

Memorandum of Understanding

December 2008

Between

The Danish Ministry of Foreign Affairs
(Hereinafter referred to as 'Danida' and /or the 'Donor')

and

The United Nations Development Programme
(Hereinafter referred to as 'UNDP')

and

General Company for Ports of Iraq
(Hereinafter referred to as "GCPI")

Concerning the rehabilitation of a

Sustainable System of NAVIGATIONAL AIDS
for the approach channel to Umm Qasr and Az-Zubayr ports - Iraq

WHEREAS there is an urgent need for the General Company for Ports of Iraq (GCPI) to rehabilitate the navigational aids to ensure a safe and continuous utilisation of the navigational channels to the ports of Umm Qasr and Az Zubayr,

WHEREAS the Danish Ministry of Foreign Affairs (DANIDA) hereby agrees to financially contribute to this project by providing funds to Government of Iraq (GoI) through United Nations Development Programme (UNDP) for its support to GCPI.

WHEREAS UNDP is prepared to receive and administer the contribution for the execution / implementation of the programme/project in close partnership with the GCPI as reflected in the project document,

WHEREAS the GoI through GCPI has been duly consulted in the formulation of the project document and agreed to the contribution of the Donor, the modalities and the implementation methodology of the programme/project, at project formulation meeting in Kuwait between GCPI, Danida and UNDP on 11 & 12 December 2006,

WHEREAS it is understood that the contribution by the Donor is for the rehabilitation of a:

Sustainable System of Navigational Aids
for the Approach Channels to Umm Qasr and Az-Zubayr ports – Iraq.

NOW THEREFORE, GCPI, UNDP and the Danida hereby agree as follows:

Article I. The Contribution

1. The Donor shall contribute to UNDP the amount of USD 2,077,540. The contribution shall be deposited in the UNDP Contributions Account within thirty days of signature of the agreement by the parties.

Bank name:	JP Morgan Chase Manhattan Bank 1166 Avenue of the Americas New York, NY 10036 – 2708
SWIFT address:	CHASUS33XXX
Routing/ABA number:	021000021
Account number:	015002284
Account title:	UNDP CONTRIBUTIONS ACCOUNT

2. The value of the payment, if made in a currency other than United States dollars, shall be determined by applying the United Nations operational rate of exchange in effect on the date of payment. Should there be a change in the United Nations operational rate of exchange prior to the full utilization by the UNDP of the payment, the value of the balance of funds still held at that time will be adjusted accordingly. If, in such a case, a loss in the value of the balance of funds is recorded, UNDP shall inform the Donor with a view to determining whether any further financing could be provided by the Donor. Should such further financing not be available, the assistance to be provided to the programme/project may be reduced, suspended or terminated by UNDP. In case of a gain in value, the programme/project can be expanded under the agreed objectives.
3. UNDP shall receive and administer the payments in according with the regulations and rules of UNDP.

4. All financial accounts and statements shall be expressed in United States dollars.
5. The UNDP may agree to accept contribution-payments in a currency other than United States dollars provided such currency is fully convertible or readily usable by UNDP and subject to the provisions of paragraph 6 below. Any change in the currency of contribution-payments shall be made only in agreement with UNDP.

Article II. Utilization of the Contribution

1. The Funds shall be utilized by UNDP for the purpose of meeting the costs of the programmes / projects as set out in the relevant programmes / project documents as well as the costs of support services relating thereto as specified in Article IV.
2. The implementation of the responsibilities of UNDP pursuant to this Agreement and the relevant programmes / project documents shall be dependant on receipt by UNDP of the contribution in accordance with the schedule of payments set out in Article I, paragraph 1 above.
3. If unforeseen increases in expenditures or commitments are expected or realized (whether owing to inflationary factors, fluctuation in exchange rates or unforeseen contingencies), UNDP shall submit to the Donor on a timely basis a supplementary estimate showing the further financing that will be necessary. The Donor shall use its best endeavors to obtain the additional funds required.
4. If the payments referred to in Article I, paragraph 1, above are not received in accordance with the payment schedule, or if the additional financing required in accordance with paragraph 4 above is not forthcoming from the Donor or other sources, the assistance to be provided pursuant to this Agreement may be reduced, suspended or terminated by UNDP.
5. Any interest income attributable to the contribution shall be credited to UNDP Account and shall be utilized in accordance with established UNDP procedures.

Article III. Administration and reporting

1. Programme / project management and expenditures shall be governed by the regulations, rules and directives of UNDP.
2. UNDP headquarters and country office shall provide to the Donor all or parts of the following reports prepared in accordance with UNDP accounting and reporting procedures.

2.2. For Agreements of more than one year:

- (a) From the country office an annual status report of programme/project progress for the duration of the Agreement, as well as the latest available approved budget.
- (b) From UNDP Bureau of Management/Comptroller's Division, an annual certified financial statement as of 31 December every year to be submitted no later than 30 June of the following year.
- (c) From the country office within six months after the date of completion or termination of the Agreement, a final report summarizing

- programme/project activities and impact of activities as well as provisional financial data.
- (d) From UNDP Bureau of Management/Comptroller's Division, on completion of the programme/project, a certified financial statement to be submitted no later than 30 June of the year following the financial closing of the project.
3. If special circumstances so warrant, UNDP may provide more frequent reporting at the expense of the Donor. The specific nature and frequency of this reporting shall be specified in an annex of the Agreement.

Article IV. Administrative and support services

1. In accordance with the decisions and directives of UNDP's Executive Board, the Contribution shall be subject to cost recovery by UNDP related to the provision of support services; i.e. indirect costs incurred by UNDP headquarters and country office structures in providing General Management Support (GMS) services. To cover these GMS costs, the contribution shall be charged a fee equal to 7%.
2. The aggregate of the amounts budgeted for the programme/project, together with the estimated costs of reimbursement of related support services, shall not exceed the total resources available to the programme/project under this Agreement.

Article V. Equipment and Consultancy Services to GCPI

Procurement & contracting will be undertaken by the GCPI in close mutual collaboration with UNDP acting as an advisory body with the GCPI being the implementing party. GCPI will be the signatory to all contracts. Ownership of equipment, supplies & properties financed from the contribution shall vest in GCPI.

Article VI. Auditing

The contribution shall be subject exclusively to the internal and external auditing procedures provided for in the financial regulations, rules and directives of UNDP. Should the biennial Audit Report of the Board of Auditors of UNDP to its governing body contain observations relevant to the contributions, such information shall be made available to the Donor.

Article VII. Completion of the Agreement

1. UNDP shall notify the Donor when all activities relating to the programme/project have been completed.
2. Notwithstanding the completion of the programme/project, UNDP shall continue to hold unutilized payments until all commitments and liabilities incurred in the execution/implementation of the programme/project have been satisfied and programme/project activities brought to an orderly conclusion.
3. If the unutilized payments prove insufficient to meet such commitments and liabilities, UNDP shall notify the Donor and consult with the Donor on the manner in which such commitments and liabilities may be satisfied.

4. Any payments that remain unexpended after such commitments and liabilities have been satisfied shall be disposed of by UNDP in consultation with the Donor.

Article VIII. Termination of the Agreement

1. After consultations have taken place between the Donor, UNDP and the programme country Government, and provided that the payments already received are, together with other funds available to the programme/project, sufficient to meet all commitments and liabilities incurred in the execution/implementation of the programme/project, this Agreement may be terminated by UNDP or by the Donor. The Agreement shall cease to be in force 30 (thirty) days after either of the Parties have given notice in writing to the other Party of its decision to terminate the Agreement.
2. Notwithstanding termination of all or part of this Agreement, UNDP shall continue to hold up to the date of termination, unutilized payments until all commitments and liabilities incurred in the execution/implementation of all or the part of the project, for which this Agreement has been terminated, have been satisfied and project activities brought to an orderly conclusion.
3. Any payments that remain unexpended after such commitments and liabilities have been satisfied shall be disposed of by UNDP in consultation with the Donor.

Article IX. Amendment of the Agreement

The Agreement may be amended through an exchange of letters between the Donor and UNDP. The letters exchanged to this effect shall become an integral part of the Agreement.

Article X. Entry Into Force

This Agreement shall enter into force upon signature and deposit by the Donor of the first contribution-payment to be made in accordance with the schedule of payments set out in Article I, paragraph 1 of this Agreement.

Article XI. Project Specifics

1. The project will be implemented by GCPI in close partnership & mutual understanding with UNDP in compliance with the project document, which shall be deemed to form an integral part of this Memorandum of Understanding. GCPI will with own funding establish adequate physical buoy workshop and repair facilities at Umm Qasr Port. GCPI will ensure that the said workshop facilities be implemented on a timely basis in relation to the present project.
2. A Project Manager and an Assistant Project Manager appointed by GCPI, will be responsible for the full execution of the project activities as specified in the Project Document. GCPI's procurement of equipment and services will be in accordance with internationally accepted procedures.

While UNDP is available to partake in the procurement process GCPI will establish a procurement evaluation committee, advertise, evaluate and award being the signatory to all legally binding contracts. GCPI will submit request for payment to UNDP, comprehensive documentation shall be included with the UNDP Project

Manager confirming due process was followed and value for money obtained prior to transfer of payment directly to the supplier.

3. A Tender Committee with members appointed by GCPI will be tasked with the responsibility for preparation and issuing of technical specifications, tender documents, advertise & call for tender and evaluation of proposals, in liaison with UNDP. Contract awards shall be in compliance with GCPI detailed recommendation following internationally accepted procedures, and in consultation with UNDP. In general while procuring goods, works and services, GCPI will adhere to the guidelines attached in Annex I of this MOU.
4. The kick-off meeting, coordination meetings and any other meeting that is deemed necessary will be conducted at a mutually agreed location with the UNDP-Iraq office in Amman, until such time when the security situation allows for UNDP staff to travel to Umm Qasr to have the above mentioned meetings conducted on-site.
5. GCPI's contribution to the project will consist of (1) payment of salaries and all related cost for the Project Management team, the Tender Committee Members or any other staff engaged in and for the project, and (2) incidental expenses incurred in Iraq.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement in the English language in two copies.

Signed in 3 copies, each of which shall be deemed an original as of the last date signed by the Partners.

For the
Government
of Denmark:

For the
United Nations
Development Programme:

For the
Ministry of Transportation;
(and/or GCPI)

(Name)

Paul A. Nyborg

Mr. Paolo Lembo

(Name)

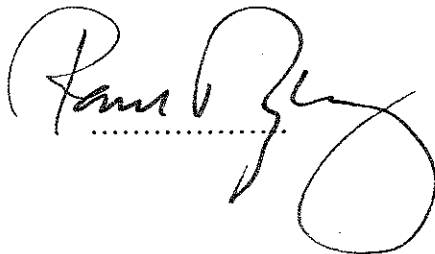
*Abdul Razzag K. Hassan
Sabah K. Shwayy*

SR. TECH. ADVISER

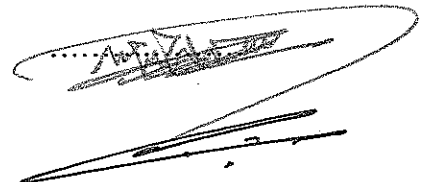
(Title)

Director

(Title)



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6 December 2008



ANNEX 1

Project Summary: Sustainable System of navigational Aids – Approach Channel to Umm Qasr and Az-Zubayr - Iraq

Context & Background

Of Iraq's six commercial ports, Umm Qasr is the only deep water port and thus central to Iraq's maritime trade. Like all Iraqi ports, Umm Qasr is situated on a major estuary, which leads to the Arab Gulf at the southernmost tip of the country. Three wars have left deep scars on the port, including wrecks, unexploded ordnances and silted and poorly marked waterways. As a result, most Iraqi imports do not transit through Umm Qasr but through ports in neighboring countries.

This has created a distorted and costly transportation pattern, which slows reconstruction efforts and has a detrimental effect on the Iraqi economy. (For more background: UNDP. 2006, Iraqi Ports Study).

This project focuses on the deficiencies and absence of proper signalization (Navigational Aids (NAs)). This causes real safety concerns and unnecessary delays and hence shippers to avoid Umm Qasr port. Inadequate NAs also impedes night navigation and thereby 24 hours access, resulting in higher freight cost and increased insurance premium.

The project complements already completed projects such as dredging works, wreck removal, other rehabilitation projects and the rehabilitation of the Buoy Lifting Vessel Nisr. It will also complement with planned projects to further improve the port infrastructure so as to help Umm Qasr capture more Iraq-bound shipments / imports, and positively contribute to the Iraqi economy.

Project Approach

The lack of adequate Navigational Aids within the approach channels presents serious navigational hazards and prevents the ports and offshore oil terminals from complying with international safety and navigational standards (as reflected in the IAIA).

A UNDP assessment conducted in 2005 found that about one-third of existing Navigational Aids in the Khawr Abd Allah Approach Channel alone are missing. Furthermore, the majority of the remaining aids dates from 1975 and are in a very poor condition. About half of them without or with defective lights. In addition, a large number of the Navigational Aids still in place, drifted away or are wrongly positioned, adding to the confusing and further increase the safety hazards to navigation.

This situation and the absence or lack of proper maintenance over the years was partly due to the fact that an operating 'buoy-tender vessel' was not available in Umm Qasr port. However, with the support of the Danish development agency DANIDA, the Iraqi buoy-laying vessel 'NISR' has been fully rehabilitated and since August 2006 been fully operational. This vessel is vital for the successful implementation of the proposed rehabilitation project of the Navigational Aids.

Key Objectives

1. Improving the safe access to the ports of Umm Qasr and Az Zubayr and thereby accelerating Iraq's reconstruction and economic development through better trade conditions through Iraqi ports.
2. Ensure sustainability of the assets provided by building capacity in maintenance and repair of the navigational aids.
3. Enhance/update the technical, managerial and institutional capacities of GCPI, by assisting in the development & training of key personnel, in order to enhance resource management and project implementation.

GCPI will implement the project activities with UNDP providing assistance & guidance and promoting a philosophy of capacity building and ownership. GCPI will undertake procurement and sign contracts, with UNDP being the responsible party for transferring resources based on GCPI's submission reflecting due process was followed and value for money. UNDP will provide advice on the processes as stipulated in the project document, and with UNDP undertaking the contracting for consultancy services and organizing the field mission.

In this connection, it is envisaged the agreed modality with UNDP acting as advisory body and GCPI being the implementing party will support further strengthening & updating of GCPI's present technical and managerial capabilities. Additional training will be sought through seminars, work visits and study tours by the GCPI.

Key Activities

1. To (a) prepare specifications and tender documents for international bidding, (b) take forward the international bidding process, (c) evaluate bids, (d) negotiate and enter into contract (e) inspect and accept the goods and (f) adequately install and maintain the NAs and (g) liaise with the Admiralty Chart Authorities to update all relevant marine charts. GCPI's project team, represented by a dedicated Project Manager, is taking the lead in all the above-mentioned activities and bears the overall responsibility of a timely and proper implementation of the project.
2. To (a) act as an advisor to the tender preparation and evaluation committee, (b) advice on the technical and commercial contract specifications and negotiation, and (c) advice on the inspection, acceptance and installation of the NAs are activities which fall under the responsibilities of UNDP, who is to provide advice to GCPI in the implementation of the project.
3. Assess the needs of the 'Buoy Maintenance Division', responsible for the maintenance, repair and upkeep of the NAs. Identify the available and additional equipment required to that effect. UNDP is to assess and specify these needs.
4. Setting up a management system and practice, for the Division to be able to handle the future maintenance and repairs to the NAs.
5. Organise training, seminars, study visits and international exposure, to upgrade and develop GCPI's technical and managerial capabilities so as to enhance their capacities in the administration and handling of project implementation.

Annex 2 – Guidelines to GCPI on Procurement

GCPI shall apply the following guidelines as deemed possible in procuring works, goods or services:

a. Principles of Procurement Process

1. Best value of Money

Best value for money means selection of the offer which represents the optimum combination of life-cycle costs and benefits, which meet the requirements. Hence it requires an integrated assessment of technical, organizational and pricing factors in light of their relative importance (i.e., reliability, quality, experience, reputation, past performance, cost/fee realism and reasonableness).

2. Fairness, Integrity and Transparency

As competition is the basis for efficient, impartial and transparent procurement; Business Units are therefore, responsible for protecting the integrity of the procurement process and maintaining fairness in Government Institution's treatment of all Bidders. Sound procurement (i.e., openness of the process; probity; complete and accurate records; accountability; confidentiality) establishes and then maintains rules and procedures that are attainable and unambiguous.

3. Effective Competition

The objective of competitive processes as described in these Guidelines is to provide all eligible prospective Bidders with timely and adequate notification of the requirements and an equal opportunity to tender for the required goods, civil works and services. The Government Institution should ensure that restrictions are not placed on the competitive processes limiting the pool of potential Offerors, as UNDP does not accept procurement awarded to exclusive Contractors.

4. The Interest of UNDP and the Beneficiaries

This could be presented by the following:

- The need for economy and efficiency in the implementation of the programme, including the procurement of goods, civil works and services involved;
- The access to procurement opportunities for all interested and qualified Offerors worldwide, (if applicable);
- Giving all eligible Offerors the same information and equal opportunity to compete in providing goods, civil works or services; and
- The importance of transparency in the procurement process

b. Procurement Process (Procedures)

1 Vendor Sourcing

Vendor sourcing for contracts exceeding USD 100,000.00 must be carried out through public announcement in newspapers, websites or based on a list of available database (short-listed previously for similar works or services).

2 Bid Solicitations

The procurement must be carried out based on a competitive process without any restrictions placed on the competitive processes limiting the pool of potential Bidders. The objective of competitive process shall be to provide all eligible prospective, qualified Bidders with timely and adequate notification of the requirements and an equal opportunity to tender for the required goods, civil works and services.

An adequate bid solicitation document shall be formulated including clear scope of works, drawings and specifications. Bid shall be received sealed unopened.

To ensure economy and efficiency bids should be evaluated amongst a minimum of three responsive and qualified offers, upon which award is made to the lowest priced offer.

3 Bid Opening and Evaluation

For contracts exceeding USD100,000.00, a public bid opening exercise shall be conducted, all bidders shall be invited to attend the bid opening. Any damaged or opened bid shall not be considered for the opening and evaluation purposes. Bids must be opened on the same day of the receipt of bids. The bid opening must be witnessed by representatives of the respective authorities (beneficiaries).

The evaluation shall be carried out by Government Institution's officials. The evaluation committee shall comprise qualified members.

The evaluation shall be carried out based on the following:

(i) Preliminary Evaluation

To examine the Proposals to determine whether they are complete, whether the documents have been properly signed, and whether the bids are generally in order. Only preliminary accepted bids shall be considered for the following evaluation stage.

(ii) Technical Evaluation

To examine full compliance with the technical specifications and / or the Terms of Reference specified in the bid solicitation document. The bids shall be considered as disqualified for any significant deviation observed on the examined bids. Only technically qualified bids shall be considered for the following evaluation process.

(iii) Financial Evaluation

For Works, price comparison shall be carried out for the technically qualified bids after checking bids for the arithmetic errors.

Arithmetical errors will be rectified on the following basis: If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected. If the Offerer does not accept the correction of errors, its Proposal will be rejected. If there is a discrepancy between words and figures the amount in words will prevail.

4 Contract Award

Contract must be awarded to the lowest evaluated bid.