CALL FOR PROPOSALS TO UNDERTAKE A STUDY AND DRAFT STANDARDS/GUIDELINES FOR THE FORM AND CALCULATION OF AN ENVIRONMENTAL PERFORMANCE GUARANTEE

21 January 2020

1. The International Seabed Authority (the Authority) is an autonomous international organization established under the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (the 1994 Agreement). The Authority is the organization through which States Parties to the Convention shall, in accordance with the Convention, organize and control activities in the Area, particularly with a view to administering the resources of the Area.

2. Draft Regulations on Exploitation of Mineral Resources in the Area are currently under development at the Authority (ISBA/25/C/WP.1). The draft regulations make reference to a number of standards and guidelines to guide the implementation of the various provisions contained therein. In particular, in accordance with draft regulation 26, a contractor would be required to lodge an environmental performance guarantee in favour of the Authority, the required form and amount of which shall be determined according to guidelines, and which shall reflect the likely costs required for: (a) the premature closure of exploitation activities; (b) the decommissioning and final closure of exploitation activities, including the removal of any Installations and equipment; and (c) the post-closure monitoring and management of residual environmental effects (see Appendix I to the present terms of reference).

3. At the 25th session of the Authority, the Legal and Technical Commission proposed, and the Council took note of, a process for the development of the necessary standards and guidelines referred to in the draft regulations (ISBA/25/C/19/Add.1, Annex). As part of that process, the Legal and Technical Commission recommended that work on guidelines for the form and calculation of an environmental performance guarantee be initiated immediately and completed after July 2020.
4. The Authority requests that all proposals to undertake the study and drafts as set out in the attached Annex be submitted via email to ola@isa.org.jm on or before 21 February 2020. Proposals should not exceed 1,500 words and should thoroughly and sufficiently demonstrate the competence and expertise of the applicant to meet the requirements contained in the Annex. Proposals should equally reflect a clear methodology on the deliverables for the study and draft standard/guidelines as well as proposed costs.

5. The outcome of the selection will be communicated to applicants using the contact details provided in the proposals.
Annex

Terms of reference
for a consultancy in view of the development by the ISA of
draft standards/guidelines for the form and calculation of an environmental performance guarantee

Background

1. The Draft Regulations on Exploitation of Mineral Resources in the Area (ISBA/25/C/WP.1) currently under development at the International Seabed Authority (ISA) impose a number of obligations on a contractor, including, in accordance with draft regulation 26, to lodge an environmental performance guarantee in favour of the Authority, the required form and amount of which shall be determined according to guidelines, and which shall reflect the likely costs required for: (a) the premature closure of exploitation activities; (b) the decommissioning and final closure of exploitation activities, including the removal of any Installations and equipment; and (c) the post-closure monitoring and management of residual environmental effects (see Appendix I to the present terms of reference).

2. At the 25th session of the Authority, the Legal and Technical Commission proposed, and the Council took note of, a process for the development of the necessary standards and guidelines referred to in the draft regulations (ISBA/25/C/19/Add.1, Annex). As part of that process, the Legal and Technical Commission recommended that work on guidelines for the form and calculation of an environmental performance guarantee be initiated immediately and completed after July 2020.

Objective and scope of work of the consultancy

3. The ISA secretariat is seeking to engage a consultant with the objective of developing draft standards/guidelines for the form and calculation of an environmental performance guarantee in the context of exploitation of mineral resources in the Area, to serve as supporting documentation for the deliberations of the ISA Legal and Technical Commission and the Council during the 26th session of the Authority in 2020.

4. In particular, the consultant will be required to:

   a) Identify and provide a list of existing standards/guidelines/guidance related to environmental performance guarantees, including in the context of other extractive industries;
b) Identify the common features of such guarantees, including objectives, form and modalities of calculation, payment and repayment/release, as well as the relationship with the liability of the contractor;

c) assess the adequacy of existing standards/guidelines/guidance for exploitation activities in the Area, in particular to respond to the requirements set out in draft regulation 26, and identify areas where customization is required, taking into account the specificities of seabed mining;

d) Develop the text of draft guidelines for the form and calculation of an environmental performance guarantee in the context of exploitation of mineral resources in the Area, taking into account the requirements under draft regulation 26.

Deliverables

5. The consultant will be required to produce the following:

   a) one report of no more than 3,000 words addressing the issues set out in paragraph 4(a) to (c) above; and

   b) the text of the draft standards/guidelines for the form and calculation of an environmental performance guarantee in the context of exploitation of mineral resources in the Area, reflecting the requirements in draft regulation 26.

Timelines

6. The work will be undertaken on the basis of the following anticipated timeline:

   a) Start date: upon signature of the contract

   b) First drafts: 1 April 2020

   c) Review of first drafts by Secretariat: 15 April 2020

   d) Final drafts provided by the consultant: 1 May 2020

Modalities of work

7. The work shall be performed at the consultant’s home base.

8. If necessary, the consultant may be required to travel to Kingston, Jamaica, to meet with the ISA Secretariat staff on issues related to the deliverables. For that purpose, a round trip airline ticket (economy) as per prevailing ISA policies on official travel and DSA at the prevailing ICSC rates established on the travel days would be provided to the consultant.
9. The Secretariat will make reasonable and practical efforts to facilitate the production of timely, accurate and useful products by promptly responding to the consultant’s queries and providing the necessary reference material as identified by the consultant where feasible.

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Appendix I

Draft regulation 26 (excerpt from document ISBA/25/C/WP.1)

Regulation 26

Environmental Performance Guarantee

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the Guidelines, and shall reflect the likely costs required for:

   (a) The premature closure of Exploitation activities;

   (b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and

   (c) The post-closure monitoring and management of residual Environmental Effects.

3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the relevant Guidelines.

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated, where:

   (a) The Closure Plan is updated in accordance with these regulations; or

   (b) As the result of:

      (i) A performance assessment under regulation 52;

      (ii) A modification of a Plan of Work under regulation 57; or

      (iii) A review of activities under a Plan of Work under regulation 58; and

   (c) At the time of review by the Commission of a final Closure Plan under regulation 60.

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:
(a) The repayment or release of any Environmental Performance Guarantee, or part thereof, upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee; or

(b) The forfeiture of any Environmental Performance Guarantee, or part thereof, where the Contractor fails to comply with such obligations.

7. The requirement for an Environmental Performance Guarantee under this regulation shall be applied in a uniform and non-discriminatory manner.

8. The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee.