of working days for each task. Given that the tendering process is competitive, it is subsequently in the interest of each bidder to submit a comprehensive execution plan with a competitive price to ensure they are awarded the contract.

LIQUIDATED DAMAGES

The contractor is liable to pay liquidated damages at the rate of 0.5% per day for each day after the agreed intended start date for the performance of works and services, and for each day that the completion date is later than the intended completion date if the delay is proven to be the fault of the contractor. The total amount of liquidated damages shall not to exceed 10% of the total contract price. Payment of liquidated damages does not affect the contractor's obligations in respect of the contract.

LAWS GOVERNING CONTRACTS IN BH

The law governing ITF contracts is Slovenian Law and in most instances generally adheres to BH procurement laws. However, in cooperation with the BH government, it has been agreed in the form of an MOU between the ITF and the BH government that some BH procurement laws would not be adhered to as they are too restrictive and difficult to implement in the context of mine action contracting.

BHMAC ACCREDITATION PROCEDURE

Any organisation wishing to conduct mine action within BH must obtain accreditation from the BHMAC prior to bidding on demining tenders issued in BH. Those organisations wishing to apply for accreditation must demonstrate to the BHMAC that they are suitable to manage and conduct mine action in a safe, efficient and competent manner. This generally consists of providing information about the organisation, such as financial and operational history; employees; equipment and technical methods for mine clearance; the ownership of equipment; and contractual relations with other demining contractors.

QUALITY ASSURANCE AND QUALITY CONTROL

The BH Law on Humanitarian Demining[2] as well as the BHMAC Standard Operating Procedures detail the QA of demining contractors. All sites are monitored by the BHMAC QA management department on a minimum weekly basis to ensure compliance with national standards as well as clearance organisations' individual SOPs. As stated above, all US Government contracts through the ITF also have dedicated on-site monitors to ensure clearance teams comply with their contractual obligations.

GENERAL COMMENTS AND CONCLUSIONS

In general, those interviewed for this guide were satisfied with the overall contracting procedures within BH. The vast majority of funding for demining in BH is through the ITF with funding provided directly by the US Government. This funding comes with the precondition that it is through restricted tendering and only those organisations that are selected are invited to bid. The BHMAC would like all tenders to be open tenders to allow for greater competition during the tendering process. They are also of the view that restrictive tendering will not always attract the best value due to its exclusive nature. The BHMAC would like all BH procurement laws to be adhered to, specifically in regard to the ITF tenders that are governed by Slovenian Law.

All those interviewed considered the respective relationships between contractors, the contracting authority and the BHMAC as professional and generally transparent. However, there was a complaint that the Mine Action Evaluation Commission does not provide feedback to unsuccessful bidders as to why their bids have failed. This leaves the bidder with little understanding as to why their bid was not successful and what actions they could take to improve their bids for future tenders.

There is also a view that the tendering process is overly complicated and expensive for bidders in time, effort and financial cost. As part of the tendering process, bidders have to provide certificates from various government agencies in order to prove compliance with government laws. There is a cost associated with obtaining these certificates. A suggestion is that all bidders provide a signed affidavit declaring their organisation complies with all government criteria. When the bidder is successful the certificates can then be obtained and provided to the contracting authority.

Only a comparatively small number of NGOs are applying for EC grants. The reason for this is that many find the EC rules and regulations governing grants excessively complicated and difficult to fulfil. The concern for the EC is that this disinterest does not allow for a true competitive process.

ENDNOTES

1 www.ec.europa.eu/europeaid/work/procedures/implementation/grants/index_en.htm

2 www.bhmac.org/en/stream.daenet?kat=89

DEMINING CONTRACTING IN AFGHANISTAN

BACKGROUND

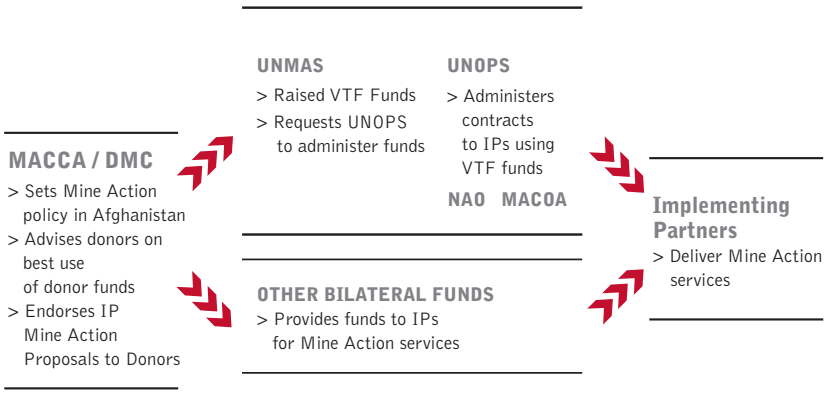
The Mine Action Programme for Afghanistan (MAPA) was the first mine action programme in the world. It encompasses all pillars of mine action: advocacy, demining (survey, marking and clearance), stockpile destruction, mine risk education and victim assistance. More than 20 mine action implementing partners are working in Afghanistan employing over 8,000 personnel. Mine action services reach almost every corner of the country.

The MAPA has a twenty year history of successfully delivering mine action in Afghanistan, and has cleared over 12,000 hazardous areas throughout the country.[1] Afghanistan became a signatory to the AP Mine Ban Convention in 2003, and has committed to clearing all mines by 2013. To achieve this goal, the MAPA will need US$ 500 million over the next five years.

CONTRACTING IN MINE ACTION

The demining community in Afghanistan consists of the following actors:

Demining actors in Afghanistan



In 2002, the Government of Afghanistan (GoA) entrusted interim responsibility for coordination of the mine action programme to the United Nations, through the UN Mine Action Centre for Afghanistan, which later became the Mine Action Coordination Centre for Afghanistan (MACCA). The MACCA, which is funded by the UN Voluntary Trust Fund (VTF), is responsible for planning, coordinating, monitoring and reporting to donors on the Mine Action Programme (MAPA) and progress being made in addressing the landmine problem in the country.

DEMINING CONTRACTING IN AFGHANISTAN

The MACCA has multiple mandates. It is an UNMAS project implemented by the UNOPS and carries a humanitarian mandate to ensure that mine action services are delivered in a safe, efficient and effective manner. It also oversees and coordinates the broader MAPA in partnership with the GoA, represented by the Department of Mine Clearance (DMC), a responsibility confirmed by the Inter-ministerial Body for Mine Action (IMB) in February 2008.

The MACCA is responsible for elaborating objectives and setting targets for all assets involved in mine action, regardless of the source of funding, and for quality assurance. In addition, the DMC coordinates accreditation of implementers; maintains the Afghanistan Mine Action Standards (AMAS)[2]; coordinates external quality assurance; leads coordination for mine risk education with the Ministry of Education; audits land released, cleared and cancelled; and prepares the Article 7 report required under the Mine Ban Treaty for submission to the Ministry of Foreign Affairs.

Based on both the desire of the government, and the UN's strategic objective of assisting in the development of national institutions, the MACCA is also responsible for transferring authority for mine action to the government and for supporting government efforts to develop capacities to manage the MAPA.

In February 2009, direct funding of mine action projects was transferred from the MACCA/DMC into a separate office, the Mine Action Contracting Office in Afghanistan (MACOA). The MACOA is the local representative of the UNOPS North America Office (NAO) and is responsible for procuring mine action services funded by the VTF. It is also responsible for administering and monitoring use of funds allocated from the VTF for mine action in Afghanistan.

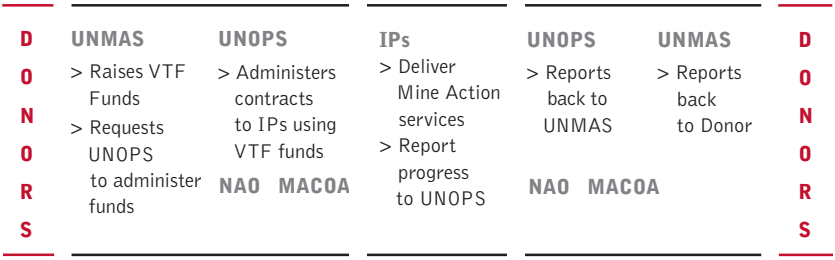
The MACOA supports the MACCA programme team in a number of functions: reviewing the initial proposals from implementing partners (IPs)[3]; negotiating and drafting of contracts; monitoring the contracting progress; administering reports for UNOPS NAO; managing IP payments; ensuring value-for-money to UNMAS concerning the use of funds allocated from the VTF; and maintaining auditable contracting and monitoring processes. UNOPS NAO, through the MACOA, contracts and monitors projects funded by the VTF and donor countries. Presently, the contracts cover activities related to mobile demining (69%); community based demining (25%); and mine risk education (6%). IPs in Afghanistan are comprised of national and international NGOs and commercial demining companies.

DEMINING CONTRACTING IN AFGHANISTAN

THE CONTRACTING PROCESS

UNMAS raises donor funds and then employs UNOPS to issue contracts to the implementing partners.

The Contracting Process in Afghanistan



MACCA / DMC

> Sets Mine Action policy in Afghanistan
> Advises donors (including UNMAS) on best use of donor funds
> Endorses IP Mine Action Proposals to Donors
> Creates framework for mine action (Accreditation, QA, Accident investigation)
> Coordinates with UNMAS to raises funds for MA programme
> Promotes MA issue in Afghanistan

The majority of contracts are issued to IPs that have been pre-selected by UNMAS on the recommendation of the MACCA. The recommendations on fund allocation are primarily based on geographical location and the capabilities and capacities of each IP (mechanical, dogs, community-based demining, etc) taking into account donor preferences and the MACCA mine action priorities. UNMAS requests UNOPS, through the MACOA, to contract each IP. For contracts to be issued, certain criteria must be met: the IP must be accredited by the MACCA/DMC; the IP must have passed an external audit; the IP's proposal must be approved by the MACCA and the UNOPS HQ CPC (Central Procurement Committee); and demining assets must be employed for a specified period of time.

Because the IPs have been pre-selected, UNOPS monitors them closely to ensure efficient and effective use of funds. This is done through quarterly reporting, both on operational progress and financial expenditures; final reports summarising outcomes; reports certified by the MACCA operations team; and annual audit reports shared with UNOPS. Payments are made quarterly according to a pre-agreed payment schedule. Pre-selected IPs must return unspent funds to UNOPS (only applicable to NGOs). UNOPS would like to issue more contracts on a competitive basis. A request for proposals (RFP) on a competitive basis was piloted in 2008.

UNOPS employs a variety of standard clauses in its contracts, but they always include the UNOPS standard *General Conditions for UNOPS Contracts for Professional Services*. In addition, the IPs must adhere to the Afghanistan Mine Action Standards (AMAS – safety standards, security procedures, medical evacuation, food, working hours, communication, etc).

Regarding liability, the IPs must demonstrate to UNOPS that they have adequate insurance. The contractor remains liable for each area surveyed, cleared and verified, for the duration of the contract. The contractor's liability ends when the MACCA, through the Area Mine Action Centres (AMAC – MACCA's regional organisations), signs the handover certificate in the completion report.

UNOPS is not liable for compensation for death, damage or other hazards which may be suffered by any third parties, or to their property, as a result of the contractor's actions, errors, omissions, negligence or misconduct. UNOPS shall not be held liable for any of the contractor's actions, omissions, negligence or misconduct in respect of life, health, accident, travel, or for any insurance coverage which may be necessary or desirable for the purpose of the contract. It is not liable for any costs, expenses or claims associated with any illness, injury, death or disability of the contractor's personnel performing services under the contract.

Regarding a code of conduct, the IPs are required to take all appropriate measures to prevent sexual exploitation or abuse of anyone by any of its personnel. The contractor is required to refrain from, and to take all appropriate measures to prohibit its personnel or other persons engaged by it from exchanging money, goods, services, or offers of employment or other things of value, for sexual favours or activities. Dispute resolution is settled by arbitration in accordance with the UNCITRAL Arbitration Rules. To date, there have not been any such disputes.

COMMENTS AND CONCLUSIONS

Meetings and interviews were conducted with six UN and governmental bodies, five national and international NGOs, and two commercial demining companies in Kabul from 9-14 September 2009.

Those interviewed confirmed that most actors involved in humanitarian demining in Afghanistan are satisfied with the way contracts are issued. The roles of the MACCA and the MACOA are highly appreciated by the actors. There seems to be, however, a need for improving communication and interaction within the demining community. It is particularly important to inform all demining actors about the newly established MACCA and MACOA roles and responsibilities. The MACCA and/or MACOA are considering regular meetings to improve the flow of information.

Additional funds are also needed for demining in Afghanistan. This is a prerequisite for achieving the goal of a mine-free Afghanistan in 2013. Both NGOs and commercial demining operators have excess capacity.

In Afghanistan, mine action contracting by the UN is carried out to a high standard. Pre-selection of IPs is the most common contracting modality and is far more common than grant agreements or requests for proposals (RFP). Almost all contracts are with national or international NGOs. Grant agreements, which seem to be most relevant for one-off activities, have not been used by the UN in Afghanistan since 2005. For contracts based on an RFP, there is often only one bidder. It is important that the right type of contract is used in the right context.

When designing contracts/tenders, there must be a strong focus on outcome, and not on capacity building. An outcome might be, for instance, "area properly cleared in accordance to the contract and the minimum standards (IMAS/AMAS)". The more a contract is outcome focused, the clearer the objectives can be stated in the contract, and the easier it will be to monitor. It seems there is a need for a speedier handling of the contract process. According to implementing partners, it takes too long from the start of the process to the signing of the contract.

DEMINING CONTRACTING IN AFGHANISTAN

The MACOA is piloting a new contract template to pay for pre-agreed output. The new template will be based on experience with commercial contractors during the use of Requests for Proposals (RFP). The contract template links outcomes to performance and payment. Payment is based on hazards completed, not on amount of time worked. The new contract template requires close coordination between the MACOA and the MACCA concerning agreement on hazards to be completed as a part of the contract, and with regard to monitoring the operational changes (change in hazard size, output requirements, etc).

Pre-selection, as the main resource allocation method, has both pros and cons. Several NGOs in Afghanistan have developed local demining capacities. As a result of local knowledge and language, interaction with local authorities and reputation, using these NGOs is good value for money, as these NGOs can do demining in areas not accessible by external organisations. Pre-selection also requires less management overhead to award contracts. However, pre-selection is not in compliance with the principle of transparent resource allocation achieved through competitive bidding. In addition, the fact that unspent funds must be returned to UNOPS does not create incentives for financial stringency, and does not let IPs build up any savings, which in turn means that they encounter frequent cash flow problems. On the other hand, political aspects can significantly impact commercial concerns.

In environments characterised by a high level of hostility, security is a significant factor. Responsibility for the safety of the deminers rests solely with the individual IPs. They must provide for the safety of their own personnel and assets based on risk assessments. Decisions to cancel or postpone ongoing activities must be the responsibility of the management of the IPs. They must take appropriate action if the security situation changes.

ENDNOTES

1 MAPA – 1388 Integrated Operational Plan

2 The AMAS is based on the International Mine Action Standards – IMAS.

3 Implementing partners in Afghanistan are national and international NGOs and commercial demining companies.

DEMINING CONTRACTING IN CROATIA | AN EXAMPLE OF CONTRACTING OF MINE CLEARANCE CAPACITY

CROATIA AND MINE ACTION | A BACKGROUND

The evolution of mine action in Croatia can be described in three phases as follows:

- first phase from 1996 to 1998, during which time the United Nations Mine Action Centre (UNMAC) was active
- second phase from 1998 to 2003, with UN assistance to the Croatian Mine Action Centre[1] (CROMAC) and assistance from the Western European Union Demining Assistance Mission (WEUDAM)
- third phase from 2003 to present, as a stand-alone mine action programme with CROMAC as coordinator

CROMAC was established through a Croatian Government Decree in 1998 with the main office in Sisak and regional offices in Karlovac, Osijek and Zadar. With its 156 employees, CROMAC is responsible for all mine action activities in Croatia including contracting of demining capacity, QA and QC and development of norms, standards and guidelines. According to CROMAC, there are 103,000 mines and 954.5 square kilometres of mine suspected areas remaining to be cleared in Croatia as at 2009.

The mine action capacity available in Croatia consists of 27 commercial demining companies and one NGO with a total capacity of 615 deminers, 56 demining machines and 38 MDD.

The priority for clearance for 2010 is houses and yards, together with agricultural areas.

MINE ACTION CONTRACTING

Between 1998 and 2008, € 380,000,000 (US$ 566,990,155[2]) were invested in demining 280 square kilometres, destroying 79,400 mines and 183,500 UXOs and marking suspect hazardous areas with 15,000 warning signs.

The current funding sources for demining are as follows:

- state budget 56%
- the World Bank 8%
- public companies 19%
- donors 17%

DEMINING CONTRACTING IN CROATIA | AN EXAMPLE OF CONTRACTING OF MINE CLEARANCE CAPACITY

CROMAC carries out 85% of all tenders and contracting for demining in the country. The remaining tenders and contracts are carried out by public companies. These companies budget for clearance based on information provided to them by CROMAC. In all cases, bidders are unaware of the amount of funds that have been allocated or budgeted for demining, and all of them have to prepare their own financial proposals based upon their proposed approach to the statement of work. When contracting is done independently by public companies, CROMAC needs to give its approval of the tender documents prior to their issuance. CROMAC must also review and approve the execution plan for any demining contracting in Croatia. Project proposals are prepared by CROMAC, which always participates in the technical evaluation with a representative from the CROMAC QA department.

Manual demining contractor in Croatia

The methods of procurement are through international competitive bidding (8%), national competitive bidding (56%), direct contracting (19%) and other means (17%). Few international demining companies respond to the open international tenders that are being posted in European gazettes due to the required training of staff and the fact that the firms must open a branch office in Croatia. Tender documents are purchased by demining firms for 15 Euros. Between 1998 and 2008, there were 1,950 contracts signed, and in 2009 there were between 110 and 115 contracts issued.

CROMAC ACCREDITATION PROCEDURES

Commercial demining companies must obtain an accreditation from CROMAC before bidding on demining tenders issued in Croatia. The CROMAC accreditation procedures aim to establish the capability of the firm for conducting humanitarian demining operations in a safe, efficient and qualitative manner.

Commercial companies are required to register their demining capacities with CROMAC. The information that is requested to be provided to CROMAC consists of general information about the company, employees, equipment and technical methods for mine clearance together with information on the ownership of equipment and contractual relations with other demining contractors.

THE CROMAC CONTRACTING PROCESS

Contracts are managed by the CROMAC support division, which consists of the legal and general administrative department and the logistics department. Other departments are also involved and provide advice throughout the process.

Typically, the CROMAC Director will appoint a team responsible for handling each procurement case of equipment or services. The team normally consists of one staff member from the legal and general administrative department (which is one of the CROMAC divisions), one staff member from the planning and analysis department, one staff member from the finance department and one member from the QA department. The technical part of the process is always supported by one staff member from the support division. This staff member is also involved throughout the whole tendering process. CROMAC uses a traditional two-envelope system for the contractor's proposals consisting of separate financial and technical components.

If one of the bidding firms has any objections to the result of a tender evaluation, the contractor in question can file a formal complaint which will result in a period of 12 days during which the contracting agency (CROMAC) cannot undertake any activities related to the contract. If the contract value is less than 40,000 Euros this period is five days.

BID SUBMISSIONS

Bidders need to prove their legal and business eligibility as part of the tendering process by submitting a document issued by the Ministry of Interior (MoI) showing that they are registered in the court register and are accredited for the conduct of demining operations. Bidders also have to prove that a competency assessment has been issued by CROMAC.

CROMAC uses a two-envelope system for its tendering. Bidders are required to submit evidence on their financial, legal and technical competencies in one envelope and basic elements of the bid including price, statement on price invariance and operative dynamic plan in the second envelope.

This practice is used because CROMAC announces several public tenders at a time (up to 15). In this way, bidders that wish to participate in more than one tender can submit a single envelope with evidence on their financial, legal and technical competencies. Bidders are still required to submit separate second envelopes with bids for each separate tender.

The information required to prove a bidder's competencies with regard to their financial status includes the following:

- a document issued by the Tax Administration confirming that the bidder has successfully paid immediate tax liabilities, including retirement and social security benefit taxes
- a document by which the bidder confirms its solvency (ie that its last year's income was at least twice as large as the bid amount)
- a document by which the bidder is obliged to prove its solvency (ie not to have had their bank account blocked longer than ten days in the last six months)
- a form to the Tax Administration in statutory term by which the bidder proves the earned revenues of its employees and other obligatory payments to be paid in full
- a bid guarantee
- a bank guarantee in the amount of 8,000 Kuna (HRK) (US$ 1,651[3]) by which they guarantee the gravity of their bid; this guarantee must be valid for a minimum period of nine months

DEMINING CONTRACTING IN CROATIA | AN EXAMPLE OF CONTRACTING OF MINE CLEARANCE CAPACITY

Mechanical demining contractor in Croatia

Bidders must also prove their technical and expert competencies through the submission of the following documents:

- list of deminers and auxiliary workers planned to be engaged in operations that are the subject of a procurement process, stating their educational qualifications, years of experience in demining operations in Croatia and the number of accreditation certificate issued by the MoI
- list of equipment and technical demining resources such as MDDs possessed by the bidder based on ownership or lease contract and planned to be engaged during the conduct of demining operations that are the subject of procurement
- statement confirming the engagement of experts with experience in conducting demining operations, including the production of the execution plan and final report in accordance with regulations and the tender documentation
- a certificate issued by the Tax Administration on the active debt status, by which the bidders confirm to have successfully covered immediate tax liabilities, including retirement and social security benefit taxes
- statement certified by a public notary confirming the bidder's adherence to the provisions of the collective agreement signed between Croatian Association of Employers in Humanitarian Demining and trade unions covering the field of humanitarian demining (the contracting authority can demand verification of the selected bidder's adherence to the above-mentioned agreement; the verification is performed by the collective agreement signatories)

All documents enclosed as evidence of a bidder's competencies must be submitted as originals or notarised copies. Evidence on active debt status and successful coverage of immediate tax liabilities, including retirement and social security benefit taxes, statement on absence of a criminal record and ID form, are not to be older than 30 days from the date of public tender announcement. Other evidence provided cannot be more than six months old from the date of the public bidding announcement. Copies of CROMAC's competency assessment and documentation issued by the MoI must also be enclosed.

For subcontracts, the bidder must submit a signed contract with the subcontractor (original or copy) whose capacities the bidder specified in its bid as well as other relevant information about the subcontractor. The subcontractor in turn also must prove its eligibility through a:

- statement confirming non-existence of any circumstance that would be contrary to Croatian public procurement law
- document showing that the company is registered in the business, court (commercial), vocational, trade or other relevant register, by which the bidders confirm to be accredited for the conduct of operations that are subjects for procurement
- a certificate issued by the Tax Administration on the active debt status and statement certified by a notary public confirming the bidder's adherence to the provisions of the collective agreement as described above

In summary the bid must consist of the following:

- general information about the bidder (in case of joint bid, only about the bid holder)
- basic bid elements form
- evidence on eligibility
- mandatory parts and/or enclosures (if any)
- joint venture contract(s)

DEMINING CONTRACTING IN CROATIA | AN EXAMPLE OF CONTRACTING OF MINE CLEARANCE CAPACITY

MDD contractor in Croatia

Several companies can also submit a joint bid for CROMAC tenders. For such bids the above rules are also applicable.

Bids are opened publicly at the CROMAC headquarters. The opening of bids is performed by representatives of CROMAC. The bid opening can also be attended by authorised representatives of bidders and persons with or without the status of an interested party. The right of active participation in the bid opening procedure is only held by authorised representatives of the bidders.

If CROMAC establishes that a bidder did not prove its technical competencies (legal, business, financial, absence of criminal record) as indicated above, then the bidder is excluded from further evaluation.

In line with Croatian public procurement law, CROMAC performs the selection among competent bidders based on the lowest price offered. It means that the bids are ranked according to the lowest price offered after each bidder has been evaluated with regard to their business, technical and staffing competencies as stated in the bidding documentation.

The most competitive bidder is obliged to submit its execution plan (including maps in case of joint bid or hiring of subcontractors) not later than seven days from the submission of the decision regarding the selection of the most competitive bidder. The contract is then signed no later than five days from the date of submission of the execution project approval. In addition, the most competitive bidder is obliged to submit an unconditional bank guarantee in the amount of 10% of the total value of operations (VAT included) to CROMAC prior to the start of operations. Performance bonds must be valid from the date of planned commencement of operations until 30 days from the ultimate deadline for the completion of operations defined by the contract. Normally, bids are to be valid for a period of 90 days.

The payment to the contractor will be made by CROMAC no later than 30 days from the quality assurance of the completed clearance and submission of the invoice.

QA AND QC

The Croatian Law on Humanitarian Demining[4] deals with QA of demining contractors. The existing law and rules and regulations[5] in Croatia describe the process of QA in detail. SOPs regulate the QA which is carried out by the CROMAC QA department (the QA department consists of approximately 50 staff and is the biggest department within CROMAC). The QA process is in place to ensure quality of the demining process as a whole. Sampling is carried out of a minimum of 0.5% of the whole area cleared by contractors before the land is handed over. The samples are taken from all parts of the cleared area. The sampling is overseen by a CROMAC QA officer. Sampling is carried out by one of the three CROMAC teams assigned to each regional office. Each team consists of three deminers. CROMAC also has 24 deminers dedicated to QA. If needed, these deminers are used to create additional sampling teams.

There is one CROMAC deminer present at each site to do sampling every day or every three days. The area checked depends on the size, but typically 450 sqm are checked every three days. CROMAC QA visits each site every seven days and is informed by the CROMAC deminer on the site about the work and QA carried out. A total of 12 QA officers are responsible for QA of two to four demining sites.

GENERAL COMMENTS AND CONCLUSIONS

In general, commercial companies in Croatia are satisfied with the way contracts are issued. They find that CROMAC has a good understanding of when tenders should be issued with regard to weather and other external factors which would affect the manner in which the firm carries out demining.

The Croatian public procurement law is very extensive and complicated. Some contractors claim that it is too long, too complex and too complicated. Normally, it takes two months to get activities under a contract started from the time the tender is issued to the signing of a contract. This time period only applies when there are no complaints lodged about the tendering process. If there are complaints, the period could be extended to four or even five months. This is not common, but it does happen occasionally. Since the period for contracting is so long, a lot of capacity that is available in Croatia is not used to its fullest extent.

Additional funds are needed for demining contracting in Croatia. Some contractors could do three times as much if the funds were available. More areas could be cleared if there were fewer limitations from CROMAC. According to the Croatian contractors, they are only allowed to clear 300 square metres per day but could produce much more if their deminers could stay longer in the field. Most contracts impose a limit on the number of hours a deminer can work per day. The QA monitor can allow for another 20% for each deminer, but any more time than that needs authorisation from CROMAC and that takes too much time to obtain.

Re-clearance is a punishment and paid for at the contractor's expense. 100% follow-on is always required and is considered to be the safest method available to ensure quality of the end product.

The price per square metre is only 6-8 HRK (US$ 1.23-1.65), which is low and is not considered to be enough for the commercial companies. This price allows for a profit of 5-10%. The cost for a machine is 2.5-3 HRK (US$ 0.52-0.62) per square metre (this does not include the purchase of the machine). One deminer is 2400 HRK (US$ 495) per day which includes salary, per diem, equipment, accommodations and transportation of the deminers. CROMAC is considered to be the best contracting authority in the region by the contractors that were interviewed during the making of this guide.

DEMINING CONTRACTING IN CROATIA | AN EXAMPLE OF CONTRACTING OF MINE CLEARANCE CAPACITY

CROMAC conclusions and recommendations regarding mine action contracting.

- Humanitarian demining contracts must be developed to ensure that the service delivered (ie demining) is of the highest quality possible and carried out within the specified terms outlined in the contract documents and in compliance with existing regulations and rules for demining operations.
- Considering the specificities during the preparation of bidding documentation (ie the inability of accessing suspect hazardous areas), the contract should regulate the method of taking appropriate actions in case changes to implementation plans not defined in the contract documents are needed.
- Taking into account the character of demining operations, the alternation of contracted work methods should be precisely defined as well as the method of engagement of additional capacities (subcontractors) and reasons for the potential extensions and/or amendments of the terms agreed to.
- A liability clause describing the responsibilities of a contractor for potential damage made during the conduct of operations to a third person should be integrated into the contract (eg destruction of real estate border markers, breaking of window glass on buildings during the process of destruction of mines, destruction of trees that should not have been damaged etc).
- Each contract should have a clause about performance bonds (in form of a bank guarantee or any other type of insurance).

ENDNOTES

1 ww.hcr.hr/en/index.asp

2 1 Euro = 1.49208 US$ (21 October 2009)

3 1 Kuna (HRK) = 0.20645 US$ (21 October 2009)

4 www.hcr.hr/pdf/THE%20CHANGES%20AND%20AMENDMENTS%20TO%20THE%20LAW%20ON%20HUMANITARIAN%20DEMINING.pdf

5 Book of rules and regulations on competence assessment procedure for authorised legal entities and tradesmen conducting humanitarian demining operations, which is to be found at the following webpage: www.hcr.hr/pdf/RULES%20AND%20REGULATIONS%20ON%20COMPETENCE%20ASSESSMENT%20PROCEDURE%20FOR%20AUTHORISED%20LEGAL%20ENTITIES%20AND%20TRADESMEN%20CONDUCTING%20HUMANITARIAN%20DEMINING%20OPERATIONS.pdf and the Book of rules and regulations on the method of conducting humanitarian demining operations.

CONTRACTING CHECKLIST FOR CONTRACTORS

The following checklist is an example of some of the questions and documentation that a contractor should keep in mind when putting together a proposal. It is not an exhaustive list and other issues may also be relevant depending on the information required in the proposal.

DOCUMENT (copy or original as required in the tender documentation)	**YES / NO OR REMARKS**	**ENCLOSED IN ENVELOPE ONE OR TWO**
ADMINISTRATIVE DOCUMENTS AND TECHNICAL COMPONENT		
Have the tender documents been reviewed by at least two staff members?		N/A
Does the tender require that the contracting agency be notified about the firms intention to bid?		N/A
General information about the contractor		
Relevant experience as a contractor		
Is there a requirement for a tender or bid guarantee?		
Is there a requirement for an affidavit statement		
Is there a requirement for proof of accreditation?		
Is there a requirement for power of attorney?		
Is there a requirement for a certificate that the firm is not filed for bankruptcy?		
Is there a requirement for an audited financial statement?		
Is there a requirement for financial identification?		
Is there a requirement for a certificate on tax settlement?		
Safety record (including subcontractors)		
Statement of non association (including subcontractors)		
Litigation history (including subcontractors)		

ANNEX 8

CHECKLISTS

DOCUMENT (copy or original as required in the tender documentation)	**YES / NO OR REMARKS**	**ENCLOSED IN ENVELOPE ONE OR TWO**
ADMINISTRATIVE DOCUMENTS AND TECHNICAL COMPONENT		
Organisational chart as required in the tender documents		
Explanation of any assumptions?		
Approach to the project: execution plan and programme, including timeline in accordance with the phase requirements in the tender documentation		
Details on all logistics for mobilisation of staff and equipment to the country and within country		
Proposed subcontract, if applicable		
Staff proposed for the execution of the contract		
CVs of staff (signed if necessary)		
Records of mine detection dogs, if applicable		
A list of equipment for the contract		
Description of any required maintenance facilities		
Table of available capacities		
Internal quality assurance system		
Does all the above documentation have the necessary and right signatures?		N/A
Are there any questions regarding the tender document?		N/A
Have all responses to clarification questions been answered and incorporated into proposal?		N/A

CONTRACTING CHECKLIST FOR CONTRACTORS (CONTD)

SITE VISIT	YES / NO	REMARKS
Is there a requirement for a site visit?		
Is the site visit escorted?		
Is a statement on attending the site visit necessary?		
Who will participate during the site visit?		
Who will prepare the site visit?		
Who will document the site visit?		
How will the site visit be documented?		

FINANCIAL COMPONENT	YES / NO	REMARKS
Has the personnel budget for the contract been prepared, including: personnel costs (HQs and field), salaries, housing, travel, visas, insurance, etc?		
Has the operations budget for the contract been prepared, including: transportation, fuel, utilities, rental of premises, consummables, etc?		
Has the equipment budget for the contract been prepared, including: local and international procurement, transportation, customs duties, export and import licenses, spare parts, etc?		
Has the administrative budget for the contract been prepared, including: possible fluctuations in exchange rate, bank fees, overheads, etc?		
Has the total integrated budget for the contract been prepared?		

FINANCIAL COMPONENT (CONTD)	YES / NO	REMARKS
Is the financial component presented as required in the tender documents?		N/A
Have the figures in the budget been double and triple checked for accuracy?		N/A
Does the total price match the amount indicated on the financial proposal cover page?		
Justification for advance payment if required		
If advance payment is over a certain threshold, is there requirement for a bank guarantee?		N/A
Has a proposed payment plan been prepared and included in the financial proposal?		

OTHERS	YES / NO	REMARKS
Has a project file been opened for this tender?		N/A
Are all pages numbered and in the right order?		N/A
Has the right number of envelopes been prepared?		N/A
Have the envelopes been marked according to the instructions in the tender documents?		N/A
When is the deadline for delivery of the proposal?		N/A
When must the proposal be sent?		N/A
What is the required method(s) for delivery of the proposal?		N/A
How will the proposal be delivered?		N/A

TENDERING CHECKLIST FOR CONTRACTING AGENCIES

The following checklist is an example of some of the questions and documentation that a contracting agency should keep in mind when putting together an ITB or an RFP. It is not an exhaustive list and other issues may also be relevant depending on the services or equipment being procured.

TENDERING PROCESS	YES	NO
Will an EOI or a prequalification exercise be used?		
Will notification of the tender be advertised on the web and in other publications?		
Will a shortlist of firms be used? Will the shortlist be comprised of local, regional or international firms?		
If a shortlist is to be used, has a shortlist been developed and approved by the designated official?		
Will an ITB or an RFP be used?		
Have the complete tender documents been prepared: cover letter, Statement of Work, model contract, general terms and conditions, etc?		
Do the tender documents clearly indicate what documentation is required, such as: affidavits, power of attorney, certificate of tax, audited financial statements, etc?		
Has the deadline for receipt of tenders been clearly indicated?		
Has the process for requesting clarifications been clearly indicated?		
Has the process of how to submit the proposal – one envelope or two been clearly indicated?		
Has the format for the financial proposal been clearly explained?		
Has the criteria for evaluation of the technical and financial proposals been clearly explained?		
Is there a requirement for a site visit?		
Will the site visit be arranged by the contracting agency?		
Is there a requirement for a tender or bid guarantee?		
Is there a requirement for a bank guarantee for an advance payment?		

EVALUATION CHECKLIST FOR CONTRACTING AGENCIES

The following checklist is an example of some of the questions and documentation that a contracting agency should keep in mind when opening and evaluating an ITB or an RFP. It should be customised to include the documentation relevant to the specific tender and the contracting agency's internal requirements. It is not an exhaustive list and other issues may also be relevant depending on the services or equipment being procured.

BID OPENING	YES	NO
Have the bids been kept in secure place since receipt?		
Have at least two staff members opened the bids?		
Has a bid report been completed?		
Has an evaluation panel comprised of at least two staff members been established?		
Has a representative of the client or a technical expert been invited to join the evaluation panel?		
EVALUATION (A SEPARATE CHECKLIST SHOULD BE USED FOR EACH BIDDER)		
Has the bidder submitted the proposal by the deadline?		
Has the bidder submitted two envelopes if required?		
Is there general information about the contractor?		
Is there a description of the contractor's relevant experience?		
Is there an affidavit statement included, if applicable?		
Is there proof of accreditation, if applicable?		
Is there a power of attorney included, if required?		
Is there a certificate showing that the firm has not filed for bankruptcy, if required?		

EVALUATION CHECKLIST FOR CONTRACTING AGENCIES (CONTD)

EVALUATION (CONTD) (A SEPARATE CHECKLIST SHOULD BE USED FOR EACH BIDDER)	**YES**	**NO**
Is there an audited financial statement included, if required?		
Is there a certificate on tax settlement, if required?		
Is the bidder's safety record (including subcontractors) included?		
Is there a statement of non association (including subcontractors) included, if required?		
Is the bidder's litigation history (including subcontractors) included, if required?		
TECHNICAL COMPONENT		
Organisational chart as required in the tender documents		
Is there an explanation of any assumptions included?		
Approach to the project: execution plan and programme, including timeline in accordance with the phase requirements in the tender documentation		
Details on all logistics for mobilisation of staff and equipment to the country and within country		
Proposed subcontracts, if applicable		
Staff proposed for the execution of the contract		
CVs of staff (signed if necessary)		
Records of mine detection dogs, if applicable		
A list of equipment for the contract		
Description of any required maintenance facilities, if required		
Was there a site visit?		

EVALUATION CHECKLIST FOR CONTRACTING AGENCIES (CONTD)

FINANCIAL COMPONENT	YES	NO
Is there is a tender or bid guarantee included, if required?		
Is the financial component presented as required in the tender documents?		
Is there a breakdown of costs in the financial proposal if required?		
Are the figures in the financial proposal accurate?		
Does the total price match the amount indicated on the financial proposal cover page?		
Is there a justification for an advance payment?		
If advance payment is over a certain threshold, will a bank guarantee be provided?		
Has a proposed payment plan been prepared and included in the financial proposal?		
OTHER		
Has a background check been done on bidder with highest score on evaluation?		

SAMPLE FORMS

SAMPLE BID BOND

WHEREAS ..... [*name of Tenderer*] (hereinafter called "the Tenderer") has submitted its Tender dated, ... for the execution of ..... [*name of Contract*] (hereinafter called "the Tender").

KNOW ALL PEOPLE BY THESE PRESENT THAT WE .... [*name of Bank*] of ..... [*name of Country*] having our registered office at ..... (hereinafter called "the Bank") are bound unto .... [*name of Employer*] (hereinafter called "the Employer") in the sum of* ..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these present.

SEALED with the Common Seal of the said Bank this ..... day of ..... 200....

THE CONDITIONS of this obligation are:

(1) If, after Tender opening, Tenderer withdraws its Tender during the period of Tender validity specified in the Form of Tender; or

(2) If the Tenderer having been notified of the acceptance of its Tender by the Employer during the period of Tender validity:

   (a) fails or refuses to execute the Form of Contract in accordance with the Instructions to Tenderers, if required; or

   (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Tenderers; or

   (c) does not accept the correction of the Tender Price pursuant to Clause 29, Section I.

We undertake to pay to the Employer up to the above amount upon receipt of its first written demand, without the Employer's having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions. This Guarantee will remain in force up to and including the date 60 days after the deadline for submission of Tenders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date ..... Signature of the Bank .....

Witness ..... Seal .....

.....
(Signature, name, and address)

* The Tenderer should insert the amount of the Guarantee in words and figures denominated in the currency used in the Employer's country. This figure should be the same as shown in the table in the invitation for tenders.

SAMPLE FINANCIAL COMPONENT

EXPENSES		UNIT	# OF UNITS	UNIT RATE (USD)	COST (USD)
1.	HUMAN RESOURCES				
1.1	Salaries (gross amounts, national staff)				
	1.1.1 Technical staff				
	1.1.2 Administrative/support staff				
1.2	Salaries (gross amounts, international staff)				
1.3	Per diems for missions/travel 1.3.1 Abroad (project staff) 1.3.2 Local (project staff) 1.3.3 Seminar/conference participants				
1.4	Insurances				
	Subtotal Human Resources				
2.	TRAVEL				
2.1.	International travel				
2.2	Local transportation and travel				
	Subtotal Travel				
3.	EQUIPMENT AND SUPPLIES				
3.1	Purchase or rent of vehicles				
3.2	Demining equipment				
	3.2.1 Mine detectors and other manual tools				
	3.2.2 Protective equipment				
	3.2.3 Explosives				
3.3	Communications equipment				
3.4	Spare parts/equipments for machines, tools				
3.5	Medical equipment				
3.6	Camping equipment				
3.7	Other				
	Subtotal Equipment and supplies				

SAMPLE FORMS

SAMPLE FINANCIAL COMPONENT

EXPENSES		UNIT	# OF UNITS	UNIT RATE (USD)	COST (USD)
4.	LOCAL OFFICE/PROJECT COSTS				
4.1	Vehicle costs – purchase				
4.2	Vehicle cost – lease				
4.3	Transportation costs for demining machines				
4.4	Maintenance of demining machines				
4.5	Spare parts for demining machines				
4.6	Fuel, oils and lubricant costs				
4.7	Service and maintenance				
4.8	Office rent				
4.9	Consumables – office				
4.10	Other services (tel/fax, internet, sat phones, electricity/heating, etc)				
	Subtotal Local office/project costs				
5.	OTHER COSTS, SERVICES				
5.1	Translation, interpreters				
5.2	Financial services (bank guarantee costs etc)				
5.3	Insurance costs for staff				
5.4	Insurance costs for equipment				
	Subtotal Other costs, services				
6.	OTHER				
	Subtotal Other				
7.	SUBCONTRACT				
7.1	Subcontract labour				
7.2	Subcontract MDDs				
7.3	Subcontract demining machines				
7.4	Subcontract security				
7.5	Subcontract other				
	Subtotal Subcontract				
	Project management costs				
	Profit				
8.	TOTAL COSTS				

SAMPLE PROPOSAL OPENING REPORT

Tender number

Opening of received proposals took place at ..... at ..... hours on ..... 200....

ENTITIES INVITED TO TENDER NAME & COUNTRY		**REMARKS** (ie INCOMPLETE, UNSOLICITED, LATE PROPOSALS, SECURITIES REQUESTED etc)

Opened by

....
Title Signature

....
Title Signature

....
Title Signature

....
Title Signature

SAMPLE ADVANCE PAYMENT GUARANTEE

The undersigned, [*name, company name, address*], hereby declare that we will guarantee, not merely jointly and severally, but as principal debtor, to [*Contracting Authority's name and address*] on behalf of [*Contractor's name and address*], the payment of [*indicate the amount*], corresponding to the advance/balance as mentioned in Article 30 of the Conditions of the Contract without dispute, on receipt of a first written request from the recipient.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract Documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The guarantee will enter into force and take effect from the [*indicate the date of payment of the advance*] and shall be valid until [*Contracting Agency's name and address*] has received full repayment of the same amount from the Contractor.

We note that you will release the guarantee and notify us of the fact at the latest within thirty days of this date.

Any dispute concerning this guarantee shall be governed by national law and fall within the jurisdiction of the court in the domicile of the Contracting authority.

Done at ……, ……/……/……

Name and first name …… On behalf of ……

Signature ……

……
[*stamp of the body providing the Guarantee*]

SAMPLE PERFORMANCE GUARANTEE

The undersigned, [*name, company name, address*], hereby declare that we will guarantee, not merely jointly and severally, but as principal debtor, to [*Contracting Agency's name and address*] on behalf of [*Contractor's name and address*], the payment of [*amount of the performance guarantee*], representing the performance guarantee mentioned in article 31 of the Conditions of the Contract without dispute, on receipt of a first written request from the recipient.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract Documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The guarantee will enter into force and take effect from the [*indicate the date of entry into force of the contract*] and shall be valid until the date of issue of the final statement of account.

We note that you will release the guarantee and notify us of the fact at the latest within thirty days of the date of issue of this Certificate.

Any dispute concerning this guarantee shall be governed by national law and fall within the jurisdiction of the court in the domicile of the Contracting agency.

Done at ……, ……/……/……

Name and first name …… On behalf of ……

Signature ……

……
[*stamp of the body providing the Guarantee*]

SAMPLE FORMS

SAMPLE END USER CERTIFICATE

END USER CERTIFICATE

WE, ...
[*name of company/organisation and country*]

HEREBY CERTIFY THAT THE EQUIPMENT LISTED BELOW, ORDERED AND PURCHASED BY US FROM .....
.....
[*name of supplier*]

IS FOR OUR EXCLUSIVE USE. THE EQUIPMENT WILL NOT BE EXPORTED OR RE-EXPORTED.

CONTRACT N°.....

CONTRACT DATE .....

EQUIPMENT.....

TYPE .....

QUANTITY .....

VALUE .....

Upon request we undertake to confirm receipt of the equipment listed above.
.....
[*date and signature*]

.....
[*name of company/organisation*]

.....
[*seal/stamp of company/organisation*]

Note: The Certificate by End User should be signed by an official representative of the company/organisation, authorised to undertake a commitment of the present.

SAMPLE AFFIDAVIT

With moral and legal responsibilities, I can confirm that demining company:

…… [*Name of the Company/Organisation*] are not bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

…… [*Name of the Company/Organisation*] are not the subject of proceedings for a declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations;

…… [*Name of the Company/Organisation*] have not been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;

…… [*Name of the Company/Organisation*] are not guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;

…… [*Name of the Company/Organisation*] have fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country where they are established;

…… [*Name of the Company/Organisation*] have fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country where they are established;

…… [*Name of the Company/Organisation*] they are not guilty of serious misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in an invitation to tender or contract;

…… [*Name of the Company/Organisation*] have not been declared to be in serious breach of contract for failure to comply with obligations in connection with another contract with the same Contracting Authority or another contract financed with Community funds;

…… [*Name of the Company/Organisation*] are not in one of the situations allowing exclusion referred to in the Ethics Clauses in connection with the tender or contract.

Name and Surname ……

Duly authorised to sign this tender ……

Signature …… Place and date ……

Stamp of the Company/Organisation ……

SAMPLE FORMS

SAMPLE FINANCIAL STATEMENT

FINANCIAL STATEMENT

Please provide all of the information required by this form in USD or National currency (NC) equivalent.

Basic Capital

Amount	USD or NC
Currency	USD or NC
Authorised	USD or NC
Issued	USD or NC

Annual value of demining work undertaken for each of the last 2 years

USD or NC	Year -2	Year -1
Home		
Abroad		
Total		

Approximate value of Work in hand (home and abroad) .....USD or NC

Please attach copies of the Company's certified statements of account for previous two (2) years from which the following basic data shall be abstracted:

USD or NC	Year -2	Year -1	Current Year
1. Total Assets			
2. Total Liabilities			
Net Value (1-2)			
3. Current Assets			
4. Current Liabilities			
Working Capital (3-4)			
5. Profit (before taxation)			
6. Loss			

Name and address of Banks (principal/others)

.....

.....

Please enclose a reference/certificate about the financial situation of the Company and its access to credit facilities equivalent USD or national currency.

Signature ..... Date .....

(a person or persons authorised to sign on behalf of the bidder)

SAMPLE FORMS

SAMPLE POWER OF ATTORNEY

POWER OF ATTORNEY

The undersigned, ... [*name and surname*], being the authorised signatory of the Tenderer ..... [*name of the demining company/NGO*], am committing that the Tenderer will act in accordance with the offer for the submitted Tender ..... [*indicate number of tender*], for the contract No. .....

Signature .....

Position .....

Stamp of the Tenderer .....

Date .....

BIOGRAPHIES

MICHAEL CREIGHTON

Chapter *7*, Contracting and land release, was written by Mike Creighton. Mike is a consultant working for the GICHD in the field implementation of land release methods in South East Asia. He has previously worked at the GICHD in the land release section as the Land Release Project Officer.

Mike was an officer in the Engineer Corp of the Australian Army for 11 years and is a qualified Explosive Ordnance Disposal (EOD) technician. He has studied for both a Bachelor's Degree in Politics and a Masters Degree in International Relations. Since leaving the Australian Army, Mike has gained experience in a number of mine action positions and theatres, including both the commercial and humanitarian spheres. He worked for a commercial company in Iraq before taking the position of Operations Officer for the North Sector of the UNOPS programme. He has since worked in Lao PDR as an EOD and QA Manager, Afghanistan as the Plans Officer in the MACA, and Lebanon as a QA Officer for the MACSL, before taking up a position at the GICHD in the land release section.

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BIOGRAPHIES

LISA GOMER

Chapter 2, Best value in procurement, Chapter 4, Contracting process and legal issues and Chapter 10, Procurement of mine clearance equipment were written by Lisa Gomer.

Lisa Gomer is an independent consultant, providing project management and legal expertise to a variety of different clients such as the UN and international NGOs in the field of mine action/ERW and international development issues.

Lisa studied both international relations and law. She has experience working in a private law firm representing developing countries in their debt restructuring activities, in establishing and running a non-profit organisation in Nepal and in working for the United Nations in a variety of positions, including policy, legal, operations and management. Lisa spent the majority of her career at the UN working for UNOPS and assisted in creating and managing the UNOPS Mine Action Unit. Her portfolio consisted of projects in emergency and post conflict countries such as Northern Iraq, Sudan, Afghanistan, South Lebanon and the Temporary Security Zone in Eritrea/Ethiopia. Lisa represented UNOPS at the Inter-Agency Coordination Meetings chaired by UNMAS and participated in the drafting of the original and revised UN Policy on Mine Action and the two UN Mine Action Strategies (2000-2005 and 2005-2010), as well as the drafting and implementing of the Framework for Mine Action Rapid Response. From 2004 to 2006, she was the Chief of the UNOPS Global and Interregional Division which was responsible for managing projects in four thematic areas: mine action, environment, governance and training/conference services.

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BIOGRAPHIES

DAVID HEWITSON

Chapter 9, Observations on contracting in mine action, was written by David Hewitson.

David Hewitson is an independent consultant working in mine action and ERW. He also works with new technology companies in the energy and water sectors to help develop management systems and strategies in support of their broader business planning and sales development.

David served in submarines in the UK Royal Navy before joining the HALO Trust in Afghanistan in 1991 and subsequently establishing and managing projects in Cambodia, Mozambique and Angola. In 1995, he founded Greenfield Consultants, a commercial demining company, which grew into a substantial group of organisations including ELS and S3, with projects in Northern Iraq, Kosovo, Angola, the Russian Federation, the US, UK, Afghanistan, Libya, Somalia, Bosnia and many other countries. Having worked in mine action at every level from hands-and-knees practical clearance, through project management to the creation and development of international organisations, David is interested in all aspects of mine action and especially the way in which fundamental strategies and objectives are reflected in the systems, structures, technologies, techniques and procedures which organisations bring to their day to day activities.

David is a past member of the IMAS Review Board and a current member of the GICHD Advisory Board.

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OLEKSANDR NOSOV

Chapter 11, Demining contracting in the oil and gas industry, was written by Oleksandr Nosov.

Oleksandr is an independent consultant with an Engineer's Degree in Operations and Maintenance and Master's Degree in Financial Management. He was an officer in the Ukrainian Army for 19 years, where he was a mechanized battalion commander and general staff officer in the logistics corps. Oleksandr was seconded by the Ukranian army for to DPKO, OSCE and the coalition forces in African, Balkan and Middle East countries as a training officer, logistics officer, technical advisor and UN office's coordinator. Since leaving the army in 2007, he has gained experience of contracts management with commercial companies providing support to international missions including demining projects in several countries.

Having applied his military qualifications into humanitarian missions and combined it with business requirements, he is currently providing analytical and expert assistance for engineering and oilfield service companies intending to explore mine-affected areas or to operate in post-conflict countries.

Alex is interested in systemising of international management and controls for quality of commercial mine action projects where both contracting parties are profiteering firms.

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BIOGRAPHIES

HOWARD THOMPSON

Chapter 6, Insurance, was written by Howard Thompson.

Howard Thompson created and remains the principal of HMT Insurance Brokers Ltd, a uniquely specialist insurance broking company concentrating on the arrangement of bespoke insurance coverage for international, high risk operations.

The company was formed twenty years ago and, from its inception, it has consistently been in the forefront of developing specially designed insurance programmes. The company's concentration is on the provision of a personal service to a wide range of international clients engaged in post conflict activities, including demining and EOD, reconstruction, marine and land based security as well as maritime industries, subsea and offshore service industries.

Howard has spoken on the subject of such specialist insurance arrangements at numerous conferences in the UK, USA and Europe, contributed to various publications and his company is now internationally known as a significant force in the insurance market, working on behalf of many commercial, charitable and governmental clients in high risk activities worldwide.

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BIOGRAPHIES

ERIK WILLADSEN

The information in the annex about Skallingen was provided by Erik Willadsen. Erik Willadsen is the project manager for the mine clearance project at Skallingen in Denmark.

Erik Willadsen has an MSc in Agricultural Economics. He served as an officer in the Danish army engineers before joining Humanitarian Demining in 1999. He has managed demining projects in Somaliland, Eritrea, Sri Lanka and Sudan for the Danish Demining Group and DanChurch Aid before his present assignment with the Danish Coastal Authority.

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BIOGRAPHIES

AUTHORS OF THE CHAPTER ON GENDER CONSIDERATIONS

Chapter 8, Gender considerations in mine action contracting, was written by the Swiss Campaign to Ban Landmines Gender and Mine Action Programme (SCBL GMAP).

The SCBL GMAP encourages and supports the mine action sector to mainstream gender through its policy, programming and operations.

GMAP was launched by the SCBL in December 2006 to address the fact that, despite growing awareness amongst the mine action community that the inclusion of a gender perspective is needed, there is still a big gap to fill. GMAP constitutes a unique programme within the mine action sphere, by raising awareness of why and how the inclusion of a gender perspective will improve the quality and outreach of mine action in mine-affected countries as well as amongst key actors at headquarters worldwide.

Amongst the most notable successes of the programme are: the release of the report "Gender and Landmines – From Concept to Practice" in 2008 and the positive feedback received; the recognition of the importance of a gender perspective in mine action (and of the work of SCBL) in several international fora, including Meetings of Standing Committees and Meetings of States Parties to the AP Mine Ban Convention; and numerous requests for the programme's expertise by various organisations and media.

The staff members that have contributed to the incorporation of gender considerations into this guide are: Marie Nilsson, Virginie Rozès and Arianna Calza Bini.

The GICHD offers a vital source of specialist knowledge to the mine action community. The Centre constantly seeks to transfer this knowledge to those who work within mine action through a range of publications, encompassing the most up-to-date technical and conceptual solutions, best practices and lessons-learnt generated by field research, socio-economic studies and evaluations.

To find an updated full list of these publications, please visit the GICHD website www.gichd.org. All publications can be accessed free of charge, by either ordering a paper copy or a CD or by downloading a PDF. Please see the publications web pages for details.

GICHD publications are always prepared in English and translations into other languages are offered whenever possible. The topics covered in the full range of GICHD publications include:

- International Humanitarian Law
- Animal Detection
- Land Release
- Manual Clearance
- Mine Risk Education
- Study Methodology
- Technology, Machines and Demining Equipment
- Evaluations
- General Mine Action
- Information Management / IMSMA
- Insurance
- Linking Mine Action and Development
- Socio-economic Aspects of Mine Action
- Standards / Quality Management
- Victim Assistance

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