RESPONSE TO QUESTIONS ON THE RFP:

ASSESSMENT OF SMNF PROJECT COMPONENT FOR INCREASING PRODUCTION OF NUTRITIOUS FOODS IN MOZAMBIQUE

February 2020

Issued by
The Global Alliance for Improved Nutrition (GAIN)

QUESTIONS AND ANSWERS

1. Does the 4-page limit for the narrative include the technical proposal and financial proposal? If not, is there a page limit for the budget/budget justification?

No, it does not. There is no page limit for the budget and budget justification (but please only include relevant information).

2. What level of detail are you looking for from the budget?

All main budget lines should be included, depicting, at a minimum, the following: staff days per planned sub-activity, numbers of staff, and rates for each staff type; estimated costs for any trainings (including duration and number of people involved); estimated costs for data collection (including travel, duration and number of people involved); all other anticipated costs.

Additionally, please note that the applicant will need to carry insurance for all staff that will work on this contract; we may request to see a copy of the certificate.

3. Would it be possible to obtain a copy of the T&C’s for GAIN and DFID for this project?

The terms and conditions governing the eventual contract are included in an Annex at the end of this document.

4. In which language are we supposed to submit the proposal?

English.

5. We would like to acknowledge the profile (demographics) of the final beneficiaries of the SMNF project with specific attention to this assignment?

We are not sure we have understood this question correctly, but the direct beneficiaries of the SMNF projects are small- and mid-sized firms producing nutritious foods. The final beneficiaries are the consumers
of those foods, expected to be primarily low- and middle-income Mozambicans. Further demographic details on them are not known.

6. For planning and logistics purposes, can GAIN provide the location (district, community, etc) of the firms to be surveyed?

We cannot share exact locations for confidentiality reasons, and the chosen firms may change. For budgeting purposes, please estimate based on five firms in rural areas of Tete, Nampula, Zambezia, Inhambane, and Sofala.
ANNEX: GAIN GENERAL TERMS AND CONDITIONS FOR SERVICES CONTRACTS

12. GENERAL PROVISIONS

a. These General Terms and Conditions (hereinafter “GTC”) shall constitute an integral part of each contract (hereinafter the “Contract”) between GAIN and the contracting party (hereinafter the “Service Provider”) entrusted with the execution of services and defined deliverables as determined in the Contract (hereinafter the “Services”).

b. The term Service Provider shall include an individual or a corporate entity and their auxiliary staff in the sense of Article 101 of the Swiss Code of Obligations (CO). In the event several entities form a consortium or a temporary association for the purpose of carrying the Contract, they must designate a representative duly empowered to contract with GAIN.

c. The contracting parties shall be bound only by provisions made in writing. Up to the signature of the Contract, withdrawal from the negotiations by either of the parties shall entail no financial obligation, each of them being responsible for its own expenses. In the event of a call for tender, the tender shall not be subject to payment, unless the call for tender provides otherwise.

d. Clauses 3 (Intellectual Property and Global Access), 4 (Confidentiality and Public Announcement), 8 (Representations and Warranties) and 9 (Liabilities and Indemnities) shall survive the expiration or earlier termination of this Contract. Any other provision of this Contract which is identified to or which by its nature should remain in full force and effect shall survive the termination or expiration of this Contract.

e. If any provision of this Contract is determined to be invalid, illegal or unenforceable, such provision shall not affect the validity, legality or enforceability of the Contract but shall be severed from the Contract and the remaining provisions of this Contract shall continue in full force and effect.

13. RESPONSIBILITIES AND OBLIGATIONS OF THE SERVICE PROVIDER

a. The Service Provider shall:

   (a) perform the Services with all due care, skill and diligence, in compliance with the agreed delivery deadlines and in accordance with the practices and professional standards used by internationally recognised industry leaders performing services similar to the Services;

   (b) efficiently use the resources or services necessary to provide the Services, and shall use its reasonable efforts to perform the Services in the most cost effective manner consistent with the required level of quality and performance;

   (c) perform its responsibilities under this Contract in a manner that does not infringe, or constitute an infringement or misappropriation of the Intellectual Property Rights or proprietary rights of any third party;

   (d) use its best endeavours to promote the interests of GAIN. Subject to receiving GAIN’s prior written consent the Service Provider shall (i) promote GAIN’s involvement in all promotional and marketing materials whether hard copy, electronic, online and commercial (broadcast) and (ii) use GAIN’s logo in the same size and position as the Service Provider’s logo/name;

   (e) not subcontract all or any part of the work or the Services to any third party without GAIN’s prior written approval. If subcontracting is approved by GAIN, the Service Provider shall remain responsible for the conduct of its sub-contractors;

   (f) immediately notify GAIN in writing of any exceptional situation arising during the Contract which may delay or endanger the timely and proper performance of the Services.

b. If the Services are not satisfactorily completed (and, where applicable, delivered) or not delivered within the deadlines fixed in the Contract, GAIN may specify an additional period within which the Services must be remedied and be performed to GAIN’s full satisfaction. Without limiting Clause 12.1 below, if the Services have not been remedied within the fixed date or are still not satisfactorily performed within any additional period granted by GAIN, GAIN may terminate the Contract with immediate effect, without prejudice to any claim by GAIN for damages or other remedies.

14. INTELLECTUAL PROPERTY RIGHTS AND GLOBAL ACCESS

a. The reports produced by the Service Provider and all other products of the Services provided by the Service Provider and any data or information prepared or produced as a result of this Contract, including rights of use and of exploitation, as well as intellectual property rights, including copyright, is the sole property of GAIN (hereinafter the “Intellectual Property Rights”). The Service Provider recognises that the Intellectual Property Rights include without limitation copyright and any other rights in written material (hard copy or electronic), sound and video recordings (including but not limited to films, maps, photography) as well as patents and other rights in inventions, and that the said rights enable GAIN to control all publications, publicity material and other means of exploitation of the Intellectual Property Rights.
b. During the course of the Contract and the Service Provider’s performance of the Services, the Service Provider may have access to or GAIN may provide the Service Provider with information and material (including without limitation confidential information and data collected by third parties) gathered or prepared by or for GAIN or generated in respect of GAIN programs including GAIN-funded projects. The Service Provider acknowledges and agrees that such information and material is and remains the exclusive property (or under the control) of GAIN and may include information that is confidential to GAIN, and the Service Provider shall not use such information or material except in the performance of the Services and with the prior written consent of GAIN. The Service Provider acknowledges that reference to “Intellectual Property Rights” includes all rights in the information and material referred to in this Clause 3.2.

c. In furtherance of its charitable purposes and in the spirit of encouraging public dissemination of information and knowledge and global access to research and newly developed products within developing countries of the world, GAIN reserves the right to freely publish, disseminate, distribute or authorize a third party to disseminate, distribute or publish the data and/or results of the Services or any research, information, knowhow or material prepared or produced as a result of this Contract and/or derived from the Services. The Service Provider shall provide GAIN with full access to the data (including raw data) and/or the results of the Services or any information, know-how or material prepared or produced as a result of this Contract and/or deriving from the Services.

d. GAIN reserves the right to revise the work part of the Services, in part or in whole, after consultation with the Service Provider, to use the said work in a different way from that originally envisaged, or not to publish or use the work.

e. The Service Provider agrees to hold harmless, indemnify and defend GAIN from and against any and all claims, damages, costs, and expenses (including reasonable attorneys’ fees) and pay the amount of any adverse final judgment (or settlement to) arising out of or related to any breach by the Service Provider of the Intellectual Property Rights or intellectual property rights of third parties, provided the Service Provider is notified in writing of any claim.

f. At the express request of the Service Provider, the Service Provider’s participation can be mentioned by GAIN. In addition, GAIN may, pursuant to a separate written agreement, authorize the Service Provider to use and/or exploit the Intellectual Property Rights, in part or in whole, either free of charge or against remuneration.

15. CONFIDENTIALITY AND PUBLIC ANNOUNCEMENT

a. Each party shall keep confidential all information and documentation relating to the projects, strategies, activities, programs, business, financial or corporate affairs, trade secrets, know-how, research or studies of the other party to which it may gain access during, or as a result of, the implementation and execution of the Contract. Accordingly, the receiving party shall not use or disclose such information for any purpose other than the performance of its obligations under the Contract (unless otherwise agreed by the disclosing party), nor shall the receiving party at any time use such information or documentation to its private advantage. The parties shall ensure that each of its employees and/or other persons and entities having access to such information shall be made aware of, and be bound by, the obligations of confidentiality under this paragraph.

b. However, there shall be no obligation of confidentiality or restriction on use, where the receiving party is clearly able to demonstrate that such information and/or documentation: (i) is publicly available, or becomes publicly available, otherwise than by any action or omission of the receiving party, or (ii) was already known to the receiving party (as evidenced by its written records) prior to becoming known to the receiving party in the implementation and execution of this contract; or (iii) was received by the receiving party from a third party not in breach of an obligation of confidentiality; or (iv) was independently developed by or for the receiving party; or (v) was required to be disclosed by law.

c. Nothing contained in this Contract shall be construed as granting or conferring any rights by licence or otherwise in any confidential information disclosed to or in any confidential rights related thereto. Neither party makes any representations or warranties in respect to any confidential information provided under this Contract.

d. Neither party shall advertise or publicize its association with the other party under this Contract, nor shall the name, emblem, or logo of either party be used, published or otherwise exploited without the prior written approval of the relevant other party.

e. Any communication or public announcement relating to the Contract whether to the media or in any other public form (including without limitation press, radio, television, cinema, Internet) shall be subject to prior written approval of GAIN. A breach of this provision shall be deemed to be a breach of this confidentiality clause.

f. The provisions described above shall survive the expiry or earlier termination of the Contract. Any breach of this Clause by breaching party may incur immediate termination of this Contract, without prejudice to any other remedies.

16. REMUNERATION AND REPORTS

a. The Service Provider shall be paid the fees as described in Clause 3 of the Contract in return for satisfactory completion of all of its obligations under the Contract and acknowledges that no further fees or compensation other than those provided for in this Contract are due or may become due to the Service Provider in respect of the performance of its obligations.
b. The Service Provider shall provide the reports stated in the Contract. GAIN reserves the right to request any other report, progress, financial statement or other documentation, which may be reasonably required to evidence satisfactory performance of the Contract.

17. COSTS AND EXPENSES

Unless otherwise agreed in writing, the Service Provider shall bear its own costs and expenses incurred while providing the Services.

18. INSURANCES

a. The Service Provider is fully responsible to contract appropriate insurances covering accident and illness, social schemes and taxes that may be required for himself/herself or his/her staff and/or associates according to applicable national law and good business practice.

b. The Service Provider shall purchase professional liability insurance and general liability insurance appropriate to cover all risks and contingencies in relation to the Contract.

c. Upon GAIN’s request, the Service Provider shall provide to GAIN copies of the relevant insurance policies obtained by the Service Provider.

d. If the Service Provider is an individual performing work in Switzerland for a period of more than three consecutive months, either self-employed or engaged to perform work in Switzerland, it is a condition of this Contract that the Service Provider provides to GAIN an up-to-date certificate from the AVS Compensation office or from the compensation office of his/her country of residence prior to the execution of this Contract (or at such other time as requested by GAIN), confirming that the Service Provider is currently contributing to the AVS or the respective corresponding contribution in his/her country of residence. By signing this Contract, the Service Provider warrants and represents that he/she is paying and will continue to pay all AVS contributions due and payable by the Service Provider at any time.

19. REPRESENTATIONS AND WARRANTIES

a. The Service Provider represents and warrants that:

1. The Service Provider has the full right, power and authority to enter into this Contract and to perform its obligations under this Contract and has not entered into any arrangement which in any way conflicts with this Contract or inhibits, restricts or impairs its ability to perform its obligations under this Contract.

2. The execution of this Contract and the performance of the Service Provider's obligations do not and will not violate any agreement to which the Service Provider is a party or by which it is bound.

3. This Contract has been executed by the Service Provider's duly authorised representative.

4. The Service Provider will not use GAIN’s name and logo in a manner that is harmful to the reputation of GAIN or otherwise affects the ownership of GAIN’s intellectual property rights.

5. The Service Provider has not violated and will not violate any acts, laws, by-laws, rules and regulations applicable to the provisions and the procurement of the project.

6. All materials used by the Service Provider shall comply with all applicable laws and governmental rules and regulations.

20. LIABILITIES AND INDEMNITIES

a. The Service Provider shall fully indemnify and hold harmless GAIN or GAIN’s authorized agent (if any) from and against any and all losses, damages, costs, expenses, liabilities, claims, suits, actions, judgments, costs and any other expenses whatsoever, (including reasonable legal and attorney fees) arising out of, or in any way connected with (i) acts or omissions of the Service Provider in relation to this Contract (ii) use of the Intellectual Property Rights or other intellectual property (iii) loss of or damage to property, personal injury, or death caused by the act, error or omission of the Service Provider or under the Service Provider’s responsibility and (iv) any breach of this Contract by the Service Provider.

b. The Service Provider accepts full liability for any and all damages caused in relation to this Contract as a result of its action or omission and releases GAIN from any responsibility for any and all damages related to any of its obligations, warranties or other provisions as provided under this Contract, unless such damages are proven to be attributable to the gross negligence or wilful acts or omissions of GAIN.

c. GAIN shall be responsible only for performing the obligations specifically set forth in this Contract. Except for those obligations, GAIN shall have no liability to the Service Provider, or any other person or entity as a result of this Contract. The Service Provider agrees that GAIN has no liability with respect to any accident to any person causing injury or death or any loss or damage to any person or property arising out of the Service Provider’s activities under this Contract or with respect to any other insurance coverage for any person which may be necessary or desirable for the purpose of this Contract or for any personnel undertaking activities under this Contract. GAIN undertakes no
liability or responsibility in respect of life, health, accident and travel. Any financial or other liability that may arise as a result of the execution of the Contract shall be the responsibility of the Service Provider. Without limiting the foregoing, GAIN makes no representations or warranties, whether written or oral, statutory, express or implied with respect to any information or any technical assistance which may be provided herein, and expressly disclaims any and all representations and warranties, express or implied, regarding the products, services, data or reports contemplated by the Contract, including without limitation any implied warranty or satisfactory quality, implied warranty of fitness for a particular purpose, or implied warranties arising from course of dealing or course of performance.

21. **ANTI CORRUPTION CLAUSE**

The Service Provider shall not make, promise, offer or secure promises thereof to any party, nor solicit or accept directly or indirectly for himself or herself or for any other party any gift, money, benefit, assistance or in-kind advantage (i) in contravention of Swiss, United Kingdom, United States or any applicable law or regulation or the United Nations Convention Against Corruption and any implementing laws in any country; (ii) to induce any government employee or official to commit or omit to commit any act in violation of his or her lawful duty; or (iii) to obtain or retain business for, or direct business to, any individual or entity.

22. **SAFEGUARDING OF VULNERABLE PERSONS**

GAIN believes that all vulnerable persons, meaning children below the age of eighteen years and vulnerable adults, require protection from all forms of abuse and exploitation. Wishing to promote the highest standards in this regard, GAIN requires the Service Provider to adhere to its Policy for Safeguarding of Vulnerable Persons and to promote the values and standards laid down in the Policy in its work and the Service Provider agrees to do so.

23. **TERMINATION**

   a. Subject to Clause 4.6 above, GAIN is free to terminate this Contract at any time without reasons, subject to 10 working days written notice. Apart from the fees due for the Services provided according to the contractual requirements and to GAIN's full satisfaction up to the date of termination and pre-approved and justified expenses due at the date of termination, no indemnity or compensation is due by GAIN to the Service Provider.

   b. In addition, in the event of bankruptcy, insolvency, judicial liquidation, cessation of activity or the dissolution of either party for whatever reason, this Contract will, if either party so wishes be terminated as of right with immediate effect and without any compensation on either side.

   c. On the termination date, the Service Provider shall:
      1. immediately deliver to GAIN all of GAIN's property in its possession and under its control including but not limited to all of GAIN's intellectual property;
      2. return, and procure the return from all persons and entities (if any) to whom disclosure has been made, to GAIN all documents supplied by GAIN containing confidential information and all copies of those documents (and for this purpose "documents" includes computer disks and all other materials capable of storing data and information); and/or
      3. permanently delete or destroy and procure the deletion or destruction by all persons and entities (if any) to whom disclosure has been made, all embodiments of GAIN’s confidential information or any part of it from all electronic methods of storing information.

24. **FORCE MAJEURE**

   a. Neither party shall be liable for any failure or delay to carry out its obligations if and to the extent that such failure is due to force majeure which shall mean in relation to either party any circumstances beyond the reasonable control of the party concerned, including but not limited to war (declared or undeclared), acts of God, riot, terrorism, earthquake, accidents, explosion, fire, floods, abnormal weather conditions, acts of Government or other agencies, strikes, lock outs or other industrial action or trade disputes (except where such relates to employees or agents of the relevant party).

   b. The party affected by such a force majeure event shall as soon as reasonably practicable notify the other party in writing. In the event that the force majeure event so notified continues so as to prevent the performance of this Contract for a period of more than 28 days and that the party fails to submit an alternative solution which has been approved by the other party then either party shall have the right to terminate this Contract without liability for breach of contract. In such event, the Service Provider must draw up a final report, together with a final financial statement of the expenses supported by the relevant receipts or documentation.
RELATIONSHIP OF THE PARTIES

The parties acknowledge and agree that they are dealing with each other as independent contractors. Neither this Contract, nor these GTC may be construed as creating or constituting an employee-employer relationship, a partnership, a joint venture, a franchise or an agency between GAIN and the Service Provider. Neither the Service Provider nor GAIN may bind the other party in contracts with third parties or make promises and/or representations on behalf of the other party without prior written consent. Employees and agents of one party are not for any purpose employees or agents of the other.

AMENDMENTS

This Contract, these GTC or the Annexes may be amended only by written agreement duly signed by the authorized representatives of the parties.

APPLICABLE LAW, LANGUAGE AND JURISDICTION

This contract and any non-contractual obligations arising out of, relating to or having any connection with this contract, its performance or any breach thereof, are governed by Swiss law. The governing language of this contract is English. In the event of an inconsistency between the English language version of this contract and a translation, the English language version of this contract will prevail.

Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this contract, including any dispute involving any non-contractual obligations or any question regarding the contract's existence, its validity, interpretation, performance, termination, or any breach thereof, shall be subject to the exclusive jurisdiction of and resolved exclusively by the courts of Geneva, Switzerland. This jurisdiction clause is for the sole benefit of GAIN, which shall retain the option of submitting any such dispute, claim, difference or controversy to the courts of any competent jurisdiction, including, without limitation, the courts of the jurisdiction where the service provider conducts business, resides or is domiciled. The service provider irrevocably agrees not to dispute the jurisdiction of any such court to resolve such dispute, claim, difference or controversy.

NOTICES

Any notices required to be given by a party under this Contract shall be transmitted in writing by prepaid registered mail and shall be delivered to the other party at its address identified at the beginning of this Contract (or such other address as previously notified by the party). Notices shall be deemed to have been given 5 working days after the date of posting.

ENTIRE AGREEMENT

Each party on behalf of itself acknowledges and agrees with the other party that:

(a) this Contract (together with any document referred to in it), constitutes the entire contract and understanding between the Service Provider and GAIN and supersedes any previous arrangement, understanding or contract between them relating to the subject matter thereof (which shall be deemed to have been terminated by mutual consent);

(b) in entering into this Contract neither party has relied on any pre-contractual statement;

(c) each party agrees that the only rights and remedies available to it or arising out of or in connection with any pre-contractual statement shall be for breach of contract. Nothing in this Contract shall, however, limit or exclude any liability for fraud.

PROHIBITION OF ASSIGNMENT CLAUSE

This Contract is personal to the parties and neither party shall assign, transfer, or deal in any other manner with its rights and obligations under this contract.