



Contract for Professional Services

between

the United Nations Development Programme

and

Bridges Across Borders Southeast Asia

May 2013

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Date: 22 May 2013

Dear Sir/Madam,

Ref.: 2013/PROC/UNDP/13 [Project ID 00085433-Capacity Building Justice Sector]

The United Nations Development Programme (hereinafter referred to as “UNDP”), wishes to engage your organization, Bridges Across Borders Southeast Asia Community Legal Education Initiative duly incorporated under the Laws of United States of America (hereinafter referred to as the “Contractor”) in order to perform services in respect of Technical Support to Development of Clinical Education (CLE) in Myanmar for the full methodology (hereinafter referred to as the “Services”), in accordance with the following Contract:

1. Contract Documents

- 1.1 This Contract is subject to the UNDP General Conditions for Professional Services attached hereto as Annex I. The provisions of such Annex shall control the interpretation of this Contract and in no way shall be deemed to have been derogated by the contents of this letter and any other Annexes, unless otherwise expressly stated under section 4 of this letter, entitled “Special Conditions”.
- 1.2 The Contractor and UNDP also agree to be bound by the provisions contained in the following documents, which shall take precedence over one another in case of conflict in the following order:
 - a) this letter;
 - b) the Terms of Reference [ref. UNDP Myanmar Request for Proposal 2013/PROC/UNDP/02 for the Support to Development of Clinical Education in Myanmar dated 22 March 2013], attached hereto as Annex II;
 - c) the Contractor’s technical proposal for Support to Development of Clinical Legal Education in Myanmar dated 4 April 2013 document not attached hereto but known to and in the possession of both parties.

1.3 All the above shall form the Contract between the Contractor and UNDP, superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Contract.

2. Obligations of the Contractor

2.1 The Contractor shall perform and complete the Services described in Annex II with due diligence and efficiency and in accordance with the Contract.

2.2 The Contractor shall provide the services of the following key personnel:

| Name | Specialization | Nationality | Period of Service |
|--------------------|--|-------------|----------------------|
| Bruce Lasky | International Team Leader | USA | May to December 2013 |
| Wendy Morrish | Project Manager | Australian | May to December 2013 |
| Aye Mi San | Coordinator | Myanmar | May to December 2013 |
| Helen Yandell | International CLE Expert, Director and Clinician Springvale Monash Legal Services | Australian | May to December 2013 |
| Thomas F. Geraghty | International CLE Expert, Director, Bluhm Legal Clinic at Northwestern | USA | May to December 2013 |
| Christopher Walsh | Senior Researcher | USA | May to December 2013 |
| Daniel Creasey | Pro Bono Counsel | Australian | May to December 2013 |
| Kristen Leanderson | Pro Bono Counsel | USA | May to December 2013 |
| Claire Donse | Pro Bono Partner | UK | May to December 2013 |
| Lisa Dewey | Pro Bono Partner | USA | May to December 2013 |

2.3 Any changes in the above key personnel shall require prior written approval of Ms. Thuy Hang To, Deputy Resident Representative (Operations), UNDP.

2.4 The Contractor shall also provide all technical and administrative support needed in order to ensure the timely and satisfactory performance of the Services.

2.5 The Contractor shall submit to UNDP the deliverables, for the full methodology, specified hereunder according to the following schedule:

| DELIVERABLES | DELIVERY DATES |
|--|------------------|
| Submission of the detailed work plan | 31 May 2013 |
| Submission of the mid-term progress report | 31 August 2013 |
| Submission of the end-of-project report | 31 December 2013 |

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- 2.6 All reports shall be written in the English language, and shall describe in detail the services rendered under the Contract during the period of time covered in such report. All reports shall be transmitted by the Contractor by mail/courier to the address specified in 9.1 below.
- 2.7 The Contractor represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Contract, as well as the quality of the deliverables and reports foreseen under this Contract in accordance with the highest industry and professional standards

3. Price and Payment

- 3.1 In full consideration for the complete and satisfactory performance of the Services under this Contract, UNDP shall pay the Contractor a fixed contract price of USD 86,176 (United States Dollars Eighty Six Thousand One Hundred and Seventy Six Only) as UNDP Supported Costs.
- 3.2 The price of this Contract is not subject to any adjustment or revision because of price or currency fluctuations or the actual costs incurred by the Contractor in the performance of the Contract.
- 3.3 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's performance of the Services.
- 3.4 UNDP shall effect payments to the Contractor after acceptance by UNDP of the invoices submitted by the Contractor to the address specified in 9.1 below, upon achievement of the corresponding milestones and for the following amounts:

| MILESTONE | AMOUNT (USD) | TARGET DATE |
|---|--------------|------------------|
| Upon submission and acceptance by UNDP the detailed work plan | 17,236 | 31 May 2013 |
| Upon submission and acceptance by UNDP the mid-term progress report | 34,470 | 31 August 2013 |
| Upon submission and acceptance by UNDP the end-of-project report | 34,470 | 31 December 2013 |

Invoices shall indicate the milestones achieved and corresponding amount payable.

4. Special conditions

- 4.1 The responsibility for the safety and security of the Contractor and its personnel and property, and of UNDP's property in the Contractor's custody, rests with the Contractor.

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4.1.1. Security

The Contractor shall:

- (a) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the services are being provided;
- (b) assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan.

4.1.2 UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this contract. Notwithstanding the foregoing, the Contractor shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth in paragraph 4.1 above.

4.2 Audits and Investigations

Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or the authorized agents of the UNDP at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. The UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the UNDP other than in accordance with the terms and conditions of the Contract. Should the audit determine that any funds paid by UNDP have not been used as per contract clauses, the company shall reimburse such funds forthwith. Where the company fails to reimburse such funds, UNDP reserves the right to seek recovery and/or to take any other action as it deems necessary.

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

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4.3 Anti-terrorism

The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under this Contract are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Contract.

5. Submission of Invoices

- 5.1 An original invoice shall be submitted by mail/courier by the Contractor for each payment under the Contract to the following address:

The Deputy Resident Representative (Operations)
UNDP Myanmar
No. 6, Natmauk Road, Tamwe Township
Yangon, Myanmar

- 5.2 Invoices submitted by fax shall not be accepted by UNDP.

6. Time and Manner of Payment

- 6.1 Invoices shall be paid within thirty (30) days of the date of their acceptance by UNDP. UNDP shall make every effort to accept an invoice or so advise the Contractor of its non-acceptance within a reasonable time from receipt.
- 6.2 All payments shall be made by UNDP to the following Bank account of the Contractor:

Bangkok Bank [NAME OF THE BANK]

8401010019103555501 [ACCOUNT NUMBER]

Bangkok Bank, Head Office, Foreign Currency Deposit Section 333 Silom Road,
Bangkok, 10500, Thailand [ADDRESS OF THE BANK]

7. Entry into force. Time limits.

- 7.1 The Contract shall enter into force upon its signature by both parties.

7.2 The Contractor shall commence the performance of the Services not later than 22 May 2013 and shall complete the Services by 31 December 2013.

7.3 All time limits contained in this Contract shall be deemed to be of the essence in respect of the performance of the Services.

8. Modifications

8.1 Any modification to this Contract shall require an amendment in writing between both parties duly signed by the authorized representative of the Contractor and Ms. Thuy Hang To, Deputy Resident Representative (Operations), UNDP.

9. Notifications

For the purpose of notifications under the Contract, the addresses of UNDP and the Contractor are as follows:

For the UNDP:

2013/PROC/UNDP/12-Support to Development of Clinical Education in Myanmar

Name: UNDP Myanmar

Address: 6 Natmauk Road, Yangon 11181, Myanmar
Attn: The Deputy Resident Representative (Operations)
Tel: 95 1 542910~9, Fax: 95 1 545634, 544531

For the Contractor:

Name: Bridges Across Borders Southeast Asia Community Legal Education Initiative

Address: 8 Soi 6 T. Suan Dok, T. Suthep, A. Muang, Ghaing Mai, 50200 Thailand
Attn: Mr. Bruce A. Lasky
Tel: +66 818843598
Fax: +66 5 3808057
E-mail: blasky@babseacle.org

If the above terms and conditions meet with your agreement as they are typed in this letter and in the Contract Documents, please initial every page of this letter and its attachments and return to this office one original of this Contract, duly signed and dated.

Yours sincerely,




Thuy Hang To
Deputy Resident Representative (Operations)
UNDP Myanmar

For Bridges Across Borders Southeast Asia Community Legal Education Initiative

Agreed and Accepted:

Signature



Name: Bruce A. Lasky
Title: Director

Date: 22 May 2013

ANNEX I
UNDP GENERAL CONDITIONS OF CONTRACT
FOR PROFESSIONAL SERVICES

1. LEGAL STATUS

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis UNDP. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNDP or the United Nations.

2. SOURCE OF INSTRUCTIONS

The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect UNDP or the United Nations and shall fulfil its commitments with the fullest regard to the interests of UNDP.

3. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES

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

4. ASSIGNMENT

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

5. SUB-CONTRACTING

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of UNDP for all sub-contractors. The approval of UNDP of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

6. OFFICIALS NOT TO BENEFIT

The Contractor warrants that no official of UNDP or the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

7. INDEMNIFICATION

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

8. INSURANCE AND LIABILITIES TO THIRD PARTIES

- 8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- 8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- 8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- 8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:
- (i) Name UNDP as additional insured;
 - (ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against UNDP;
 - (iii) Provide that UNDP shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

8.5 The Contractor shall, upon request, provide UNDP with satisfactory evidence of the insurance required under this Article.

9. ENCUMBRANCES/LIENS

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with UNDP against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

10. TITLE TO EQUIPMENT

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

11. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

UNDP shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At the UNDP's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to UNDP in compliance with the requirements of the applicable law.

12. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with UNDP, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of UNDP or the United Nations, or any abbreviation of the name of UNDP or the United Nations in connection with its business or otherwise.

13. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

13.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract

15.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, UNDP may, without prejudice to any other right or remedy it may have, terminate this Contract forthwith. The Contractor shall immediately inform UNDP of the occurrence of any of the above events.

16. SETTLEMENT OF DISPUTES

16.1. Amicable Settlement

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

16.2. Arbitration

Unless, any such dispute, controversy or claim between the Parties arising out of or relating to this Contract or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, including its provisions on applicable law. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

PRIVILEGES AND IMMUNITIES

Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

TAX EXEMPTION

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

18.2 Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

19 CHILD LABOUR

19.1 The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.

19.2 Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, at no cost to UNDP.

MINES

20.1 The Contractor represents and warrants that neither it nor any of its suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.

20.2 Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNDP.

OBSERVANCE OF THE LAW

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

AUTHORITY TO MODIFY

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

ANNEX II

TERMS OF REFERENCE (TOR)

SUPPORT TO DEVELOPMENT OF CLINICAL LEGAL EDUCATION (CLE) IN MYANMAR

1) GENERAL BACKGROUND

UNDP supports Clinical Legal Education (CLE) as a key dimension of strengthening rule of law and access to justice, by raising the awareness of students about social justice, and strengthening their sense of values and ethics as well as their capacities to engage in legal empowerment of poor and marginalized communities.

As Myanmar continues to implement economic, political and institutional reforms including strengthened rule of law and access to justice, universities in Myanmar have expressed strong support for the establishment of clinical legal education programmes in their universities.

Accordingly, UNDP wishes to engage a contractor to provide technical assistance to a number of universities in Myanmar in 2013 with a view to increasing their understanding of CLE and helping them in the first stage of establishing CLE programmes.

2) OBJECTIVES OF THE ASSIGNMENT

The main objective is to provide technical support to seven universities (to include Yangon University, Mandalay Law University and at least one other) to increase their understanding of CLE and to support them to develop strategic plans for the establishment of CLE programmes in their universities.

3) SCOPE OF WORK

The contractor will provide technical support to participating universities, to include the following:

- Organise introductory CLE Workshop in Yangon to increase awareness around goals and objectives of CLE, different models of CLE, strategic planning, assessment and teaching methodologies. The workshop should provide enough basic information to enable each university to decide on the format of its own CLE programme and to draw up a strategic plan to establish it. The workshop participants should include representatives from at least 3 university partners in Myanmar (leadership, teaching staff) as well as international experts from other CLE programmes in Asia who will give direct experiences of their own CLE programme and how they established it.

- Work individually with each partner university to identify a suitable model and support development of the strategic plan
- [Facilitate representatives from each university to take part in a study tour of other CLE programmes in the region]
- Organise second (follow-up) workshop in Mandalay for those universities that have drafted strategic plans and work plans to discuss work plans and demonstrate how to build towards an accredited CLE programme, with the assistance of international clinical experts from Asian CLE programmes.
- Support representative(s) from each participating university to attend relevant regional and international conferences and events as proposed by the contractor in order to build networks and deepen understanding of regional justice education and related social justice initiatives. The contractor should specify in the proposal which events are recommended for this purpose.

4) DURATION OF ASSIGNMENT, DUTY STATION AND EXPECTED PLACES OF TRAVEL

The services will be provided between May and December 2013 in participating law schools namely: Yangon University, Mandalay University, and at least one other.

5) REQUIRED DELIVERABLES

In cooperation with participating universities, the contractor will:

- Organize the two in-country workshops, including designing the programmes and agendas, providing conference services, arranging and paying for travel and attendance of in-country participants, identifying international experts and funding them to participate in the workshop, and all associated logistics;
- Liaise with participating universities to support development strategic plans and workplans, ensuring prompt demand-driven technical support and advice;
- Arrange for the participation by representatives of each partner university at the designated international/regional events including payment of registration and conference fees, arranging and paying for travel of Myanmar participants, and ensuring Myanmar participants to prepare for attendance and to follow-up on return to Myanmar to reflect lessons learned from the conferences in their own strategic plans and workplans;

- Submit mid-term report by 15 September 2013 covering services provided from May-August 2013;
- Submit an end-of-project report covering activities September-December 2013 and enumerating and evaluating the results achieved in each participating university, and providing recommendations for further development of CLE in Myanmar as a whole.

6) PROVISION OF MONITORING AND PROGRESS CONTROLS

In addition to the reports submitted by the contractor as set out above, each of the participating law schools will complete a feedback form at the end of each activity performed by the contractor, evaluating the services performed, which will be sent directly to UNDP. An end-of-contract evaluation will also be completed by each of the participating law schools.

7) ADMINISTRATIVE SUPPORT AND REFERENCE DOCUMENTS

The contractor is required to provide all necessary support for activities to be performed by contractor in Myanmar.

8) REVIEW TIME REQUIRED AND PAYMENT TERM

20% of the contract price will be paid upon submission and acceptance of the detailed work plan

50% of the contract price will be paid upon acceptance and submission of the mid-term progress report (covering period May-August 2013)

30% of the contract price will be paid upon acceptance and submission of the end-of-project report (covering September -December 2013 and evaluating the project as a whole with recommendations for follow-up).

9) SUBMISSION REQUIREMENT

1. The contractor will provide details of the personnel who will be engaged on this research project, both substantive and administrative, sufficient to meet the needs of implementation of this research project. If there is any change of the key personnel, the contract will replace him/her with the other of same or higher required qualifications.
2. The contractor will submit competitive financial offer to complete the scope of work in the TOR using the following format.