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## Guide for the development and management of mine action contracts

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## Foreword

International standards for humanitarian demining programmes were first proposed by working groups at an international technical conference in Denmark, in July 1996. Criteria were prescribed for all aspects of demining, standards were recommended and a new universal definition of 'clearance' was agreed. In late 1996, the principles proposed in Denmark were developed by a UN-led working group and the International Standards for Humanitarian Mine Clearance Operations were developed. A first edition was issued by the UN Mine Action Service (UNMAS) in March 1997.

The scope of these original standards has since been expanded to include the other components of mine action and to reflect changes to operational procedures, practices and norms. The standards were re-developed and renamed as International Mine Action Standards (IMAS) with the first edition produced in October 2001.

The United Nations has a general responsibility for enabling and encouraging the effective management of mine action programmes, including the development and maintenance of standards. UNMAS, therefore, is the office within the United Nations responsible for the development and maintenance of IMAS. IMAS are produced with the assistance of the Geneva International Centre for Humanitarian Demining.

The work of preparing, reviewing and revising IMAS is conducted by technical committees, with the support of international, governmental and non-governmental organisations. The latest version of each standard, together with information on the work of the technical committees, can be found at <http://www.mineactionstandards.org/>. Individual IMAS are reviewed at least every three years to reflect developing mine action norms and practices and to incorporate changes to international regulations and requirements.

## Introduction

This International Mine Action Standard (IMAS) provides guidance on the development and management of mine action contracts, including commercial and NGO, to conduct specific mine action activities. This standard considers mine action contracting in general terms. It does not propose a specific contract structure as the most suitable structure will be dependent on the nature of the parties to the contract and the situation and environment in which the contracted activity will be conducted. Additionally, many potential principals such as the World Bank<sup>1</sup>, the European Commission<sup>2</sup>, the United Nations<sup>3</sup> and major commercial organisations have their own well-tried procedures for developing and managing mine action contracts. This standard is not intended to replace these procedures. Rather, it is intended to highlight the key issues of the process as guidance to those that don't have such procedures and as an aide-memoire for those that do. This standard does not provide specific guidance on grants or grant agreements.

The aim of this standard is to provide guidelines for the preparation of contracts for mine action and the subsequent management of the contracted activity. Even when work is carried out under an arrangement such as a letter of agreement rather than a formal contract, the basic principles and considerations should be contained in that arrangement. The aim is to promote a common and consistent approach to framing and managing contracts. This should then ensure the inclusion of those conditions that are necessary for the generation and demonstration of high quality management practices and operational capabilities. Such conditions will be regardless of the size or experience of the organisations carrying out the work.

For the purposes of this standard, the term 'principal' has been used rather than 'donor', 'client' or similar. This has been done in recognition of the fact that the organisation seeking to establish the mine action contract is paying a mine action organisation to achieve a particular outcome. This holds true whether the contracting organisation is a direct beneficiary of the mine action such as an infrastructure contractor or an indirect beneficiary such as a donor seeking an outcome for a local community. Equally, the guidance offered in this standard applies to commercial companies, NGOs and any other type of organisation that may be contracted to conduct mine action activities. From a contractual point of view, no distinctions are made between the types of contractor active in mine action. The principles of good contracting remain relevant whether the contractor is an NGO or a commercial enterprise. However, the principal may choose to apply the principles of contractor selection differently if there is insufficient time for the full contracting process, such as might be the case in an emergency situation. The actual contract should still incorporate the various issues and items identified in this standard.

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1. World Bank, Procurement of Works – Smaller Contracts, Washington, January 1995.
  2. European Community, Official Journal of the European Communities, Brussels, L382 Annex III.
  3. UNOPS, Procurement Rules and Procedures, Model Mine Action Contract, New York.

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# Guide for the development and management of mine action contracts

## 1. Scope

This standard establishes principles and provides guidance on the process of contracting, and on the drafting of effective contracts. It examines general concepts behind the process of mine action contracting, and identifies key issues that should be included in mine action contracts.

Although this standard focuses on demining, good and practicable contracts are required for other components of mine action including national technical assessment missions, impact surveys, Mine Risk Education (MRE) projects and stockpile destruction.

This standard concentrates on the preparation, award and subsequent management of contracts, and the word 'contract' is used throughout the document. The principles and guidelines laid down are in many cases equally applicable to less formal agreements under which mine action is carried out on behalf of a donor agency, and can be used for guidance when drafting such agreements.

## 2. References

A list of normative references is given in Annex A. Normative references are important documents to which reference is made in this standard and which form part of the provisions of this standard.

## 3. Terms, definitions and abbreviations

A complete glossary of all the terms, definitions and abbreviations used in the IMAS series of standards is given in IMAS 04. The key terms used in this Standard are also defined below.

A 'contract' is a formal legally binding agreement with specific terms between two or more entities in which there is a promise to do something in return for a valuable benefit known as a consideration.

A 'fixed price' contract is one in which a contractor is paid a fixed price to undertake a specific scope of work or to provide a specific number of assets (demining teams, Mine Detection Dog (MDD) teams or mechanical equipment) over an agreed time-frame. The fixed price covers the whole of the works, supplies and services to be provided by the contractor.

A 'cost-plus' contract is one in which a contractor is reimbursed all costs incurred in undertaking a specific scope of work and is paid an additional lump sum or fixed percentage of the reimbursable costs.

The term 'unit rate' means the rates agreed and accepted for specific priced activity items and quantities stated in the contract. Unit rates are often used in cost-plus contracts.

An 'agreement', as used in a legal sense, is an alternative term for a contract and includes all the crucial elements of a contract.

A 'letter of agreement' is 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. Regardless of its use, it should:

- a) identify both parties and the role of each within the agreement;
- b) describe the nature of the agreement; and
- c) state payment terms, time expectations and other key elements of the agreement.

To 'tender' means to present to another entity an unconditional offer to enter into a contract. A tender will normally have a specified period of validity and it may be accepted at any time during this period.

The term 'proposal' means an offer for consideration or acceptance by another entity. If accepted, a proposal is accepted in the very terms offered. It is a general rule that a proposal may be withdrawn at any time prior to acceptance provided that notice of withdrawal is given to the entity to whom the proposal is made.

The 'tender process' is the process of calling for and evaluating tenders to select a preferred contractor.

The 'principal' refers to the entity that contracts another entity to undertake the required mine action. The principal may be a donor, a National Mine Action Authority (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. The principal may be the direct beneficiary of the mine action such as an infrastructure contractor or it may be an indirect beneficiary such as a donor seeking an outcome for a local community. Strictly speaking, an organisation does not become a principal until it enters into a contract however, for ease; this term has been used throughout this Standard irrespective of the stage of the contract and contract lifecycle.

A 'donor' includes all sources of funding.

The term 'contractor' refers to any organisation (government, non-governmental or commercial entity) contracted to undertake a mine action activity. The organisation liable under contract 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 'sub-contractors'. Sub-contractors are responsible to the prime contractor and not to the principal.

The term 'National Mine Action Authority (NMAA) refers to the government entity, often an inter-ministerial committee, in a mine-affected country charged with the responsibility for the regulation, management and coordination of mine action.

Note: In the absence of a NMAA, it may be necessary and appropriate for the UN, or some other recognised international body, to assume some or all of the responsibilities, and fulfil some or all the functions, of a MAC or, less frequently, an NMAA..

A 'programme' is "a group of projects or activities which are managed in a co-ordinated way to deliver benefits that would not be possible or as cost effective where the projects and/or contract managed independently."

'Risk' is defined as... "the combination of the probability of occurrence of harm and the severity of that harm."

#### **4. Mine action contracts**

A mine action contract is a formal agreement between two or more parties that allows a mine action activity to be implemented and conducted. The use of contracts serves three purposes. Firstly, it binds the parties involved in the activity and gives a degree of assurance that the activity will be carried out and that the commitments and undertakings made by the parties will be honoured. Secondly, it clearly defines the work to be undertaken, the outcomes to be achieved and the roles, responsibilities and interaction of the respective parties. Thirdly, it serves to assign responsibilities to the respective parties.

There are six crucial elements to the formation of a contract. The absence of any of these elements renders the contract invalid. The elements are:

- a) an offer;
- b) an acceptance of that offer;
- c) a promise to perform;
- d) a valuable consideration;
- e) a timeframe in which performance must be made; and
- f) terms and conditions for performance.

#### **4.1. Principles of mine action contracts**

There are seven principles underpinning the development of effective, efficient and appropriate mine action contracts. These are:

- a) the contract must recognise the environment and conditions in which the activity is to be undertaken;
- b) it must recognise the capabilities and capacities of the parties;
- c) it must be realistic in its performance requirements and other obligations and must specify them as completely as possible;
- d) it must be fair and equitable to all parties;
- e) it should assign specific risk to that party most able and best-motivated to control it;
- f) the wording of the contract should be clear, concise and unambiguous; and
- g) it should encourage co-operation rather than confrontation between the parties.

#### **4.2. Types of contracts**

There are a variety of contract types but the two primary contracts used in mine action are:

- a) fixed price contracts – either for a specific scope of work to be achieved within an agreed time-frame or for a specific number of assets to be provided over an agreed time-frame; and
- b) cost-plus contracts.

##### **4.2.1. Fixed price contracts**

In a fixed price contract, the principal pays 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 if costs turn out to be less than expected.

Fixed price contracts provide an incentive for the contractor to tightly manage and reduce activity costs through increased efficiency or using the most cost-effective approaches. They also make it easy for the principal to compare tenders assuming that all other things, including the expertise of the tendering organisations, are equal and that the principal has been able to completely specify the activity requirements and conditions.

Fixed price contracts may have a number of specific consequences:

- a) the principal will usually have to pay a premium to the contractor if they are to bear the cost-uncertainty as part of the contract price;
- b) they can lead to constant haggling between the principal and the contractor as they argue over any changes, who caused them and whether they were included in the original specification;
- c) if the quality of the work conducted by the contractor is not completely specified or verifiable, the principal runs the risk that the contractor may seek to minimise costs by cutting back on the quality of its output;
- d) the principal may pay for work that is not carried out because more refined information gained as the activity progresses proves it to be unnecessary; and
- e) 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.<sup>4</sup> The principal should consider asking the contractor to take out a performance bond to offset the additional risk.

#### **4.2.2. Cost-plus contracts**

With a cost-plus contract, the principal reimburses the contractor for all costs and pays a percentage of these costs as a fixed fee. The cost of overcoming any errors, omissions and other charges is borne by the principal.

The use of cost-plus contracts has several advantages for the principal:

- a) costs are limited to what is actually needed;
- b) the contractor cannot earn excessive profits; and
- c) the possibility that a potential loss for the contractor will result in degraded quality or other adverse consequences is avoided.

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

- a) the total cost of the contract is uncertain and there is little incentive for the contractor to control costs;
- b) the contractor is responsible for controlling costs yet the higher the costs the higher the contractor's profit;
- c) 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 manpower layoff costs; and
- d) the contracts may be more expensive for the principal because of additional contract administration requirements.

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4. S. Chapman and S. Ward, Project Risk Management – Processes, Techniques and Insights, Chichester, 1997, p.271.

An additional difficulty lies in the principal and contractor agreeing and documenting exactly what are allowable costs for a given contract. It is important that all contract related costs are correctly identified and included. If costs such as overhead costs and managerial time are not specifically included and reimbursed, they must be paid out of the fixed fee and the contractor will be motivated to minimise these costs – possibly to the extent that they jeopardise the success of the contract.<sup>5</sup>

#### **4.3. Selection of most appropriate type of contract**

There is no definite rule as to the best type of contract to be used for a given mine action activity. It will depend on the environment in which the activity will be conducted, any past relationship between the principal and the potential contractor, the technical knowledge of the principal, the intimate oversight the principal is able to give, and the degree to which both the principal and the contractor are 'risk adverse'.

For a specific activity, the most appropriate type of contract may be fixed price, cost-plus or a combination of both. A combination contract may have a fixed price for those components of the activity in which the requirements and operating conditions can be completely and thoroughly specified and a cost-plus system for those components that cannot.

### **5. Structure of mine action contracts**

A mine action contract is a formal agreement between two or more parties that allows a mine action activity to be implemented and conducted. The foundation for any mine action contract is the plan and systems developed by the principal to implement the specific activity. It must detail the objectives and outcomes to be achieved and the control and management systems the principal intends to put in place as well as the legal and financial requirements of the principal that are acceptable to the contractor.

A mine action contract can be considered to consist of three distinct but inter-related components. These are the legal component which describes the relationship between the parties and general requirements and obligations, the technical component which describes the outcomes to be achieved and the manner in which the work is to be conducted and the price component which describes the price to be paid by the principal and the payment structure and methodology to be adopted.

#### **5.1. Legal component of the contract**

The specific content of the legal component of the contract will be driven by the standard practices and other requirements of the principal. However, as a minimum, it should contain detail on:

- a) date of the agreement;
- b) parties to the agreement;
- c) a written introduction giving a brief background to the contracted activity;
- d) relevant definitions and interpretations;
- e) the legal jurisdiction under which the contract is to be formed and any rules for interpreting the agreement;
- f) the role of the contractor and the use of any sub-contractors;
- g) the role of the principal;

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5. S. Chapman and S. Ward, Project Risk Management – Processes, Techniques and Insights, Chichester, 1997, p.270.

- h) Safety and Occupational Health (S&OH);
- i) any required releases and indemnities to be provided by the contractor and the principal;
- j) insurance to be held by the contractor (i.e. medical, life, disability, worker's compensation and third party liability);
- k) current and residual liabilities for both the principal and the contractor;
- l) the reporting of incidents;
- m) the format and delivery of reports by the contractor to the principal;
- n) the format and requirements or milestones for the payment of contract fees;
- o) requirement for parent company guarantees, bank guarantees and/or performance bonds;
- p) the system and processes to be used for variations to the services to be provided during the life of the contract should the need arise;
- q) grounds for the termination of the contractor's services;
- r) the residual ownership of equipment purchased for the contracted activity;
- s) privacy and confidentiality requirements;
- t) the management of unavoidable delay or Force Majeure;
- u) the systems and procedures for dispute resolution;
- v) IMAS and/or IATG incorporated by reference to the applicable standards. See clause 6 below; and
- w) other matters of relevance to the specific contracted activity.

## **5.2. Technical component of the contract**

The technical component of the contract is the statement of work. The content of the statement of work will vary depending on the nature of the contracted activity and the environment in which the activity will be conducted but, as a minimum, it should contain detail of:

- a) the background and objectives of the contract;
- b) relevant terms, definitions and abbreviations;
- c) the role of other parties involved in the contract such as independent Quality Assurance (QA) agencies and the principal's representatives;
- d) The scope of work including:
  - (1) the intentions of the principal and the outline structure of the contracted activity;
  - (2) the specific objectives and outcomes to be achieved by the contract;
  - (3) the timeframe and target duration of the contracted activity;

- (4) specific milestones within the life of the contract and the timeframe in which they are to be achieved;
- (5) standards to be achieved;
- (6) any limitations on or requirements for the method of operation to be adopted by the contractor;
- (7) the requirements for the production and maintenance of a contract works programme;
- (8) reporting requirements including progress reports and post-contract auditing and documentation;
- (9) Quality Management (QM) requirements;
- (10) S&OH requirements;
- (11) any specific environmental issues;
- (12) administration and logistical details such as insurance requirements and details of equipment, materials and other support, if any, to be provided by the principal or other agencies;
- (13) requirements for compliance with IMAS and/or IATG. See clause 6 below; and
- (14) the development of a code of conduct which regulates the interaction with local communities, illegal activities (sexual exploitation and abuse, sexual harassment, prostitution, posting pornographic materials, buying copied DVDs, among other issues), use of child labour, ethical and fair companies etc.

It is essential that the statement of works be as inclusive and comprehensive as possible. It is this information that will dictate what the contractor does and the manner and standard to which they do so. Any reference made in a contract to other documents (such as IMAS, IATG or national standards) that indicate specific requirements to be complied with by parties to the contract, shall where applicable, include the date, edition and version number so that all parties are sure of the document being referred to.

### **5.3. Price component of the contract**

The structure of the price component of the contract will depend on whether the contract is to be a fixed price, cost-plus or a combination contract. Regardless, it should include detail of:

- a) the total contract price or the unit rates, including the units of measurement for each rate;
- b) the frequency and methods of payment, including advanced payments and recovery mechanisms if relevant;
- c) the milestones or actions that will act as triggers for payment; and
- d) the requirement for performance bonds or similar control measures and details of how these may be applied, including penalty clauses if relevant.

## **6. Compliance with IMAS and/or National Mine Action Standards**

It is essential that the principal incorporates any requirements for the contractor to comply with IMAS, IATG and/or national mine action standards of the country involved, in the contract.

These standards are too voluminous to attach to the contract, so they should be incorporated by reference, and the website or location where they can be found, indicated. It is also strongly recommended that those IMAS most relevant to the contract be specifically referred to in the statement of work.

Even if the contracting authority has opted for a single preferred contractor under an arrangement such as a letter of agreement, it is recommended that relevant IMAS or national standards are applied within the terms of the agreement.

### **6.1. Safety and Occupational Health (S&OH)**

S&OH issues are addressed in IMAS 10.10 to 10.70 and cover:

- a) IMAS 10.10 S&OH - General requirements;
- b) IMAS 10.20 S&OH - Demining worksite safety;
- c) IMAS 10.30 S&OH - Personal protective equipment (PPE);
- d) IMAS 10.40 S&OH - Medical support to demining operations;
- e) IMAS 10.50 S&OH - Storage, transportation and handling of explosives;
- f) IMAS 10.60 S&OH - Reporting and investigation of demining incidents; and
- g) IMAS 10.70 S&OH – Protection of the environment.

Because of the detailed nature of the requirements of these aspects of S&OH, it should be sufficient to cite the compliance with these IMAS as required actions under the contract.

S&OH should be covered in the monitoring and evaluation carried out by the contracting authority or their agents. The IMAS shown above, and/or national mine action standards should be used as the benchmark to be achieved on safety-related issues. IMAS 07.40 Monitoring of demining organisations and IMAS 07.42 Monitoring of stockpile destruction programmes cover the monitoring of mine action activities.

### **6.2. Quality Management (QM)**

All mine action activities should be carried out to the highest possible standards and this aspect is particularly emphasised in the IMAS as part of QM. The achievement of quality in mine action relies on a number of factors, including the following:

- a) selection of an appropriate mine action organisation;
- b) accreditation of the contractor;
- c) internal QM systems; and
- d) external QA and Quality Control (QC).

Although this clause refers mainly to procedures that should be adopted under contract, the same QA/QC requirements apply to any mine action organisation, whether engaged on contract or under an arrangement such as a letter of agreement.

#### **6.2.1. Accreditation of the contractor**

Accreditation is the procedure by which a mine action organisation is formally recognised as competent, and able to plan, manage and carry out mine action activities safely, effectively and efficiently.

For most mine action programmes, the NMAA will be the body providing accreditation. International organisations such as the United Nations or regional bodies may also introduce accreditation schemes in certain circumstances. Details of accreditation are contained in IMAS 07.30 Accreditation of demining organisations and operations. This IMAS should be referred to in any contract or letter of agreement.

The principal should require, in all mine action contracts, that the contractor is accredited by the mine action authority in country by a certain date in order to ensure that the contractor has complied with all in-country requirements and that operations can start in a timely fashion.

### **6.2.2. Internal QM systems**

Every mine action organisation shall establish internal QM systems, under which all aspects of the mine action activities being carried out are checked by internal staff. This is especially necessary if the contractor has adopted a mine action 'system' involving different component parts, such as mechanical vegetation clearance to facilitate manual clearance, followed by the use of MDD for internal QC. Each component of the 'system' will need QA assessment, to ensure that it produces the best quality and reliability possible. Questions concerning the QM system should be asked during the pre-selection process, and the requirement to set up such systems should be incorporated in the contract or letter of agreement, and monitored during any evaluation undertaken by the principal. Therefore mine action organisations should maintain and make available documentation, reports, records and other data concerning their QM system to the monitoring body.

### **6.2.3. External Quality Assurance (QA) and Quality Control (QC)**

External QA and QC are the processes under which it is confirmed that the contracted activity is being conducted in accordance with the contract and has produced the desired results. In the case of clearance, the national authority accepts the land as cleared by the contractor or mine action organisation. The inspection of cleared land aims to provide confidence that the clearance requirements have been met, and as such forms an essential part of the overall clearance process.

IMAS 08.30 Post clearance documentation provides guidance on post-clearance handover requirements and management responsibilities. IMAS 09.20 The inspection of cleared land, provides guidelines for the use of sampling procedures. The need to comply with, or be aware of, these IMAS should be contained in any contract or letter of agreement.

## **6.3. Specialist capabilities**

### **6.3.1. Use of Mine Detection Dogs (MDD)**

When MDD are to be used as one of the assets under a contract, the specific IMAS covering the use of dogs should be included in the contract:

- a) IMAS 09.40 Guide for the use of mine detection dogs;
- b) IMAS 09.41 Operational procedures for mine detection dogs;
- c) IMAS 09.42 Operational accreditation of mine dogs; and
- d) IMAS 09.43 Remote explosive scent tracing (REST).

### **6.3.2. Mechanical demining**

When mechanical equipment or systems are to be used under a demining contract, IMAS 09.50 Mechanical demining, covering the use of mechanical equipment or systems should be included in the contract.

## **7. Selection of a mine action contractor**

A principal intending to establish a mine action contract may choose to select the mine action contractor through a process of competitive tendering or by directly approaching an individual contractor. The process of directly approaching an individual organisation is known as 'sole-sourcing'. In the case of a donor, they may also be approached by a contractor submitting an unsolicited proposal. Regardless, the sole aim of selecting a mine action contractor is to engage one that will deliver the best 'value-for-money' for the principal.

The decision as to whether the principal should go to competitive tender or sole-source will depend on the organisation's procedural and contracting requirements and its past experience and relationship with mine action organisations. It will also depend on:

- a) the magnitude and technical complexity of the necessary mine action;
- b) the number of contractors available to undertake the activity;
- c) the competence and capabilities of the available mine action organisations;
- d) specific capabilities that may be necessary to counter the mine and Explosive Remnants of War (ERW) (including unexploded sub-munitions) problem in the contracted activity area within the timeframe and funding available for the contract; and
- e) the number of available contractors that possess and can deploy the specific capability to the contracted activity area.

### **7.1. Characteristics and capabilities of suitable contractors**

When identifying the contractors available to undertake the contracted activity, the principal should assess the suitability of organisations against the following characteristics and capabilities:

- a) their technical capability and capacity in terms of workforce, equipment and techniques to undertake the required work;
- b) their experience with similar mine action contracts;
- c) their experience with other mine action activities in the region or location of the intended activity area;
- d) their overall experience with mine action contracts;
- e) their past performance history;
- f) their potential if their past experience is limited;
- g) the structure of the organisation, with emphasis on their:
  - (1) management structure;
  - (2) supervision and monitoring structure and system;
  - (3) control and co-ordination structure and system; and
  - (4) cost-management structure;
- h) their internal QM and 'problem-resolution' structure and system;

- i) the qualifications, experience and guaranteed availability of their key personnel;
- j) their professional standing and reputation;
- k) their financial viability;
- l) their compliance with the requirements of the NMAA, including accreditation if appropriate;
- m) their compliance with the requirements of relevant national government policies; and
- n) their management policies and regard to social responsibilities such as their S&OH and personnel development policies.

The accident record of any mine action organisation considered for work under contract or other agreement should also be examined. Accidents are difficult to prevent in mine action, and a record of a number of accidents resulting from many mine action programmes should be viewed with caution. Indeed, an honest record of accidents may be more reassuring than an apparent accident free record. It could indicate little experience in hazardous areas or a reluctance to report accidents. Contracting authorities may wish to see the reports from any formal investigations resulting from mine action incidents. When doing so evaluators should also consider the hazardous conditions that a demining organisation has been working under. (For example those working in an area with few mines would be in a completely different hazardous scenario to those working in areas with bounding fragmentation mines protected by minimum metal mines). Generally, the record of an accident describes the circumstances under which it occurred and injuries that resulted. These records can be far more informative than the simple fact of an accident having taken place.

The assessment of the suitability of the one or more contractors may be done as a separate 'pre-qualification' requirement prior to the issue of the tender documentation or it may be conducted as part of the evaluation of the received tenders or proposals.

## **7.2. The cost of selecting a contractor**

The principal must be aware that whatever method of selecting a contractor is decided on, it will impose a cost on both the principal and the contractor and must be allowed for in the contracted activity budget estimate.

From the contractor's perspective, the cost will include:

- a) reconnaissance, if appropriate;
- b) the time and effort spent in developing a plan to meet the contract requirements;
- c) the time and effort spent in the preparation of tender or proposal documents; and
- d) the physical submission of the tender or proposal documents.

For the principal, the cost will include:

- e) identification of the available contractors;
- f) assessment of the capabilities and capacities of the individual contractors;
- g) production of the tender or proposal documentation;
- h) physical distribution of the documentation to the relevant contractors;
- i) rigorous evaluation of the tenders or proposals received;

- j) communication with the unsuccessful bidders; and
- k) negotiation with the selected contractor.

The principal may also need to engage an external adviser if its own staff do not have the technical expertise necessary to manage the selection process for the mine action contractor.

As a general rule, sole-sourcing imposes less of a cost on the principal in that, while they must still rigorously evaluate the sole-source tender or proposal, it takes less time than that necessary to evaluate a number of competing tenders. Additionally, there is generally less expenditure of time and effort in identifying a sole-source provider than there is in identifying a number of suitable contractors and in dealing with those contractors that are unsuccessful in their tender. There is however, the possible disadvantage in sole sourcing that expectations and responsibilities will not be as clearly specified, whereas competitive selection usually results in much clearer agreement on the statement of work, responsibilities and expectations. The principal must decide whether the savings to be made by sole-sourcing outweigh the potential savings and benefits to be had from competition between the contractors.

## **8. The tender process**

Regardless of whether the principal intends to go to competitive tendering or sole-source, there is a similar process to be followed. For ease, this standard refers to this process as the tender process.

### **8.1. Type of tender**

Tenders are either invited from competitors or from a sole source. Some principals insist on the issue of international competitive tenders. Some principals and mine action authorities have a preference for particular contractors and may prefer to offer sole source tenders.

If competitive tendering is used then the following factors must be considered:

- a) whether there will be pre-qualification;
- b) whether the intent to tender will be advertised nationally or internationally;
- c) what type of tender will be used (fixed cost, cost-plus or a combination of the two);
- d) whether tenders will be opened publicly;
- e) payment conditions (on completion of agreed phases, on milestones, potential penalties imposed etc.); and
- f) requirements for:
  - (1) parent company guarantees;
  - (2) bank performance bonds;
  - (3) insurance cover; and
  - (4) indemnity cover.

The tender process consists of five main stages:

- g) the issue of a Request for Tender (RFT) or Request for Proposal (RFP) by the principal;
- h) the submission of a tender or proposal by the potential contractor;

- i) the principal's evaluation of the tenders or proposals received and the selection of the preferred contractor;
- j) the notification of the results of the evaluation to all competitors; and
- k) negotiation with the preferred contractor to establish a contract.

## **8.2. Prequalification of suitable contractors**

Pre-qualification may be carried out to ensure that potential contractors are reviewed; and the ones to be finally included on the tender list are those considered most suitable for the particular scope of work.

Pre-qualification procedures are broadly similar in many major organisations, and suitable documentation is available<sup>6</sup>. The process should start with the compilation of a 'long list' of potential companies to be invited to pre-qualify including those who applied via local, national or international advertising.

Pre-qualification questionnaires should be sent to the companies or NGOs identified on the 'long list'. The purpose of the questionnaire is to obtain answers and information in a standard format to enable an evaluation to take place. The criteria for the pre-qualification evaluation must be determined prior to the return of the pre-qualification questionnaires.

Some of the key factors to be checked are:

- a) the overall experience of the bidding contractors, especially their management staff, and the size of their recent contracts in time and monetary terms;
- b) their previous experience of working in the particular region or location;
- c) the structure of the organisation;
- d) how the company fits into their parent organisation;
- e) local offices relating to the location of the specific work;
- f) the personnel qualifications, certification, and CVs;
- g) what equipment is owned by the company;
- h) any suggestions for teaming or establishing joint ventures with local NGOs or contractors;
- i) any proposals for sub-contracting, including the identity and qualifications of major sub-contractors;
- j) proposals for training, including use of national facilities;
- k) outline plans for the mine action, including methodologies, safety and QM;
- l) generic SOPs and their compliance with IMAS and/or national standards;
- m) their financial stability, including last three years audited financial accounts; and
- n) their previous history in terms of ethical considerations (code of conduct), gender balance among staff, among other things

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6. For an example, see World Bank document 'Procurement of Works' dated April 1993.

Even when a preferred or national contractor is to be selected on a single tender or a letter of agreement, it is necessary to ask some of the questions above, to check the viability of the organisation before committing funds.

In some countries, all mine action organisations will be required to be accredited before starting work. It is the NMAA that has the responsibility for carrying out the accreditation process, but all candidate contractors must prepare themselves for the accreditation process.

### **8.3. The Request for Tender (RFT) or Request for Proposal (RFP)**

The RFT or RFP is the process by which the principal seeks tenders or proposals from contractors. The RFT or RFP may be issued by a general advertisement in a suitable mine action publication or website or it may be issued by letter to a shortlist of known organisations.

As a minimum, the RFT or RFP should contain the following information:

- a) background to the intended activity;
- b) role of other parties in the contract and intended activity;
- c) the individual schedules comprising the tender/proposal document;
- d) a detailed scope of work, see also clause 5.2 d);
- e) the type of contract that will be established and, where possible, an example of the contract;
- f) information on the payment schedule that will be established and policies on advance payments;
- g) penalty clauses for failure to meet specific deadlines or milestones;
- h) the period for which the contractor will be engaged;
- i) the requirement and format for the bidder to submit a tender/proposal;
- j) the required validity period of the tender/proposal;
- k) the method by which tenders/proposals will be evaluated including a description of the scoring system that will be used to evaluate the technical and price components;
- l) whether opportunity exists for the contractors to submit a tender/proposal that offers alternate methodologies or scope of work;
- m) procedure on how to request clarifications from the principal on the RFT or RFP;
- n) the requirements for the tender to be 'conforming' including:
  - (1) the format for the tender/proposal;
  - (2) the matters to be addressed in the tender/proposal such as:
    - understanding of the task;
    - approach and work plan;
    - methodologies, technologies and techniques to be used;
    - the capacity of the contractor;

- the means by which the contractor will provide 'value-for-money';
  - the mine action organisation's acceptance of the conditions of the proposed contract;
  - the key personnel to be provided;
- (3) the format and components of the tender/proposal price;
  - (4) formal requirements such as the number of copies of the tender/proposal and the manner of their submission;
  - (5) the requirements, such as date, time and place, for the lodgement of the tender/proposal; and
  - (6) any specific requirements for the contractor to have conducted a reconnaissance or to have satisfied itself as to the accuracy of information provided.

Depending on the situation, the principal may invite mine action organisations to express their interest in tendering before sending them the formal RFT or RFP.

#### **8.4. Clarifications during the tender period**

Once the RFT or RFP has been issued, any questions or clarifications by contractors should be addressed in writing to the designated official of the principal indicated in the RFT or RFP documents. The principal should ensure that none of its personnel, contract staff or mine action authority staff respond to questions from contractors and that all queries are referred to the designated official. All responses to queries should be in writing and addressed to all contractors that have been invited to submit a tender/proposal.

#### **8.5. Submission of the tender**

When submitting a tender, the mine action organisation should ensure it conforms to all the requirements of the RFT and clearly addresses the requirements of the intended contracted activity. They should also ensure that the tender is clear, concise and easily understood and avoid verbosity or the inclusion of superfluous information.

#### **8.6. Evaluation of the tenders**

Once the principal has received the tenders or proposals, it must rigorously evaluate them to identify the one offering the best value-for-money. It must be stressed that this is not necessarily the tender with the lowest price. The evaluation should be undertaken by an evaluation committee comprised of competent personnel who understand the nature of the activity to be contracted and the specific capacities being requested in the RFT.

The tenders should be evaluated objectively using a scoring system that systematically checks the responses to the questions and requirements of the RFT. The scoring system should be transparent and should conform to that described in the RFT. It should also provide an inherent 'weighting' for those elements of the tender the principal considers to be the most important. It should be possible to carry out some equalisation or normalisation of technically acceptable tenders, even in cases where additional services or solutions are offered.

To ensure that tenders are assessed against value-for-money rather than lowest price, the evaluation should be carried in two phases. The first phase should evaluate the tenderer's overall experience, competency and reputation, its technical approach to the statement of work issued in the tender and the quality of the personnel being proposed under the tender. Only those tenders that meet or exceed a minimum technical score should be assessed against price. A separate assessment system should be used to evaluate the price proposals. The price component should generally be weighted less than the technical component in order to ensure that the principal is getting value-for-money.

The evaluation should be formalised into a tender evaluation report. This contributes to openness, transparency and objectivity and will assist the principal in any subsequent discussion with unsuccessful competitors.

If the principal has gone to a sole-source or has received an unsolicited proposal, it should still go through an evaluation process to ensure that the tender or proposal meets its needs and objectives and offers value-for-money.

#### **8.7. Notification of the results of the tender**

Once the evaluation of the tenders has been completed and accepted, the results should be notified in writing to all competitors as soon as possible. This is not only common courtesy but it also allows unsuccessful competitors to refocus their attentions on other contracts.

If requested, and based on the rules of the contracting organisation, the principal should be prepared to offer a debriefing to an unsuccessful bidder. Such a debriefing should provide reasons for their non-selection in relation to the evaluation criteria and should provide advice on areas in which their tender could be improved. The debriefing must focus only on the tender of the unsuccessful bidder and must not disclose confidential information of another bidder.

#### **8.8. Award of contract and negotiation with the successful contractor**

The result of the tendering process is the identification of the preferred contractor. It may be necessary to negotiate and resolve any contentious issues raised in the tender before it is possible to award the contract. In some organizations, a contracts committee may be required to review the tendering process prior to an official award being made. Once the principal has awarded the contract, a final contract will be negotiated and finalized.

### **9. Contract management**

#### **9.1. Responsibility for contract management**

The responsibility for contract management of mine action activities rests equally, although to different degrees, with both the principal and the contractor. The principal is responsible at a strategic level to ensure that the contractor delivers the desired outcomes in the manner required. The contractor is responsible to manage the contracted activity at the operational level to ensure the necessary outcomes are achieved.

It is the responsibility of those managing the contract on behalf of the principal to do the following:

- a) read and understand the entire contract, especially with regard to the obligations of both the contractor and the principal under the contract. Carry out the contract obligations related to the principal both at headquarters and in the field;
- b) ensure that adequate work is done, unnecessary work is not done and the contract's purpose is achieved;
- c) discuss any deviations from the statement of work with the contractor in country, and if not resolved, then inform the principal;

- d) suggest amendments or revisions to the contract or statement of work to the principal if required;
- e) 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;
- f) confirm that milestones have been achieved in accordance with the contract; and
- g) ensure that the IMAS or the national mine action standards are being followed and report any breaches to the principal.

### **9.2. Managing contract cost**

The management of cost in mine action contracts has always been important but is becoming increasingly so as pressure on available mine action funds increases. It is essential that the principal has an intimate understanding of the likely cost of a contract before it is initiated, refines this cost before the contract is implemented and monitors and controls cost as the contract is executed. Similarly, the contractor must have an intimate understanding of the likely cost before it tenders for or proposes a contract if the tender or proposal is to be realistic. The contractor must also closely monitor and manage costs during the contracted activity to protect both itself and the principal. Principals and contractors should remain vigilant for any currency fluctuations that may impact on their budgets.

The cost of the contract should be controlled by comparing the amount of work performed to date to the actual expenditure to date. Principals and contractors should be aware of avoiding the dual errors of:

- a) using the predicted rate of expenditure with time as the baseline and comparing actual rate of expenditure with this baseline. This fails to measure the work that has been achieved for the expenditure to date;
- b) recording the work done against expenditure to date only as invoices are paid. Although this measure provides a reasonable comparison, it may be too late to overcome problems. It is far more efficient to make the comparison when a cost is actually committed. Suitable times for committing costs are:
  - (1) when the order is placed for significant components such as large material items, major equipment or fixed-price sub-contracts; and
  - (2) when the work is done for components such as labour and bulk materials.

### **9.3. Managing contract time**

From the perspective of the principal, the primary purpose of managing contract time is to ensure that the benefits resulting from the contract outcomes are achieved within a timeframe that justifies the expenditure on the contract. It is also undertaken so the principal can predict the necessary levels of funds at certain times to meet payment schedules and so it can co-ordinate the contract with other supporting or complementary activities.

From the perspective of the contractor, contract time should be managed to ensure it meets the principal's timeframe requirements and is able to co-ordinate the efficient and effective deployment of labour, equipment and other resources.

There are five steps in managing and controlling contract time:

- a) determine target dates and milestones for key components and tasks of the contract;

- b) clearly articulate these target milestones using a GANNT Chart, Cascade Bar Chart or similar tool;
- c) record progress of the contract against the target milestones and
- d) measure the variance between the target milestones and the actual progress; and
- e) take remedial action as appropriate.

It should be borne in mind that, in most cases, lateness does not cause the contract to fail completely, however it may significantly reduce the benefits resulting from the contract.

#### **9.4. Effective control of contracts**

As the contracted activity progresses, control must be exercised to ensure that the desired objectives and outcomes are delivered to the quality required and within the cost and timeframe it was thought necessary to make their delivery worthwhile. An effective system of control allows progress to be regularly checked and action to be taken to overcome any deviations from the plan.

The four key steps in the control process are:

- a) plan future work and estimate performance;
- b) monitor and report results;
- c) compare results achieved to the plan and forecast future results; and
- d) plan and take effective action to recover the original plan or to minimise any variance.

#### **9.5. Effective reporting**

To be effective, the contract reporting system should meet the following criteria:

- a) reports should be made against the contract performance plan and its milestones;
- b) reports should follow a set format and answer set questions;
- c) the reports and the reporting system should be as simple as possible and take as little time as possible to complete; and
- d) reports should be made at regular, defined intervals.

#### **9.6. Effective review**

Reports should be reviewed and analysed by the principal or the principal's agent to ensure that problems and other key information that is provided is noted and acted upon. As such, all reports must be reviewed against the contract performance plan with variances and other key information analysed and solutions developed and acted upon.

The principal should also give consideration to conducting a series of periodic visits to the contracted activity area to monitor and review progress and performance. If such visits are undertaken, they should be conducted by personnel with the technical expertise to accurately assess technical and general progress and performance. Additionally, the first visit should be undertaken sufficiently early in the contract to allow any problems to be remedied before the success of the contract is jeopardised.

## **9.7. Post-Contract Reviews (PCRs)**

PCRs are a valuable tool in the development and improvement of an organisation's ability to plan, manage and carry out mine action contracts. The aims of a PCR are to compare the outcomes achieved and the manner in which they were achieved with the original contract plan, to identify the strengths and weaknesses of the contract and to identify and communicate the lessons to be learned.

To achieve its aims, the PCR should:

- a) clearly and accurately identify the actual results and outcomes of the contract and compare these to the original plan;
- b) clearly describe the operational and management methodologies, systems and processes used during the contract and identify their strengths and weaknesses for feeding back into the organisation's processes for the design and selection of future contract;
- c) compare the final costs and benefits resulting from the contract for feeding back into the organisation's processes for estimating and selecting future contract; and
- d) review the successes and failures of the contract and the lessons to be learned for feeding back into the organisation's process for managing future contract.

The steps to be followed when conducting a PCR are:

- e) conduct interviews with key contract personnel;
- f) review and analyse contract data and management reports;
- g) compare the information gathered against a standard of 'best practice';
- h) identify the strengths and weaknesses of the operational methodologies and management approach used; and
- i) Identify and define opportunities for improvement.

It is essential that the PCR is distributed to and acted upon by all relevant people within the principal's and contractor's organisations and to key people among other stakeholders in the contract. This process may benefit from a meeting of all relevant personnel to discuss the findings of the PCR and to develop a plan to implement its recommendations.

## **10. Responsibilities**

### **10.1. United Nations**

The United Nations has a general responsibility for ensuring the establishment of a regime conducive to the effective management of mine action programmes by continuously refining IMAS to reflect developing mine action norms and practices. This may involve the incorporation of changes to international regulations and requirements such as those produced by the International Organisation for Standardisation (ISO) and the International Labour Organisation (ILO). UNMAS is the office within the United Nations Secretariat responsible to the international community for the development and maintenance of IMAS, including this standard.

The United Nations applies IMAS to its mine action programmes, activities and contracts unless the local situation precludes their effective use. In such circumstances, when one or more IMAS is not appropriate, the UN provides alternative specifications, requirements and guidance.

## **10.2. National Mine Action Authority (NMAA)**

The NMAA, or the organisation acting on its behalf, is responsible for ensuring the national and local conditions that enable the effective management of mine action. The NMAA is ultimately responsible for all phases of mine action related contracted activities within its national boundaries, including defining the clearance requirement, the accreditation of demining organisations, the monitoring of demining organisations during clearance, and post-clearance inspections prior to accepting full responsibility for the cleared land. This also applies to MRE and in some cases victim assistance contracted activities.

The NMAA is responsible for establishing and maintaining national regulations and procedures for the management of mine action operations. These procedures should be consistent with IMAS, other relevant national and international standards, regulations and requirements.

In certain situations and at certain times it may be necessary and appropriate for the UN, or some other recognised international body, to assume some or all of the responsibilities, and fulfil some or all of the functions, of a NMAA.

## **10.3. Donors**

Donor agencies are part of the management process, and as such have a responsibility to ensure that the contracts they are funding are managed effectively, and in accordance with international standards. This involves strict attention to the writing of contract documents, and ensuring that demining organisations chosen to carry out such contracts meet the accreditation criteria. Donors can take an active role, where applicable, in ensuring the sequential continuation of contracts to minimise the 'cost' of demobilising and remobilising demining organisations. Donors, or their agents, are also partly responsible for ensuring that the standards and guidelines for QM are applied. This responsibility and accountability is even greater when the NMAA is in the process of formation, and has not had the opportunity to gain experience.

## **10.4. Contractors**

Ultimately, it is the contractor organisation, of whatever type, which is required to establish an appropriate and effective management system, to demonstrate it to the donor/principal and the NMAA, and to apply it throughout the mine action contracted activity.

Where the NMAA is in the process of formation, the mine action organisation is also responsible for assisting the formation process, by giving advice and assistance including the framing of national standards.

## **10.5. Host Government**

The Host Government, through the NMAA, ultimately accepts residual liability for the cleared land once the full process of clearance has been undertaken. It is necessary for this acceptance to be agreed by the Host Government as a pre-condition for the commencement of mine action. It should also ensure that the NMAA has, or has contracted, the staff and skills needed to undertake the external QA/QC.

It is also the responsibility of the Host Government to ensure that conditions are established that are conducive to the conduct of successful mine action in the country. Conditions could include advantageous labour laws, tariffs and duties, accreditation fees, social security including sound maternity and paternity leave policies and health benefit costs, all of which may have the potential to divert donor funding from operational mine action processes. The Host Government should also ensure the maintenance of a secure workplace for mine action, and freedom from interruption by military or other agencies. It is recommended that agreements are reached on these conditions between the donor, the Host Government and the contractor, and that any changes required by the Host Government which impact on the planned costs to the contractor are discussed and agreed by the donor.

## **Annex A (Normative) References**

The following normative documents contain provisions, which, through reference in this text, are relevant to this standard. For dated references, subsequent amendments to, or revisions of, any of these publications do not apply. However, parties to agreements based on this part of the standard are encouraged to investigate the possibility of applying the most recent editions of the normative documents indicated below. For undated references, the latest edition of the normative document referred to applies. Members of ISO and IEC maintain registers of currently valid ISO or EN:

- a) IMAS 04.10 Glossary of mine action terms, definitions and abbreviations;
- b) IMAS 07.10 Guide for the management of demining operations;
- c) IMAS 07.30 Accreditation of demining organisations and operations;
- d) MAS 07.40 Monitoring of demining organisations;
- e) IMAS 07.42 Monitoring of stockpile destruction programmes;
- f) IMAS 08.30 Post clearance documentation;
- g) IMAS 09.40 Guide for the use of mine detection dogs;
- h) IMAS 09.41 Operational procedures for mine detection dogs;
- i) IMAS 09.42 Operational accreditation of mine dogs;
- j) IMAS 09.43 Remote explosive scent tracing (REST);
- k) IMAS 09.50 Mechanical demining;
- l) IMAS 10.10 S&OH - General requirements;
- m) IMAS 10.20 S&OH - Demining worksite safety;
- n) IMAS 10.30 S&OH - Personal protective equipment (PPE);
- o) IMAS 10.40 S&OH - Medical support to demining operations;
- p) IMAS 10.50 S&OH - Storage, transportation and handling of explosives;
- q) IMAS 10.60 S&OH - Reporting and investigation of demining incidents; and
- r) IMAS 10.70 S&OH – Protection of the environment.

The latest version/edition of these references should be used. GICHD hold copies of all references used in this standard. A register of the latest version/edition of the IMAS standards, guides and references is maintained by GICHD, and can be read on the IMAS website (<http://www.mineactionstandards.org/>). NMAA, employers and other interested bodies and organisations should obtain copies before commencing mine action programmes.

## Annex B (Informative) The process of contracting for mine action



