REQUEST FOR PROPOSALS

TECHNICAL ASSISTANCE FOR THE

MONGOLIAN OPERATING LEASING LAW DEVELOPMENT

Submission Deadline: **12:00 P.M.**

LOCAL TIME

NOVEMBER 16, 2010

Submission Place: Ministry of Finance of Mongolia
Zasgiin gazriin II bair
Negedsen undestnii gudamj 5/1
Chingeltei Duurug
Ulaanbaatar-210646
Mongolia

Phone: 976-51-26-02-47
Fax: 976-51-26-02-47

SEALED PROPOSALS SHALL BE CLEARLY MARKED AND RECEIVED PRIOR TO THE TIME AND DATE SPECIFIED ABOVE. PROPOSALS RECEIVED AFTER SAID TIME AND DATE WILL NOT BE ACCEPTED OR CONSIDERED.

REQUEST FOR PROPOSALS

ANNEX 1	FEDBIZOPPS ANNOUNCEMENT
ANNEX 2	BACKGROUND DEFINITIONAL MISSION REPORT
ANNEX 3	USTDA NATIONALITY REQUIREMENTS
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Section 1: INTRODUCTION

The U.S. Trade and Development Agency (USTDA) has provided a grant in the amount of US$248,117 to the Mongolian Ministry of Finance (the "Grantee") in accordance with a grant agreement dated August 27, 2010 (the "Grant Agreement"). This Mongolian Operating Leasing Law Development technical assistance project ("Project") will assist the Ministry of Finance to develop draft laws for Mongolia ("Host Country") that allow and encourage operating leasing. Facilitating operating leasing in Mongolia will reduce the risk to equipment suppliers, which should reduce costs of equipment and associated new infrastructure. The Grant Agreement is attached at Annex 4 for reference. The Grantee is soliciting technical proposals from qualified U.S. firms to provide expert consulting services to perform the Technical Assistance.

1.1 BACKGROUND SUMMARY

Operating leasing is a widely and well-established financing vehicle for mining exploration and operations in the United States and many other countries. As previously noted, commercial leasing arrangements are of two basic types: capital leasing and operating leasing. A capital lease is a contract that allows the lessor to retain ownership of an asset while transferring the risks and rewards of ownership to the lessee. In contrast, an operating lease is essentially a rental contract for the temporary use of an asset by the lessee. An operating lease is commonly used to acquire equipment on a relatively short-term basis, with the maintenance and insurance responsibilities remaining with the lessor, who recovers the costs and benefits from multiple rentals and the final sale of the asset.

Despite an economy dependent on industries using heavy equipment, Mongolia does not have an operating leasing law; rather, the Company Law of Mongolia and the Financial Leasing Law (FLL) have been utilized as the legal instruments for operating leasing. The FLL, which was developed under a technical assistance program funded by the International Finance Corporation (IFC), while leading to positive growth in the overall leasing industry, nonetheless was intended solely for capital, and not operating, leasing arrangements. Two recent assessments have identified certain problems with the application of the FLL that constrain the development of operating leasing, and thus limit the use of this important financing vehicle by companies throughout the Mongolian economy. This constraint has particular impact in the mining and construction sectors, where heavy equipment is needed extensively. This need is expected to grow sharply under planned new mining investments. This project would correct these deficiencies through the drafting of a law (or adequate amendments to existing legislation) on operating leasing, as well as the development of an implementation plan for the new law.

Since the FLL was implemented in 2006, the Mongolian leasing industry has shown signs of positive growth. Under relative macroeconomic stability and other legislative initiatives, foreign and domestic investment in Mongolia have increased, which has positively impacted the leasing industry. For example, the total volume of new leases reached almost $90 million in 2007, over eight times the volume in 2005. The number of lease providers nearly quadrupled over that period, and the market became more diversified (today including a variety of items including cars, mining equipment and consumer items).

In addition to the IFC-funded technical assistance, IFC conducted a survey of the leasing industry in 2008, which identified a number of constraints on operating leasing. The private sector, including distributors of U.S. equipment, also asserts that these constraints limit the growth of operating leasing and lead to increased prices that are passed on to the lessee. Establishing a more formalized and appropriate structure for operating leasing would enable more companies to lease more equipment and increase their participation in the anticipated major growth in Mongolia's mining and energy sectors. The proposed operating leasing law developed by this project would specifically address the constraints identified by the private sector and IFC.

The development of an operating leasing law has received support from the Mongolian Ministry of Finance (the regulatory agency which oversees the FLL) and Central Bank. Conversations with the Embassy and multiple ministries, as well as knowledge of the government's priorities as a whole, confirm that the Mongolian government is interested in revising the leasing laws to the benefit of Mongolia's economy. This project will provide the information needed for the governing bodies to understand the needed changes to the law and how such changes would benefit the leasing industry and the country's economic development as a whole.

A background Definitional Mission report is provided for reference in Annex 2.

1.2 OBJECTIVE

The purpose of this TA is to assist in the development of an operating leasing law which addresses all aspects relevant to the Mongolian economy, and can be presented to lawmakers for ultimate passage. The Terms of Reference (TOR) for this Technical Assistance are attached as Annex 5.

1.3 PROPOSALS TO BE SUBMITTED

Technical proposals are solicited from interested and qualified U.S. firms. The administrative and technical requirements as detailed throughout the Request for Proposals (RFP) will apply. Specific proposal format and content requirements are detailed in Section 3.

The amount for the contract has been established by a USTDA grant of US$248,117. **The USTDA grant of $US248,117 is a fixed amount. Accordingly, <u>COST will not be a factor in the evaluation and therefore, cost proposals should not be submitted</u>.** Upon detailed evaluation of technical proposals, the Grantee shall select one firm for contract negotiations.

1.4 CONTRACT FUNDED BY USTDA

In accordance with the terms and conditions of the Grant Agreement, USTDA has provided a grant in the amount of US$248,117 to the Grantee. The funding provided under the Grant Agreement shall be used to fund the costs of the contract between the Grantee and the U.S. firm selected by the Grantee to perform the TOR. The contract must include certain USTDA Mandatory Contract Clauses relating to nationality, taxes, payment, reporting, and other matters. The USTDA nationality requirements and the USTDA Mandatory Contract Clauses are attached at Annexes 3 and 4, respectively, for reference.

Section 2: INSTRUCTIONS TO OFFERORS

2.1 PROJECT TITLE

The project is called Mongolian Operating Leasing Law Development.

2.2 DEFINITIONS

Please note the following definitions of terms as used in this RFP.

The term "Request for Proposals" means this solicitation of a formal technical proposal, including qualifications statement.
The term "Offeror" means the U.S. firm, including any and all subcontractors, which responds to the RFP and submits a formal proposal and which may or may not be successful in being awarded this procurement.

2.3 DEFINITIONAL MISSION REPORT

USTDA sponsored a Definitional Mission to address technical, financial, sociopolitical, environmental and other aspects of the proposed project. A copy of the report is attached at Annex 2 for background information only. Please note that the TOR referenced in the report are included in this RFP as Annex 5.

2.4 EXAMINATION OF DOCUMENTS

Offerors should carefully examine this RFP. It will be assumed that Offerors have done such inspection and that through examinations, inquiries and investigation they have become familiarized with local conditions and the nature of problems to be solved during the execution of the Technical Assistance.

Offerors shall address all items as specified in this RFP. Failure to adhere to this format may disqualify an Offeror from further consideration.

Submission of a proposal shall constitute evidence that the Offeror has made all the above mentioned examinations and investigations, and is free of any uncertainty with respect to conditions which would affect the execution and completion of the Technical Assistance.

2.5 PROJECT FUNDING SOURCE

The Technical Assistance will be funded under a grant from USTDA. The total amount of the grant is not to exceed US$248,117.

2.6 RESPONSIBILITY FOR COSTS

Offeror shall be fully responsible for all costs incurred in the development and submission of the proposal. Neither USTDA nor the Grantee assumes any obligation as a result of the issuance of this RFP, the preparation or submission of a proposal by an Offeror, the evaluation of proposals, final selection or negotiation of a contract.

2.7 TAXES

Offerors should submit proposals that note that in accordance with the USTDA Mandatory Contract Clauses, USTDA grant funds shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in the Host Country.

2.8 CONFIDENTIALITY

The Grantee will preserve the confidentiality of any business proprietary or confidential information submitted by the Offeror, which is clearly designated as such by the Offeror, to the extent permitted by the laws of the Host Country.

2.9 ECONOMY OF PROPOSALS

Proposal documents should be prepared simply and economically, providing a comprehensive yet concise description of the Offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

2.10 OFFEROR CERTIFICATIONS

The Offeror shall certify (a) that its proposal is genuine and is not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with, and agreement of, any undisclosed group, association, organization, or corporation; (b) that it has not directly or indirectly induced or solicited any other Offeror to put in a false proposal; (c) that it has not solicited or induced any other person, firm, or corporation to refrain from submitting a proposal; and (d) that it has not sought by collusion to obtain for itself any advantage over any other Offeror or over the Grantee or USTDA or any employee thereof.

2.11 CONDITIONS REQUIRED FOR PARTICIPATION

Only U.S. firms are eligible to participate in this tender. However, U.S. firms may utilize subcontractors from the Host Country for up to 20 percent of the amount of the USTDA grant for specific services from the TOR identified in the subcontract. USTDA's nationality requirements, including definitions, are detailed in Annex 3.

2.12 LANGUAGE OF PROPOSAL

All proposal documents shall be prepared and submitted in English, and only English.

2.13 PROPOSAL SUBMISSION REQUIREMENTS

The **Cover Letter** in the proposal must be addressed to:

State Secretary
Ministry of Finance
Zasgiin gazriin II bair
Negedsen undestnii gudamj 5/1
Chingeltei Duurug
Ulaanbaatar-210646
Mongolia

Phone: 976-51-26-02-47

An Original and four (4) copies of your proposal must be received at the above address no later than 12 noon, on NOVEMBER 16, 2010.

An electronic copy of your proposal must also be sent to: otgonbayar_ch@mof.gov.mn and Zambaga_z@mof.gov.mn. Please maintain a record of electronic receipt of your proposal.

Hard copy proposals may be either sent by mail, overnight courier, or hand-delivered. Whether the proposal is sent by mail, courier or hand-delivered, the Offeror shall be responsible for actual delivery of the proposal to the above address before the deadline. Any proposal received after the deadline will be returned unopened. The Grantee will promptly notify any Offeror if its proposal was received late.

Upon timely receipt, all proposals become the property of the Grantee.

2.14 PACKAGING

The original and each copy of the proposal must be sealed to ensure confidentiality of the information. The proposals should be individually wrapped and sealed, and labeled for content including "original" or "copy number x"; the original and four (4) copies should be collectively wrapped and sealed, and clearly labeled.

Neither USTDA nor the Grantee will be responsible for premature opening of proposals not properly wrapped, sealed and labeled.

Neither USTDA nor the Grantee will be responsible for premature opening of proposals not properly wrapped, sealed and labeled.

2.15 AUTHORIZED SIGNATURE

The proposal must contain the signature of a duly authorized officer or agent of the Offeror empowered with the right to bind the Offeror.

2.16 EFFECTIVE PERIOD OF PROPOSAL

The proposal shall be binding upon the Offeror for NINETY (90) days after the proposal due date, and Offeror may withdraw or modify this proposal at any time prior to the due date upon written request, signed in the same manner and by the same person who signed the original proposal.

2.17 EXCEPTIONS

All Offerors agree by their response to this RFP announcement to abide by the procedures set forth herein. No exceptions shall be permitted.

2.18 OFFEROR QUALIFICATIONS

As provided in Section 3, Offerors shall submit evidence that they have relevant past experience and have previously delivered advisory, Technical Assistance and/or other services similar to those required in the TOR, as applicable.

2.19 RIGHT TO REJECT PROPOSALS

The Grantee reserves the right to reject any and all proposals.

2.20 PRIME CONTRACTOR RESPONSIBILITY

Offerors have the option of subcontracting parts of the services they propose. The Offeror's proposal must include a description of any anticipated subcontracting arrangements, including the name, address, and qualifications of any subcontractors. USTDA nationality provisions apply to the use of subcontractors and are set forth in detail in Annex 3. The successful Offeror shall cause appropriate provisions of its contract, including all of the applicable USTDA Mandatory Contract Clauses, to be inserted in any subcontract funded or partially funded by USTDA grant funds.

2.21 AWARD

The Grantee shall make an award resulting from this RFP to the best qualified Offeror, on the basis of the evaluation factors set forth herein. The Grantee reserves the right to reject any and all proposals received and, in all cases, the Grantee will be the judge as to whether a proposal has or has not satisfactorily met the requirements of this RFP.

2.22 COMPLETE SERVICES

The successful Offeror shall be required to (a) provide local transportation, office space and secretarial support required to perform the TOR if such support is not provided by the Grantee; (b) provide and perform all necessary labor, supervision and services; and (c) in accordance with best technical and business practice, and in accordance with the requirements, stipulations, provisions and conditions of this RFP and the resultant contract, execute and complete the TOR to the satisfaction of the Grantee and USTDA.

2.23 INVOICING AND PAYMENT

Deliverables under the contract shall be delivered on a schedule to be agreed upon in a contract with the Grantee. The Contractor may submit invoices to the designated Grantee Project Director in accordance with a schedule to be negotiated and included in the contract. After the Grantee's approval of each invoice, the Grantee will forward the invoice to USTDA. If all of the requirements of USTDA's Mandatory Contract Clauses are met, USTDA shall make its respective disbursement of the grant funds directly to the U.S. firm in the United States. All payments by USTDA under the Grant Agreement will be made in U.S. currency. Detailed provisions with respect to invoicing and disbursement of grant funds are set forth in the USTDA Mandatory Contract Clauses attached in Annex 4.

Section 3: PROPOSAL FORMAT AND CONTENT

To expedite proposal review and evaluation, and to assure that each proposal receives the same orderly review, all proposals must follow the format described in this section.

Proposal sections and pages shall be appropriately numbered and the proposal shall include a Table of Contents. Offerors are encouraged to submit concise and clear responses to the RFP. Proposals shall contain all elements of information requested without exception. Instructions regarding the required scope and content are given in this section. The Grantee reserves the right to include any part of the selected proposal in the final contract.

The proposal shall consist of a technical proposal only. A cost proposal is NOT required because the amount for the contract has been established by a USTDA grant of US$248,117, which is a fixed amount.

Offerors shall submit one (1) original and four (4) hard copies of the proposal, as well as an electronic copy. Proposals received by fax <u>cannot</u> be accepted.

Each proposal must include the following:

Transmittal Letter,
Cover/Title Page,
Table of Contents,
Executive Summary,
Company Information,
Organizational Structure, Management Plan, and Key Personnel,
Technical Approach and Work Plan, and
Experience and Qualifications.

Detailed requirements and directions for the preparation of the proposal are presented below.

3.1 EXECUTIVE SUMMARY

An Executive Summary should be prepared describing the major elements of the proposal, including any conclusions, assumptions, and general recommendations the Offeror desires to make. Offerors are requested to make every effort to limit the length of the Executive Summary to no more than five (5) pages.

3.2 COMPANY INFORMATION

For convenience, the information required in this Section 3.2 may be submitted in the form attached in Annex 6 hereto.

3.2.1 Company Profile

Provide the information listed below relative to the Offeror's firm. If the Offeror is proposing to subcontract some of the proposed work to another firm(s), the information requested in sections 3.2.5 and 3.2.6 below must be provided for each subcontractor.

1. Name of firm and business address (street address only), including telephone and fax numbers.

2. Year established (include predecessor companies and year(s) established, if appropriate).

3. Type of ownership (e.g. public, private or closely held).

4. If private or closely held company, provide list of shareholders and the percentage of their ownership.

5. List of directors and principal officers (President, Chief Executive Officer, Vice-President(s), Secretary and Treasurer; provide full names including first, middle and last). Please place an asterisk (*) next to the names of those principal officers who will be involved in the Technical Assistance.

6. If Offeror is a subsidiary, indicate if Offeror is a wholly-owned or partially-owned subsidiary. Provide the information requested in items 1 through 5 above for the Offeror's parent(s).

7. Project Manager's name, address, telephone number, e-mail address and fax number.

3.2.2 Offeror's Authorized Negotiator

Provide name, title, address, telephone number, e-mail address and fax number of the Offeror's authorized negotiator. The person cited shall be empowered to make binding commitments for the Offeror and its subcontractors, if any.

3.2.3 Negotiation Prerequisites

1. Discuss any current or anticipated commitments which may impact the ability of the Offeror or its subcontractors to complete the Technical Assistance as proposed and reflect such impact within the project schedule.

2. Identify any specific information which is needed from the Grantee before commencing contract negotiations.

3.2.4 Offeror's Representations

If any of the following representations cannot be made, or if there are exceptions, the Offeror must provide an explanation.

1. Offeror is a corporation *[insert applicable type of entity if not a corporation]* duly organized, validly existing and in good standing under the laws of the State of ______________. The Offeror has all the requisite corporate power and authority to conduct its business as presently conducted, to submit this proposal, and if selected, to execute and deliver a contract to the Grantee for the performance of the Technical Assistance. The Offeror is not debarred, suspended, or to the best of its knowledge or belief, proposed for debarment, or ineligible for the award of contracts by any federal or state governmental agency or authority.

2. The Offeror has included, with this proposal, a certified copy of its Articles of Incorporation, and a certificate of good standing issued within one month of the date of its proposal by the State of ____________. The Offeror commits to notify USTDA and the Grantee if they become aware of any change in their status in the state in which they are incorporated. USTDA retains the right to request an updated certificate of good standing.

3. Neither the Offeror nor any of its principal officers have, within the three-year period preceding this RFP, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal or state criminal tax laws, or receiving stolen property.

4. Neither the Offeror, nor any of its principal officers, is presently indicted for, or otherwise criminally or civilly charged with, commission of any of the offenses enumerated in paragraph 3 above.

5. There are no federal or state tax liens pending against the assets, property or business of the Offeror. The Offeror, has not, within the three-year period preceding this RFP, been notified of any delinquent federal or state taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied. Taxes are considered delinquent if (a) the tax liability has been fully determined, with no pending administrative or judicial appeals; and (b) a taxpayer has failed to pay the tax liability when full payment is due and required.

6. The Offeror has not commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law. The Offeror has not had filed against it an involuntary petition under any bankruptcy, insolvency or similar law.

The selected Offeror shall notify the Grantee and USTDA if any of the representations included in its proposal are no longer true and correct at the time of its entry into a contract with the Grantee.

3.2.5 Subcontractor Profile

1. Name of firm and business address (street address only), including telephone and fax numbers.

2. Year established (include predecessor companies and year(s) established, if appropriate).

3.2.6 Subcontractor's Representations

If any of the following representations cannot be made, or if there are exceptions, the Subcontractor must provide an explanation.

1. Subcontractor is a corporation *[insert applicable type of entity if not a corporation]* duly organized, validly existing and in good standing under the laws of the State of ______________. The subcontractor has all the requisite corporate power and authority to conduct its business as presently conducted, to participate in this proposal, and if the Offeror is selected, to execute and deliver a subcontract to the Offeror for the performance of the Technical Assistance and to perform the Technical Assistance. The subcontractor is not debarred, suspended, or to the best of its knowledge or belief, proposed for debarment or ineligible for the award of contracts by any federal or state governmental agency or authority.

2. Neither the subcontractor nor any of its principal officers have, within the three-year period preceding this RFP, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal or state criminal tax laws, or receiving stolen property.

3. Neither the subcontractor, nor any of its principal officers, is presently indicted for, or otherwise criminally or civilly charged with, commission of any of the offenses enumerated in paragraph 2 above.

4. There are no federal or state tax liens pending against the assets, property or business of the subcontractor. The subcontractor, has not, within the three-year period preceding this RFP, been notified of any delinquent federal or state taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied. Taxes are considered delinquent if (a) the tax liability has been fully determined, with no pending administrative or judicial appeals; and (b) a taxpayer has failed to pay the tax liability when full payment is due and required.

5. The subcontractor has not commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law. The subcontractor has not had filed against it an involuntary petition under any bankruptcy, insolvency or similar law.

The selected subcontractor shall notify the Offeror, Grantee and USTDA if any of the representations included in this proposal are no longer true and correct at the time of the Offeror's entry into a contract with the Grantee.

3.3 ORGANIZATIONAL STRUCTURE, MANAGEMENT, AND KEY PERSONNEL

Describe the Offeror's proposed project organizational structure. Discuss how the project will be managed including the principal and key staff assignments for this Technical Assistance. Identify the Project Manager who will be the individual responsible for this project. The Project Manager shall have the responsibility and authority to act on behalf of the Offeror in all matters related to the Technical Assistance.

Provide a listing of personnel (including subcontractors) to be engaged in the project, including both U.S. and local subcontractors, with the following information for key staff: position in the project; pertinent experience, curriculum vitae; other relevant information. If subcontractors are to be used, the Offeror shall describe the organizational relationship, if any, between the Offeror and the subcontractor.

A manpower schedule and the level of effort for the project period, by activities and tasks, as detailed under the Technical Approach and Work Plan shall be submitted. A statement confirming the availability of the proposed project manager and key staff over the duration of the project must be included in the proposal.

3.4 TECHNICAL APPROACH AND WORK PLAN

Describe in detail the proposed Technical Approach and Work Plan (the "Work Plan"). Discuss the Offeror's methodology for completing the project requirements. Include a brief narrative of the Offeror's methodology for completing the tasks within each activity series. Begin with the information gathering phase and continue through delivery and approval of all required reports.

Prepare a detailed schedule of performance that describes all activities and tasks within the Work Plan, including periodic reporting or review points, incremental delivery dates, and other project milestones.

Based on the Work Plan, and previous project experience, describe any support that the Offeror will require from the Grantee. Detail the amount of staff time required by the Grantee or other participating agencies and any work space or facilities needed to complete the Technical Assistance.

3.5 EXPERIENCE AND QUALIFICATIONS

Provide a discussion of the Offeror's experience and qualifications that are relevant to the objectives and TOR for the Technical Assistance. If a subcontractor(s) is being used, similar information must be provided for the prime and each subcontractor firm proposed for the project. The Offeror shall provide information with respect to relevant experience and qualifications of key staff proposed. The Offeror shall include letters of commitment from the individuals proposed confirming their availability for contract performance.

As many as possible but not more than six (6) relevant and verifiable project references must be provided for each of the Offeror and any subcontractor, including the following information:

Project name,
Name and address of client (indicate if joint venture),
Client contact person (name/ position/ current phone and fax numbers),
Period of Contract,
Description of services provided,
Dollar amount of Contract, and
Status and comments.

Offerors are strongly encouraged to include in their experience summary primarily those projects that are similar to or larger in scope than the Technical Assistance as described in this RFP.

Section 4: AWARD CRITERIA

Individual proposals will be initially evaluated by a Procurement Selection Committee of representatives from the Grantee. The Committee will then conduct a final evaluation and completion of ranking of qualified Offerors. The Grantee will notify USTDA of the best qualified Offeror, and upon receipt of USTDA's no-objection letter, the Grantee shall promptly notify all Offerors of the award and negotiate a contract with the best qualified Offeror. If a satisfactory contract cannot be negotiated with the best qualified Offeror, negotiations will be formally terminated. Negotiations may then be undertaken with the second most qualified Offeror and so forth.

The selection of the Contractor will be based on the following criteria:

1) Technical Approach and Work Plan (40% weighting).

Contractors must provide a Technical Approach and Work Plan, and within this document, describe how it will approach and conduct the TA. As part of the Technical Approach and Work Plan, the Contractor must commit to work on the TA as per the tasks, schedule, personnel and deliverables and related items as outlined in the TOR. It must provide written and signed commitments by each team member regarding scheduling availability (e.g., linked to specific calendar dates such as "October 2010 forward" or "October 15, 2010 forward"), and commit in writing that team members will retain their availability for the complete duration of the TA as per the TOR schedule. If a Contractor has resources or ideas as to how to enhance the TOR, it may submit these items for consideration as an enhancement to the requirements in the TOR, but the cost of the TA will remain Fixed Price in nature and will not be adjusted in any way to accommodate changes outside of these TOR. Further, Contractors may not substitute for any tasks, deliverables or scheduling plans included herein by suggesting additional resources, ideas or enhancements.

2) Qualifications (40% weighting) of each of the eight key personnel, which must be supported with:

a. Detailed resumes for each of the individuals; and,

b. Supporting project and/or country examples of relevant work activities to the proposed assignment as described in the TOR and within the section on Contractor Qualifications, and a description of how these project and/or country examples provide evidence of competence and/or expertise as related to the proposed assignment and Contractor Qualifications.

3) Experience working with government, state-run organizations and/or the private sector in developing nations, preferably in Mongolia, other Asian countries, and/or countries that were formally a part of the Soviet Union (20%).

Proposals that do not include all requested information may be considered non-responsive.

Price will not be a factor in contractor selection.

ANNEX 1

State Secretary
Ministry of Finance
Zasgiin gazriin II bair
Negedsen undestnii gudamj 5/1
Chingeltei Duurug
Ulaanbaatar-210646
Mongolia

Phone: 976-51-26-02-47

2010-31063A Mongolian Operating Leasing Law Development

POC: Nina Patel, USTDA, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901, Tel: (703) 875-4357, Fax: (703) 875-4009. Mongolian Operating Leasing Law Development. The Grantee invites submission of qualifications and proposal data (collectively referred to as the "Proposal") from interested U.S. firms that are qualified on the basis of experience and capability to conduct technical assistance for this Mongolian Operating Leasing Law Development project to assist the Ministry of Finance to develop draft laws for Mongolia that allow and encourage operating leasing.

There are two basic types of commercial leasing arrangements: capital leasing and operating leasing. A capital lease is a contract that allows the lessor, as owner, to retain ownership of an asset while transferring the risks and rewards of ownership to the lessee. In contrast, an operating lease is essentially a rental contract for the temporary use of an asset by the lessee. An operating lease is commonly used to acquire equipment on a relatively short-term basis, such as heavy machinery or airplanes. Despite an economy dependent on industries using heavy equipment, Mongolia does not have an operating leasing law and is constrained by laws and regulations that deal with other types of leasing. As a result, operating leasing requires higher risk premiums and other costs due to the possibility of redress and repossession. This TA would address these concerns and provide a draft operating leasing law to the Ministry of Finance based on best practices and the experiences of other countries. The result would be increased use of operating leasing as a financing vehicle.

The TOR for this project will include the following summarized tasks:

Task 1: Legal Context and Research
Task 2: Research Commercial Context and Interactions with Private Sector Interests

Task 3: Develop Draft Operating Leasing Law and System for Managing New Legal Framework
Task 4: Economic Analysis
Task 5: Regulatory Analysis and Implementation Arrangements
Task 6: Development Impact Analysis
Task 7: Preliminary Environmental Analysis
Task 8: Final Report

The U.S. firm selected will be paid in U.S. dollars from a $248,117 grant to the Grantee from the U.S. Trade and Development Agency (USTDA).

A detailed Request for Proposals (RFP), which includes requirements for the Proposal, the Terms of Reference, and a background definitional mission/desk study report are available from USTDA, at 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901. To request the RFP in PDF format, please go to: https://www.ustda.gov/businessopps/rfpform.asp. Requests for a mailed hardcopy version of the RFP may also be faxed to the IRC, USTDA at 703-875-4009. In the fax, please include your firm's name, contact person, address, and telephone number. Some firms have found that RFP materials sent by U.S. mail do not reach them in time for preparation of an adequate response. Firms that want USTDA to use an overnight delivery service should include the name of the delivery service and your firm's account number in the request for the RFP. Firms that want to send a courier to USTDA to retrieve the RFP should allow one hour after faxing the request to USTDA before scheduling a pick-up. Please note that no telephone requests for the RFP will be honored. Please check your internal fax verification receipt. Because of the large number of RFP requests, USTDA cannot respond to requests for fax verification. Requests for RFPs received before 4:00 PM will be mailed the same day. Requests received after 4:00 PM will be mailed the following day. Please check with your courier and/or mail room before calling USTDA.

Only U.S. firms and individuals may bid on this USTDA financed activity. Interested firms, their subcontractors and employees of all participants must qualify under USTDA's nationality requirements as of the due date for submission of qualifications and proposals and, if selected to carry out the USTDA-financed activity, must continue to meet such requirements throughout the duration of the USTDA-financed activity. All goods and services to be provided by the selected firm shall have their nationality, source and origin in the U.S. or host country. The U.S. firm may use subcontractors from the host country for up to 20 percent of the USTDA grant amount. Details of USTDA's nationality requirements and mandatory contract clauses are also included in the RFP.

Interested U.S. firms should submit their Proposal in English directly to the Grantee by 12 noon, November 16, 2010 at the above address. Evaluation criteria for the Proposal are included in the RFP. Price will not be a factor in contractor selection, and therefore, cost proposals should NOT be submitted. The Grantee reserves the right to reject any and/or all Proposals. The Grantee also reserves the right to contract with the selected firm for subsequent work related to the project. The Grantee is not bound to pay for any costs associated with the preparation and submission of Proposals.

ANNEX 2

DEFINITIONAL MISSION: EXECUTIVE SUMMARY

Mongolia possesses tremendous mineral resources, most of which have not been exploited, and include coal, copper, gold, iron, fluorspar, lead, molybdenum, silver, tungsten, uranium and zinc, among others. Even with the relatively limited development thus far; however, the mining sector accounted for over 33 percent of the country's gross domestic product (GDP) in 2009. Exploration and development have been hampered by limited infrastructure, including a shortage of transportation and water resources, as well as severe climate conditions. In addition, Mongolia's regulatory structure has been historically viewed by international mining companies as unfavorable, although recent reforms have improved the investment environment. The landmark Oyu Tolgoi (OT) copper mine is evidence of the transition in the sector, and the anticipated Tavan Tolgoi (TT) coking coal project represents another step in that direction.

Recognizing the general lack of infrastructure (in particular with respect to power generation and distribution), USTDA commissioned this Definitional Mission (DM) to identify and evaluate projects in the energy sector which could help spur additional mining developments, assisting U.S. companies in the process and providing development benefits to Mongolia. TERA International Group, Inc. (TERA) conducted the DM in early 2010, and recommends the following projects for USTDA funding consideration:

(1) Technical assistance to develop Mongolia's commercial leasing law ($248,117);
(2) Technical assistance to develop coal bed methane (CBM) resources ($651,045); and
(3) Feasibility study to utilize TT coal waste for power generation ($466,453).

These projects represent development priorities of the respective project sponsors, and also are expected to both aid in improving the general business environment for U.S. firms in the sector and provide opportunities for tangible commercial benefits in the form of U.S. sales of equipment and services. A brief summary of each project is presented below.

Technical Assistance to Develop Mongolia's Commercial Leasing Law

Mongolia does not have a commercial leasing law; rather, the Company Law of Mongolia and the Financial Leasing Law (FLL) have been utilized as the legal instruments for commercial leasing. The FLL, which was developed under a technical assistance program funded by the International Finance Corporation (IFC), while leading to positive growth in the overall leasing industry, nonetheless was intended solely for financial, and not commercial (or operational), leasing arrangements. Two recent assessments have identified certain problems with the application of the FLL which constrain the development of commercial leasing, and thus limit the use of this important financing vehicle by companies throughout the Mongolian economy and in particular the mining and construction sectors. The proposed TA would assist in correcting these deficiencies through the drafting of a law (or adequate amendments to existing legislation) on commercial leasing. The result will be increased use of commercial leasing as a financing vehicle. While this project is a policy-oriented technical assistance activity, given that U.S. commercial interests in Mongolia are so heavily focused on the mining sector, it represents an area of significant interest to U.S. companies in the sector. In addition, the project is also expected to lead to positive developmental impacts, including both direct (through market-oriented reform) and indirect (through infrastructure development, technology transfer/productivity improvement and human capacity building) benefits.

SECTION B: BACKGROUND

Landlocked between the Russian Federation and the People's Republic of China, Mongolia is a country of 2.9 million people spread across a territory the size of Western Europe. Being situated between these two powerful neighbors, Mongolia's history has often been defined by the political and economic relationships between these countries. Often this dependence hindered Mongolia's development, as its economy had become too dependent on these countries – for example, it continues to rely on Russia for nearly all of its petroleum and on China as its primary foreign trade partner. Despite the challenges caused by this situation, however, Mongolia has shown steady economic growth over the past several years, with 10.6 percent growth in 2004, 6.2 percent in 2005, 7.5 percent in 2006, 9.9 percent in 2007, and 8.9 percent in 2008. In order to maintain these enviable growth rates, however, the government of Mongolia understands that it will need to expand commercial ties with its neighbors as well as the outside world. Today, Mongolia's proximity to the Chinese market (which is expected to continue to demand raw materials on a massive scale) is more of an opportunity, given its expansive mineral resources. Mongolia, therefore, seeks to expand its output of a number of key commodities in order to boost economic growth. In return, it hopes to utilize the foreign exchange earned to develop infrastructure throughout the country. In addition, Mongolia hopes to increase economic ties with other countries, in particular the United States, through its "Third Neighbor Policy," which seeks to establish cooperation with countries beyond Russia and China.

Economic Overview

As noted, Mongolia's socioeconomic development has been largely defined by its geography and recent history. As a landlocked country, it is dependent upon its neighbors Russia and China for both a significant amount of resources as well as access to the sea and international markets. Prior to the breakup of the Soviet Union, Mongolia was to a large degree dependent on it in terms of trade and financing for infrastructure projects. Recent years have seen the growth of trade with China, which is based on lower priced imports, exports to China as well as through China's port at Tianjin to other countries, and transit trade between China and Russia. Trade with China now accounts for about 70% of total trade. These trends are increasing and are likely to provide the basis for Mongolia's future economy.

Another important geographic feature is its latitude, which has makes it one of the world's coldest countries, with mean winter temperatures approximating, and routinely exceeding, -20°F. This has resulted in the average crop growing season lasting only about 100 days. In addition, Mongolia is a very dry country, with water resources abundant only in limited areas in the northern and western regions. The Gobi Desert and adjoining steppe constitutes a significant portion of the country, which has meant that nomadic herding (and associated short-term cropping such as hay and other fodder) is the only currently viable agricultural activity in a large portion of Mongolia.

With a relatively large land mass (about 1.6 million km^2) and a small population (2.7 million), Mongolia has one of the lowest population densities in the world, with most of the country having less than 1.5 persons per km^2. The low population density means that infrastructure and social services have a higher per person cost because population concentrations are so low. Globally, this typically indicates that the domestic market is too small to support a wide range of industries and services, and Mongolia is not an exception. Thus, aside from herding and some limited industrial and service activities to support the domestic market, economic activity has been linked to exploitation of timber in the north and mineral resources elsewhere, including coal, copper, iron ore, fluorspar, gold, molybdenum, and zinc.

The breakup of the Soviet Union and the accompanying cessation of funds and other support to its former satellite countries resulted in a rapid decline in Mongolia's GDP, about 30 percent, in the early 1990s. This decline in the economy was further exaggerated by deteriorating infrastructure, including the power and heating systems that are vital for survival in the cold climate. Multinational and bilateral donors stepped in with support for near-term retrofits to keep these systems and other critical components of the economy operating. Existing large-scale projects such as the jointly-owned (Mongolia and Russia) copper mine, were generally inefficient and based on outdated technologies. With a limited export basis and downturns in the global and regional economies during the 1990s, terms of trade worsened and inflation increased (and is still a problem today).

Compounding these factors, the winters of 1999-2000, 2000-2001 and 2001-2002 were extremely cold, and resulted in losses in the national herd of about 30 percent. This loss of economic assets led to increased rural-urban migration even though employment prospects were limited in urban areas. Throughout this period of transition from a socialist to a market economy, the social safety net that provided employment, health and education services markedly declined, and further aggravated economic dislocations. However, this transition period also resulted in a number of reform measures to facilitate investment by and growth in the private sector.

Despite these circumstances, Mongolia's economy has been growing and broadening as more industries and businesses are expanded or created. With a relatively small market and resource base, and high unit development costs because of the cold and small population, Mongolia remains highly vulnerable to global and regional economic events, and largely dependent on development assistance for its capital budget. This vulnerability has been highlighted during the recent global economic crisis, which has severely impacted the national economy. Comparing January-August 2009 with the same period in 2008 highlights the extent of the damage[1]:

- Tax revenue fell by 25.7%;
- Non-tax revenue fell by 23.8%;
- Exports fell by 35.3%;
- Imports fell by 25.6%;
- Rail freight tonnage transported fell by 6.3%;
- Rail passengers fell by 27.5%;
- Air freight tonnage transported fell by 38.9%;
- Air passengers fell by 21.0%; and
- National unemployment increased by 29.4% (through July).

Compounding the above, the severe 2009-2010 winter resulted in the loss of approximately 18-19% of the national herd (about 7.5 million head out of 40 million). In real terms, total GDP increased by 10.2% in 2007 (over 2006), 8.9% in 2008, and then contracted by about 1.6% in 2009. Nominal GDP amounted to $4.2 billion in 2009, or about $1,551 per capita.

As noted, an important factor in the economy has been inflation. While it was at one time quite high in the 1990s, it slowed during the early part of the last decade. However, in recent years, inflation again increased – 17.8 percent in 2007 and 22.1 percent in 2008. While the economic slowdown reflected in 2009 caused inflation to fall to 4.2 percent, it is expected to remain an issue for the foreseeable future, especially with the development of OT and TT. OT is expected to result in a doubling of the economy by 2015, and TT another doubling by 2020. Globally, small minerals-led economies have typically been highly vulnerable to inflationary pressures as the value of their currencies increases versus those of main trading partners, which leads to increased

[1] *The Mongol Messenger*, September 6, 2009.

imports and consumption. Thus, Mongolia will have to carefully manage monetary and fiscal policies in the near future as the revenues from OT and TT begin to flow into the economy. The last several years have seen the government's budget go from a surplus in 2007 to deficits in 2008 and 2009. In recent years, Mongolia has been running a trade imbalance as imports are greater than exports, which is to be expected as mining operations are expanding, and this requires considerably more equipment and other goods and services. This should be reversed once OT increases its operations and TT comes on-stream.

Despite these issues, however, OT and TT are expected to provide vast benefits to the Mongolian economy and people, as a steadier stream of revenue will become available for the government to invest in infrastructure and social services, in addition to providing a large amount of jobs for local residents.

Mining Sector

As noted, Mongolia's non-fuel mineral sector has been one of the main pillars of its development. While agriculture and animal husbandry still account for the majority of employment, the mining sector accounted for 33 percent of GDP, approximately 70 percent of export earnings and 16 percent of tax revenue in 2007.[2] Its output, however, is highly vulnerable to mineral price volatility and its direct contribution to employment has been limited (2.4 percent of labor force), due to the highly capital-intensive nature of the sector. The government has aimed to develop new areas in order to increase employment as well as provide specialized training in the sector for its citizens.

Mongolia has tremendous geological potential to become a major producer and exporter of minerals. As noted, there are substantial deposits of coal, copper, molybdenum, gold, uranium, lead, zinc, zeolites, rare earth elements, ferrous metals, fluorspar, phosphate and precious and semi-precious stones. Several major mining operations were developed before 1989 with the assistance of the former Soviet Union, but in recent years private sector mining companies have commenced operations. Most of the expansion in the mining sector has taken place since the 1997 adoption of the "Minerals Law of Mongolia," although foreign mining companies continue to be wary of tax policies in the sector which discourage investment. Mongolia's general lack of infrastructure required for mining projects (including roads, railways, access to electric power) and limited water resources have further hampered the development of many mineral deposits with economic potential.

Despite these constraints, economic and government reforms over the past several years have led to increased foreign investment, highlighted by the recent OT development, which will become one of the largest copper and gold

[2] National Statistics Office. 2008. *Mongolian Statistical Yearbook 2007.* Ulaanbaatar.

mines in the world. Mineral exploration and operation now accounts for over 70 percent of foreign direct investment, and includes other investments in copper (at Tsagaan Suvarga), coal (Baruun Naran, Ovoot Tolgoi and Tavan Tolgoi, among others), gold (Gatsuurt and Golden Hills), and molybdenum (Tsagaan Suvarga). Mongolia also produces a substantial amount of silver, zinc and fluorspar. While some U.S. companies have been involved in the sector, notably Peabody, most of the international interest and investment has come from companies in other countries, including Canada, Russia, Australia and China. However, the United States remains a world leader in mineral extraction equipment (both for surface and underground operations), and therefore U.S. equipment providers are likely to benefit from new mine development, even if the lead developer is a foreign firm. In addition, many existing mines currently utilize aging equipment from Russia and China that is reaching the end of its economic life.

Once OT and TT become fully operational, mining and quarrying will likely dwarf all other economic sectors in Mongolia. While mining revenues will provide the basis for expanding social services and upgrading infrastructure throughout the country, there has to be a recognition that these revenues are dependent on market prices, and as history has clearly shown, prices fluctuate. The challenge for the government will be to understand that, as a small economy dependent on minerals revenues, it needs to operate and invest in projects in the country as if minerals prices are low, because prices will inevitably fall. In other words, recurrent expenditures need to be kept at reasonable levels and a solid minerals revenue stabilization fund should be established to provide support when prices fall below their current, relatively high, prices.

Energy Sector

As noted, Mongolia's energy infrastructure (including power generation facilities and transmission lines) will need to be expanded in order to meet projected demand, even before new mining areas can be developed. Mongolia's central power system consists of five coal-fired power plants serving the majority of electricity needs. Smaller electricity and heating systems are connected to Russia's Siberian grid and serve remote provinces and towns. Diesel generators provide power in many rural centers, while one third of the population receives no electricity and must rely on either renewable energy equipment (e.g., solar and wind generators) or, more commonly, the burning of coal briquettes and even garbage. Management of the coal-fired heat system is still largely based on the framework put in place under the centrally planned economic order of previous decades. The system is overseen by the Ministry of Energy and Mineral Resources (MEMR) and the Energy Regulatory Authority (ERA), and includes: the central energy system, which operates the main combined heat and power plants and district heating systems; the major coal mines, which are almost all state-owned; and the public Energy Utility Organizations (EUOs), which operate the electricity and heating systems in isolated towns. Lines of responsibility and accountability between MEMR, ERA and the energy companies are blurred, and both entities are involved in many aspects of day-to-day company operations.

In March 2008, the Mongolian Government approved its Millennium Development Goals-Based Comprehensive National Development Strategy of Mongolia, which included the following "Fuel Sector Development Policy":

Phase One (2007-2015):

Strategic objective 1. Small-size power plants shall be supplied with gas fuel produced from coal:

- Build small-size plants to produce smoke-free fuel out of coal.
- Build and operate medium and large-size industrial complexes, which produce liquid fuel out of coal.

Strategic objective 2. Coke-chemistry and coal, energy, chemical industrial complexes shall be built and put in operation:

- Based on coking coal deposit at TT, process coal, set up and operate a coal chemistry research laboratory center.
- Produce petroleum products from coal.

Phase Two (2016-2021):

Strategic objective 1. A large capacity power plant using clean coal technology shall be built and reach full industrial capacity to produce petroleum products from coal:

- Build a fuel, energy and coal chemistry complex at Choir-Nyalga coal deposit.
- Obtain new kinds of fuel from coal such as hydrogen, methanol, DME and others.
- Reach full capacity in coke-chemistry production and export not less than 5 million tonnes of coke annually.[3]

Large conventional coal-fired power plants are not mentioned in this statement of national goals, although the government previously proposed such a facility at Baga Nuur, just outside of Ulaanbaatar. The government has also been in discussions with Chinese representatives regarding a proposed facility at Shivee Ovoo. Instead, use of coal gasification processes for electrical generation is proposed. All coal production discussed in the fuel section of the National Development Strategy involves value-added processing into gases,

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3 Millennium Development Goals-Based Comprehensive National Development Strategy of Mongolia, dated 24 March, 2008, pages 22-23.

liquids or metallurgical coke within Mongolia. Development of value-added coal processing plants will take time, however. Gasification plants are far more complex to build and cost significantly more per kilowatt hour of capacity than conventional coal-fired steam generator plants. The elapsed time between obtaining a financing commitment and achieving full production of the gasification plant is likely to be at least five years.

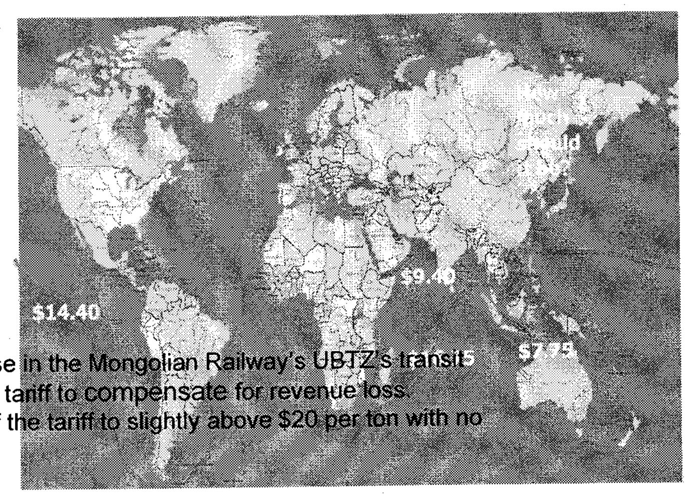
In terms of exports, Mongolia is beginning to increase its capacity to produce coke, instead of raw coking coal or raw power plant coal, as more jobs and more revenue would be generated by pursuing this policy. Processing removes "waste" material from the coal. Coke, after processing, weighs less than the coking coal it came from. Fewer railcars will be needed for the shipment of coke to market in China or Russia than are currently employed in shipping the unprocessed coking coal – resulting in reduced transport cost (and railway revenue). Gas from coal is generally used on-site to generate power, or is piped to local factories, businesses and homes for use in heating and cooking.

Considerations for Mining Investments

When searching for new project opportunities, it is important to understand the full range of costs. As noted, mining is a highly capital intensive business, and even small metal mines with relatively simple mining conditions and uncomplicated processing can cost between $20-50 million depending on their production rate and location. In Mongolia, the lack of infrastructure noted above represents a substantial portion of this cost. The transportation cost of bulk mineral commodities is usually a major item and may even exceed the freight on board (FOB) mine cost of the commodity. Hence, the economics of mineral production are very sensitive to the cost of transportation. The estimated cost of truck and rail transportation for Mongolian bulk mineral commodities is $0.30 and $0.075 per ton-km, respectively. Given Mongolia's vast size and the distance that must be traversed in order to get the product to market, these costs can often inhibit new mine developments.

One recent example of the adverse impact of high transport costs is the increase in the fall of 2008 of export rail freight tariffs for minerals from Darkhan to Zamyn-Uud, a distance of 1,046 km, to $29.30 per ton ($0.028 per ton-km) compared to the 2006 tariff of $9.50 per ton ($0.009 per ton-km).[4] The importance of this price hike on the competitiveness of Mongolian minerals in China, the nearest

Figure B.1: Coal Transport Cost



[4] This increase was prompted by the unexpected decrease in the Mongolian Railway's UBTZ's transit traffic which led the management to increase the export tariff to compensate for revenue loss. Subsequent exporter pressure resulted in a reduction of the tariff to slightly above $20 per ton with no significant increase in export traffic.

large market which imports significant quantities of raw materials from many countries, is evident in Figure B.1. The figure depicts the transport cost of iron ore and coal from principal world sources to the Chinese port of entry, which is akin to Zamyn-Uud – Erlian border point for exports from Mongolia to China. The inland rail transport cost to the port of loading in Australia for coal is $2.25 per ton for a distance of 425 km or $0.005 per ton-km.[5] The ocean freight rate to the Chinese port of entry is $5.50 per ton, bringing the total transport cost from mine mouth in Australia to the port of entry in China to $7.75 per ton. Corresponding transport cost from India is $9.40 per ton, from Brazil $14.40 per ton, and from South Africa $16.75 per ton. The transport cost disadvantage caused by monopolistic pricing resulted in a significant reduction of minerals exports to China.[6]

In addition to high transport cost, the low population density means that a mining project will normally be required to fund the construction of a complete township for its employees, including apartments, schools, hospitals, etc. This places a huge additional economic burden on the project; it has been estimated to cost as much as the (presumably small-size) mining project itself.[7] Larger mines can cost more than $1 billion, and the OT and TT projects, while unique in terms of size, are expected to cost over $4 billion and $2 billion, respectively. Therefore, high capital cost mines typically require that financing be obtained from several sources (bank loans, equity and bond markets).

These factors all contribute to determining the economic viability of new mining developments. However, as will be shown with the projects recommended under this DM, the activities are related either to a mine which is clearly economically viable (TT) or relate to broader areas in which technical assistance is needed in order to further develop the sector.

As noted, TERA recommends three projects for USTDA funding consideration: (i) technical assistance to improve Mongolia's commercial leasing law, (ii) technical assistance to develop CBM resources, and (iii) a feasibility study to assess the use of coal waste at TT for power generation.

SECTION C: RECOMMENDED PROJECTS

Technical Assistance to Develop Mongolia's Commercial Leasing Law

Project Description

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5 This very competitive rail rate is possible because of use of state-of-the-art equipment (100 ton hopper cars), 3 modern locomotives of 6,000 Hp or more, 100 wagon trains, and 35-ton axle load track.

6 The common explanation given to the reduction of Mongolia's minerals export revenue is the worldwide economic and financial downturn since mid-2008. Contrary to this belief, Chinese imports of minerals has surged. During the first 7 months of 2009, China's coal imports, for example, increased by 130% to 54.67 million tons compared to the corresponding period in 2008 (www.chinamining.com). Mongolian exports of coal to China during this period stood at 186,200 tons (UB Post 01 September 2009), a share of only 0.34% of the PRC coal imports.

7 Mr. Purvee, MongolRostsvetment Mining & Trade Corporation.

Mongolia does not have a commercial leasing law; rather, the Company Law of Mongolia and the Financial Leasing Law (FLL) have been utilized as the legal instruments for commercial leasing. The FLL, which was developed under a technical assistance program funded by the International Finance Corporation (IFC), while leading to positive growth in the overall leasing industry, nonetheless was intended solely for financial, and not commercial (or operational), leasing arrangements.[8] In fact, the law gives a definition of financial leasing which discriminates clearly between financial leasing and commercial/operational leasing (the latter akin to renting). Two recent assessments have identified certain problems with the application of the FLL which constrains the development of commercial leasing, and thus limits the use of this important financing vehicle by companies throughout the Mongolian economy and in particular the mining and construction sectors. This project would correct these deficiencies through the drafting of a law (or adequate amendments to existing legislation) on commercial leasing.

Since the FLL was implemented in 2006, the Mongolian leasing industry has shown signs of positive growth, and coupled with relative macroeconomic stability and other legislative initiatives, foreign and domestic investment have increased. For example, the total volume of new leases reached almost $90 million in 2007, over eight times the volume compared to 2005. The number of lease providers nearly quadrupled over that period, and the market became more diversified (today including a variety of items including cars, mining equipment and consumer items).

In addition to the IFC-funded technical assistance (provided to the Ministry of Finance), IFC also conducted a survey of the leasing industry in 2008 (the "Mongolia Leasing Industry Survey"). The proposed commercial leasing law would specifically address the constraints noted by IFC. In addition, the private sector, including Wagner, a leading distributor of U.S. equipment (including Caterpillar, Ford, and other major brands), agreed that these constraints limit the growth of commercial leasing and lead to increased prices that are passed on to the lessee. Establishing a more formalized and appropriate structure for commercial leasing would enable more companies to lease more equipment and increase their participation in the anticipated major growth in Mongolia's mining and energy sectors. Commercial leasing is a widely and well-established financing vehicle for mining exploration and operations in the United States and many other countries, and which should be supported in Mongolia as well.

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[8] A financial lease is a contract that allows the lessor, as owner, to retain ownership of an asset while transferring substantially all the risks and rewards of ownership to the lessee. In contrast, a commercial or operating lease is essentially a rental contract for, usually, the short-term or temporary use of an asset by the lessee. The maintenance and insurance responsibilities remain with the lessor, who recovers the costs and profits from multiple rentals and the final sale of the asset.

Project Sponsor's Capabilities and Commitment

The proposed Grantee is the Department of Food Production, (Domestic) Trade and Services (DFPTS), which is under the Ministry of Food, Agriculture and Light Industry. TERA met with both the Ministry of Finance (the regulatory agency which oversees the FLL) and the Central Bank regarding this project, and both indicated that DFPTS would be the most appropriate entity for this role. DFPTS was fully supportive of assistance in this area, indicating that it fit well with their work program to revise and restructure the laws and regulations that facilitate private sector development in Mongolia.

Implementation Financing

As a policy-oriented activity, no financing would be required to implement the project. In order to develop the law, DFPTS would, with the assistance of the selected Contractor, draft a law which addresses the current gap in coverage (or, if appropriate, the Contractor could propose amendments to existing legislation). The draft law would then be presented to Parliament, where it would be debated, potentially adjusted, and ultimately (if all goes according to plan), passed. Following passage, DFPTS would likely assume regulatory control.

U.S. Export Potential

Potential U.S. exports related to this project are difficult to project but expected to be significant given the frequency in which large capital equipment (in particular, mining equipment) is leased rather than purchased. With the Mongolian mining industry expected to grow significantly in the coming years, U.S. suppliers of such equipment are likely to benefit. In discussions with Wagner, the licensed distributor of Caterpillar equipment, the company noted that of its estimated turnover of more than $100 million for 2010, 40 percent involves leased equipment, and that this business would increase significantly as a result of a law which establishes a transparent structure and is similar to international norms. In addition to the mining industry, other industries which could be positively affected include construction, agriculture and transportation. In addition to Caterpillar (Peoria, Illinois), Wagner is also a distributor for other U.S. companies such as Ford (Detroit, Michigan), Agco (Duluth, Georgia), Sullair (Michigan City, Indiana), Multiquip (Carson, California), Genie Industries (Redmond, Washington), Allmand Bros. (Holdrege, Nebraska) and Thawzall (Glenwood, Minnesota) (though it should be noted that some of these companies manufacture their products destined for the Asian market outside of the United States). Other mining and earthmoving equipment producers such as Bucyrus (Milwaukee, Wisconsin), Joy (Warrendale, Pennsylvania), Deere & Company (Moline, Illinois) and Addcar (Ashland, Kentucky) could also benefit.

Foreign Competition and Market Entry Issues

While there are no specific market entry issues associated with this project, it would benefit U.S. and non-U.S. companies equally. For instance, Wagner also distributes some foreign equipment/vehicles manufactured by, for example, Shandong SEM Machinery (China) and Land Rover (U.K.). Foreign suppliers of mining and earthmoving equipment such as Terex (U.K.), Komatsu (Japan), Hitachi (Japan), Liebherr (Germany) and Emeco (Australia) are active in Mongolia and could also benefit.

Developmental Impact

Developmental impacts of the commercial leasing law stem from the reduction of risk to equipment suppliers, thus enabling them to reduce costs. This should subsequently lead to increased business as more companies are able to afford the cost of equipment leasing. In terms of USTDA's developmental impact measures, the project would directly lead to impacts in the area of Market-Oriented Reforms, and indirectly in the areas of Infrastructure, Technology Transfer/Productivity Improvements and Human Capacity Building. In terms of market-oriented reform, while Mongolia has made significant strides in recent years, much of the country's laws and regulatory structure is based on a system essentially inherited from the Soviet Union. As noted, while a suitable FLL is in place, a gap exists in which development of a commercial leasing law would help to fill, thus furthering the general Mongolian legal/regulatory framework to a more market-oriented structure. The major benefit will be a more structured leasing industry that will facilitate increased market activity. With capital equipment more accessible, the costs associated with new infrastructure would be subsequently reduced, productivity increased, and jobs created. There will also likely be more companies participating or expanding their operations in the mining and energy industries as well as the construction sector.

Impact on the Environment

No direct environmental impacts would be associated with the project. However, as the use of mining and earthmoving equipment is expected to be facilitated, the typical environmental impacts associated with mining development would be a secondary effect. Since these impacts are not a direct result of the project, a detailed environmental impact analysis is not warranted. Per USTDA legal requirements, however, a preliminary analysis has been included in the terms of reference.

Impact on U.S. Labor

This project would not negatively affect the U.S. labor market, i.e., it would not (a) provide financial incentive to a business enterprise currently located in the United States to relocate, (b) violate internationally recognized worker rights, or (c) assist in establishing or expanding production of an exportable product which could cause injury to U.S. producers. Rather, the U.S. labor market should be positively impacted through increased exports and associated job creation.

Qualifications

For this activity, three international experts will be required for a total of 5 person-months, and 3 national experts will be required for a total of 6 person-months. In addition, an Environmental Specialist should form a minor component of the team in order to analyze potential impacts of the proposed legislation on the environment (it is not necessary for this individual to travel to Mongolia). The following provides a breakdown of expertise and time requirements:

- Legal Advisor (international - 3 months and national - 4 months);
- Financial Advisor (international - 1 month and national – 1 month);
- Leasing Specialist (international - 1 month and national – 1 month); and
- Environmental Specialist (international – 2 days).

Legal Advisor (Team Leader)

- Team Leadership: Demonstrated experience leading consulting teams on multiple projects.
- Commercial Leasing Law: At least 10 years of experience in the development of and practice in commercial leasing law.
- Country/Regional Experience: Experience in projects in Mongolia or countries of the former Soviet Union.
- Education: Law degree is required, preferably coupled with a degree in business administration or a related field.

Financial Advisor

- Financial: At least 10 years of *international* experience in financial analysis of loans, and equipment leasing.
- Education: Advanced degree or equivalent experience in economics, finance, business administration, or a related field.

Leasing Specialist

- Equipment Leasing: At least 10 years of experience in international equipment leasing.
- Education: Degree in finance, civil engineering or a related field.

Environmental Specialist

- Environmental Regulatory Reform: At least 10 years of experience in with respect to environmental impacts related to legal/regulatory reforms.

- Education: Degree in environmental science or a related field.

Contracting Team Selection Criteria

The selection of the Contractor should be based on the criteria outlined below.

1) Technical Approach and Work Plan (40% weighting).

Contractors must provide a Technical Approach and Work Plan, and within this document, describe how it will approach and conduct the TA. As part of the Technical Approach and Work Plan, the Contractor must commit to work on the TA as per the tasks, schedule, personnel and deliverables and related items as outlined in the TOR. It must provide written and signed commitments by each team member regarding scheduling availability (e.g., linked to specific calendar dates such as "October 2010 forward" or "October 15, 2010 forward"), and commit in writing that team members will retain their availability for the complete duration of the TA as per the TOR schedule. If a Contractor has resources or ideas as to how to enhance the TOR, it may submit these items for consideration as an enhancement to the requirements in the TOR, but the cost of the TA will remain Fixed Price in nature and will not be adjusted in any way to accommodate changes outside of these TOR. Further, Contractors may not substitute for any tasks, deliverables or scheduling plans included herein by suggesting additional resources, ideas or enhancements.

2) Qualifications (40% weighting) of each of the eight key personnel, which must be supported with:

c. Detailed resumes for each of the individuals; and,

d. Supporting project and/or country examples of relevant work activities to the proposed assignment as described in the TOR and within the section on Contractor Qualifications, and a description of how these project and/or country examples provide evidence of competence and/or expertise as related to the proposed assignment and Contractor Qualifications.

3) Experience working with government, state-run organizations and/or the private sector in developing nations, preferably in Mongolia, other Asian countries, and/or countries that were formally a part of the Soviet Union (20%).

Justification

Mongolia has enacted a range of legal and regulatory reforms since the late 1990s; however, commercial leasing, which is a major financing vehicle in the United States and other developed nations, has received less attention and in practical terms has been subject to laws and regulations that deal with other subjects. As a result, commercial leasing requires higher risk premiums and other costs because there are problems with redress and repossession. This Project will address these concerns and provide a draft commercial leasing law based on best practices and the experiences of other countries. The result will be increased use of commercial leasing as a financing vehicle. While this project is a policy-oriented technical assistance activity, given that U.S. commercial interests in Mongolia are so heavily focused on the mining sector, it represents an area of significant interest to U.S. companies in the sector. In addition, the project is also expected to lead to positive developmental impacts, including direct (through market-oriented reform) and indirect (through infrastructure development, technology transfer/productivity improvement and human capacity building).

ANNEX 3

U.S. TRADE AND DEVELOPMENT AGENCY
Arlington, VA 22209-2131

NATIONALITY, SOURCE, AND ORIGIN REQUIREMENTS

The purpose of USTDA's nationality, source, and origin requirements is to assure the maximum practicable participation of American contractors, technology, equipment and materials in the prefeasibility, feasibility, and implementation stages of a project.

USTDA STANDARD RULE (GRANT AGREEMENT STANDARD LANGUAGE):

Except as USTDA may otherwise agree, each of the following provisions shall apply to the delivery of goods and services funded by USTDA under this Grant Agreement: (a) for professional services, the Contractor must be either a U.S. firm or U.S. individual; (b) the Contractor may use U.S. subcontractors without limitation, but the use of subcontractors from host country may not exceed twenty percent (20%) of the USTDA Grant amount and may only be used for specific services from the Terms of Reference identified in the subcontract; (c) employees of U.S. Contractor or U.S. subcontractor firms responsible for professional services shall be U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the U.S.; (d) goods purchased for implementation of the Study and associated delivery services (e.g., international transportation and insurance) must have their nationality, source and origin in the United States; and (e) goods and services incidental to Study support (e.g., local lodging, food, and transportation) in host country are not subject to the above restrictions. USTDA will make available further details concerning these standards of eligibility upon request.

NATIONALITY:

1) <u>Rule</u>

Except as USTDA may otherwise agree, the Contractor for USTDA funded activities must be either a U.S. firm or a U.S. individual. Prime contractors may utilize U.S.

subcontractors without limitation, but the use of host country subcontractors is limited to 20% of the USTDA grant amount.

2) Application

Accordingly, only a U.S. firm or U.S. individual may submit proposals on USTDA funded activities. Although those proposals may include subcontracting arrangements with host country firms or individuals for up to 20% of the USTDA grant amount, they may not include subcontracts with third country entities. U.S. firms submitting proposals must ensure that the professional services funded by the USTDA grant, to the extent not subcontracted to host country entities, are supplied by employees of the firm or employees of U.S. subcontractor firms who are U.S. individuals.

Interested U.S. firms and consultants who submit proposals must meet USTDA nationality requirements as of the due date for the submission of proposals and, if selected, must continue to meet such requirements throughout the duration of the USTDA-financed activity. These nationality provisions apply to whatever portion of the Terms of Reference is funded with the USTDA grant.

3) Definitions

A "U.S. individual" is (a) a U.S. citizen, or (b) a non-U.S. citizen lawfully admitted for permanent residence in the U.S. (a green card holder).

A "U.S. firm" is a privately owned firm which is incorporated in the U.S., with its principal place of business in the U.S., and which is either (a) more than 50% owned by U.S. individuals, or (b) has been incorporated in the U.S. for more than three (3) years prior to the issuance date of the request for proposals; has performed similar services in the U.S. for that three (3) year period; employs U.S. citizens in more than half of its permanent full-time positions in the U.S.; and has the existing capability in the U.S. to perform the work in question.

A partnership, organized in the U.S. with its principal place of business in the U.S., may also qualify as a "U.S. firm" as would a joint venture organized or incorporated in the United States consisting entirely of U.S. firms and/or U.S. individuals.

A nonprofit organization, such as an educational institution, foundation, or association may also qualify as a "U.S. firm" if it is incorporated in the United States and managed by a governing body, a majority of whose members are U.S. individuals.

SOURCE AND ORIGIN:

1) Rule

In addition to the nationality requirement stated above, any goods (e.g., equipment and materials) and services related to their shipment (e.g., international transportation and insurance) funded under the USTDA Grant Agreement must have their source and origin in the United States, unless USTDA otherwise agrees. However, necessary purchases of goods and project support services which are unavailable from a U.S. source (e.g., local food, housing and transportation) are eligible without specific USTDA approval.

2) Application

Accordingly, the prime contractor must be able to demonstrate that all goods and services purchased in the host country to carry out the Terms of Reference for a USTDA Grant Agreement that were not of U.S. source and origin were unavailable in the United States.

3) Definitions

"Source" means the country from which shipment is made.

"Origin" means the place of production, through manufacturing, assembly or otherwise.

Questions regarding these nationality, source and origin requirements may be addressed to the USTDA Office of General Counsel.

ANNEX 4

GRANT AGREEMENT

This Grant Agreement is entered into between the Government of the United States of America, acting through the U.S. Trade and Development Agency ("USTDA") and the Government of Mongolia, acting through the Ministry of Finance ("Grantee"). USTDA agrees to provide the Grantee under the terms of this Agreement US$248,117 ("USTDA Grant") to fund the cost of goods and services required for a feasibility study ("Study") on the proposed Mongolian Operating Leasing Law Development ("Project") in Mongolia ("Host Country").

1. USTDA Funding

The funding to be provided under this Grant Agreement shall be used to fund the costs of a contract between the Grantee and the U.S. firm selected by the Grantee ("Contractor") under which the Contractor will perform the Study ("Contract"). Payment to the Contractor will be made directly by USTDA on behalf of the Grantee with the USTDA Grant funds provided under this Grant Agreement.

2. Terms of Reference

The Terms of Reference for the Study ("Terms of Reference") are attached as Annex I and are hereby made a part of this Grant Agreement. The Study will examine the technical, financial, environmental, and other critical aspects of the proposed Project. The Terms of Reference for the Study shall also be included in the Contract.

3. Standards of Conduct

USTDA and the Grantee recognize the existence of standards of conduct for public officials, and commercial entities, in their respective countries. The parties to this Grant Agreement and the Contractor shall observe these standards, which include not accepting payment of money or anything of value, directly or indirectly, from any person for the purpose of illegally or improperly inducing anyone to take any action favorable to any party in connection with the Study.

4. Grantee Responsibilities

The Grantee shall undertake its best efforts to provide reasonable support for the Contractor, such as local transportation, office space, and secretarial support.

5. USTDA as Financier

(A) USTDA Approval of Competitive Selection Procedures

Selection of the U.S. Contractor shall be carried out by the Grantee according to its established procedures for the competitive selection of contractors with advance notice of the procurement published online through *Federal Business Opportunities (www.fedbizopps.gov)*. Upon request, the Grantee will submit these contracting procedures and related documents to USTDA for information and/or approval.

(B) USTDA Approval of Contractor Selection

The Grantee shall notify USTDA at the address of record set forth in Article 17 below upon selection of the Contractor to perform the Study. Upon approval of this selection by USTDA, the Grantee and the Contractor shall then enter into a contract for performance of the Study. The Grantee shall notify in writing the U.S. firms that submitted unsuccessful proposals to perform the Study that they were not selected.

(C) USTDA Approval of Contract Between Grantee and Contractor

The Grantee and the Contractor shall enter into a contract for performance of the Study. This contract, and any amendments thereto, including assignments and changes in the Terms of Reference, must be approved by USTDA in writing. To expedite this approval, the Grantee (or the Contractor on the Grantee's behalf) shall transmit to USTDA, at the address set forth in Article 17 below, a photocopy of an English language version of the signed contract or a final negotiated draft version of the contract.

(D) USTDA Not a Party to the Contract

It is understood by the parties that USTDA has reserved certain rights such as, but not limited to, the right to approve the terms of the contract and any amendments thereto, including assignments, the selection of all contractors, the Terms of Reference, the Final Report, and any and all documents related to any contract funded under the Grant Agreement. The parties hereto further understand and agree that USTDA, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these approval rights shall be made as a financier in the course of funding the Study and shall not be construed as making USTDA a party to the contract. The parties hereto understand and agree that USTDA may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the Project with the parties to the contract or any subcontract, jointly or separately, without thereby incurring any responsibility or liability to such parties. Any approval or failure to approve by USTDA shall not bar the Grantee or USTDA from asserting any right they might have against the

Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Grantee or USTDA.

(E) Grant Agreement Controlling

Regardless of USTDA approval, the rights and obligations of any party to the contract or subcontract thereunder must be consistent with this Grant Agreement. In the event of any inconsistency between the Grant Agreement and any contract or subcontract funded by the Grant Agreement, the Grant Agreement shall be controlling.

6. Disbursement Procedures

(A) USTDA Approval of Contract Required

USTDA will make disbursements of Grant funds directly to the Contractor only after USTDA approves the Grantee's contract with the Contractor.

(B) Contractor Invoice Requirements

The Grantee should request disbursement of funds by USTDA to the Contractor for performance of the Study by submitting invoices in accordance with the procedures set forth in the USTDA Mandatory Clauses in Annex II.

7. Effective Date

The effective date of this Grant Agreement ("Effective Date") shall be the date of signature by both parties or, if the parties sign on different dates, the date of the last signature.

8. Study Schedule

(A) Study Completion Date

The completion date for the Study, which is December 15, 2011 is the date by which the parties estimate that the Study will have been completed.

(B) Time Limitation on Disbursement of USTDA Grant Funds

Except as USTDA may otherwise agree, (a) no USTDA funds may be disbursed under this Grant Agreement for goods and services which are provided prior to the Effective Date of the Grant Agreement; and (b) all funds made available under the Grant Agreement must be disbursed within four (4) years from the Effective Date of the Grant Agreement.

9. USTDA Mandatory Clauses

All contracts funded under this Grant Agreement shall include the USTDA mandatory clauses set forth in Annex II to this Grant Agreement. All subcontracts funded or partially funded with USTDA Grant funds shall include the USTDA mandatory clauses, except for clauses B(1), G, H, I, and J.

10. Use of U.S. Carriers

(A) Air

Transportation by air of persons or property funded under the Grant Agreement shall be on U.S. flag carriers in accordance with the Fly America Act, 49 U.S.C. 40118, to the extent service by such carriers is available, as provided under applicable U.S. Government regulations.

(B) Marine

Transportation by sea of property funded under the Grant Agreement shall be on U.S. carriers in accordance with U.S. cargo preference law.

11. Nationality, Source and Origin

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and services funded by USTDA under the Grant Agreement: (a) for professional services, the Contractor must be either a U.S. firm or U.S. individual; (b) the Contractor may use U.S. subcontractors without limitation, but the use of subcontractors from Host Country may not exceed twenty percent (20%) of the USTDA Grant amount and may only be used for specific services from the Terms of Reference identified in the subcontract; (c) employees of U.S. Contractor or U.S. subcontractor firms responsible for professional services shall be U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the U.S.; (d) goods purchased for performance of the Study and associated delivery services (e.g., international transportation and insurance) must have their nationality, source and origin in the United States; and (e) goods and services incidental to Study support (e.g., local lodging, food, and transportation) in Host Country are not subject to the above restrictions. USTDA will make available further details concerning these provisions upon request.

12. Taxes

USTDA funds provided under the Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in Host Country. Neither the Grantee nor the Contractor will seek reimbursement from USTDA for such taxes, tariffs, duties, fees or other levies.

13. Cooperation Between Parties and Follow-Up

The parties will cooperate to assure that the purposes of the Grant Agreement are accomplished. For five (5) years following receipt by USTDA of the Final Report (as defined in Clause I of Annex II), the Grantee agrees to respond to any reasonable inquiries from USTDA about the status of the Project.

14. Implementation Letters

To assist the Grantee in the implementation of the Study, USTDA may, from time to time, issue implementation letters that will provide additional information about matters covered by the Grant Agreement. The parties may also use jointly agreed upon implementation letters to confirm and record their mutual understanding of matters covered by the Grant Agreement.

15. Recordkeeping and Audit

The Grantee agrees to maintain books, records, and other documents relating to the Study and the Grant Agreement adequate to demonstrate implementation of its responsibilities under the Grant Agreement, including the selection of contractors, receipt and approval of contract deliverables, and approval or disapproval of contractor invoices for payment by USTDA. Such books, records, and other documents shall be separately maintained for three (3) years after the date of the final disbursement by USTDA. The Grantee shall afford USTDA or its authorized representatives the opportunity at reasonable times to review books, records, and other documents relating to the Study and the Grant Agreement.

16. Representation of Parties

For all purposes relevant to the Grant Agreement, the Government of the United States of America will be represented by the U. S. Chargé D'Affairs to Host Country or USTDA and Grantee will be represented by the State Secretary of the Ministry of Finance. The parties hereto may, by written notice, designate additional representatives for all purposes under the Grant Agreement.

17. Addresses of Record for Parties

Any notice, request, document, or other communication submitted by either party to the other under the Grant Agreement shall be in writing or through a wire or electronic medium which produces a tangible record of the transmission, such as a telegram, cable or facsimile, and will be deemed duly given or sent when delivered to such party at the following:

To: Ministry of Finance of Mongolia
Zasgiin gazriin II bair

Negedsen undestnii gudamj 5/1
Chingeltei Duurug
Ulaanbaatar-210646
Mongolia

Phone:	976-51-26-02-47
Fax:	976-51-26-02-47

To: U.S. Trade and Development Agency
1000 Wilson Boulevard, Suite 1600
Arlington, Virginia 22209-3901
USA

Phone:	(703) 875-4357
Fax:	(703) 875-4009

All such communications shall be in English, unless the parties otherwise agree in writing. In addition, the Grantee shall provide the Commercial Section of the U.S. Embassy in Host Country with a copy of each communication sent to USTDA.

Any communication relating to this Grant Agreement shall include the following fiscal data:

Fiscal Data:

Appropriation No.:	11 10/11 1001
Activity No.:	2010-31063A
Reservation No.:	2010310080
Grant No.:	GH2010310025

18. Termination Clause

Either party may terminate the Grant Agreement by giving the other party thirty (30) days advance written notice. The termination of the Grant Agreement will end any obligations of the parties to provide financial or other resources for the Study, except for payments which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the written notice of termination.

19. Non-waiver of Rights and Remedies

No delay in exercising any right or remedy accruing to either party in connection with the Grant Agreement shall be construed as a waiver of such right or remedy.

20. U.S. Technology and Equipment

By funding this Study, USTDA seeks to promote the project objectives of the Host Country through the use of U.S. technology, goods, and services. In recognition of this purpose, the Grantee agrees that it will allow U.S. suppliers to compete in the procurement of technology, goods and services needed for Project implementation.

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IN WITNESS WHEREOF, the Government of the United States of America and the Government of Mongolia each acting through its duly authorized representative, have caused this Agreement to be signed in the English language in their names and delivered as of the day and year written below. In the event that this Grant Agreement is signed in more than one language, the English language version shall govern.

For the Government of the United States of America, on behalf of the U.S. Trade and Development Agency

By:____________________

Date:_______________

Witnessed:

By:____________________

For the Government of Mongolia on behalf of the Ministry of Finance

By:____________________

Date: _______________

Witnessed:

By:____________________

Annex I -- Terms of Reference

Annex II -- USTDA Mandatory Clauses

Annex I

TERMS OF REFERENCE

Purpose/Objective

The purpose of this TA is to assist in the development of an operating leasing law which addresses all aspects relevant to the Mongolian economy, and can be presented to lawmakers for ultimate passage.

There are two basic types of commercial leasing arrangements: capital leasing and operating leasing. A capital lease is a contract that allows the lessor, as owner, to retain ownership of an asset while transferring the risks and rewards of ownership to the lessee. In contrast, an operating lease is essentially a rental contract for the temporary use of an asset by the lessee. An operating lease is commonly used to acquire equipment on a relatively short-term basis, such as heavy machinery or airplanes.

Task 1: Legal Context and Research

1.1 The Contractor shall conduct research into all relevant Host Country laws and regulations including, but not limited to the following:

- (i) the Law of Mongolia on International Treaties (December 1993);
- (ii) the Constitution of Mongolia (1992);
- (iii) the Law of Mongolia on Coordination of Foreign Loans and Grant Aid (2003);
- (iv) the Land Law of Mongolia (2004);
- (v) the Civil Code of Mongolia (2002);
- (vi) the Foreign Investment Law of Mongolia and other laws related to foreign investment;
- (vii) the Unfair Competition Law of Mongolia;
- (viii) the Company Law of Mongolia;
- (ix) Import and Export Regulations and Procedures, including the Customs Law of Mongolia;
- (x) The Law on State and Local Property of Mongolia (1996);
- (xi) The Public Procurement Law of Mongolia (2006); and
- (xii) The Law on Financial Leasing (2006).

1.2 The Contractor shall research international law in the area of operating leasing and identify standards and best practices in other countries (both developed and developing) which could be applicable to the Host Country. In particular, the Contractor shall examine the International Institute for the Unification of Private Law (UNIDROIT) Convention on International Financial Leasing and the UNIDROIT Model Law on Leasing.

1.3 The Contractor shall examine technical assistance projects conducted by international finance institutions, in particular but not limited to the International Finance Corporation (IFC), in order to develop potential legal and institutional adjustments in the Host Country.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 1 and present to the Grantee for review and comment.

Task 2: Research Commercial Context and Interactions with Private Sector Interests

2.1 The Contractor shall conduct research into the current system of product leasing in the Host Country. In particular, the Contractor shall examine the changes in the leasing industry which have occurred since the implementation of the Law on Financial Leasing in 2006. The Contractor shall examine the market in practice, i.e., taking into account both the typical and non-typical arrangements utilized by leasing companies, financial institutions (both bank and non-bank) and other stakeholders.

2.2 The Contractor shall conduct interviews with international and local firms which lease products and identify areas in which operating leasing is hampered based on the current legal framework. The Contractor shall contact international producers (which have a presence in the Host Country) of equipment that is typically leased (for example, but not limited to, the mining, construction and transportation industries) for similar insight. Based on these discussions, the Contractor shall identify specific issues and/or gaps within the existing legal framework and regulatory structure in which the new and/or amended legislation could address. For U.S. companies which are interviewed, the Contractor shall estimate the effects of the proposed law in terms of U.S. exports of equipment and services.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 2 and present to the Grantee for review and comment.

Task 3: Develop Draft Operating Leasing Law and System for Managing New Legal Framework

3.1 Based on the analyses conducted in Tasks 1 and 2, the Contractor shall either develop a draft operating leasing law or suitable amendments to existing law. The Contractor shall ensure that the new law or amendments do not conflict with or contradict existing laws of the Host Country. The law/amendments shall be consistent with international law, standards and best practices as identified in Task 1.

3.2 The Contractor shall draft implementing regulations for the Grantee to oversee leasing companies and other stakeholders. These regulations shall clearly outline the regulatory role of the government, corporate governance regulations, integration of leasing companies and other stakeholders with existing capital market instruments and institutions, public budget provisions to ensure economically sustainable government intervention in the industry, and other relevant aspects developed in consultation with the Grantee.

3.3 The Contractor shall present the draft law/amendment to the Grantee for review and comment, and shall organize and execute at least one public presentation/seminar for lawmakers and other government officials, representatives from industry and other stakeholders. The draft shall be presented in both the English and Mongolian languages, and the presentation(s) shall include interpretation in Mongolian and translated handouts. If venue or other logistical costs are incurred in executing the presentation, these shall be the responsibility of the Contractor.

3.4 Following the receipt of Grantee comments and comments received following the public presentation(s), the Contractor shall recommend any adjustments to the law/amendments it believes are warranted. The Contractor shall provide explanations for any items it deems inappropriate for inclusion in the final draft.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 3 and present to the Grantee for review and comment.

Task 4: Economic Analysis

4.1 The Contractor shall ascertain the economic impacts of potential provisions in the proposed operating leasing law, including both positive and negative impacts, on various industries expected to be impacted by the legislation, as well as government entities.

4.2 While cross border leasing arrangements are not expected to be significantly affected by an operating leasing law, the Contractor shall nonetheless examine existing arrangements in this area and identify potential impacts.

4.3 The Contractor shall outline potential changes in the industry which could occur if an operating leasing law is implemented (or existing legislation amended). The objective of this subtask is to develop a document to present the business case for the proposed legislation to relevant lawmakers, as well as allow the Grantee and other stakeholders to plan accordingly if the legislation is passed.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 4 and present to the Grantee for review and comment.

Task 5: Regulatory Analysis and Implementation Arrangements

5.1 The Contractor shall examine existing accounting laws/regulations, tax laws, customs regulations and classifications, and other regulatory and/or institutional frameworks that could be affected by the proposed operating leasing law. The Contractor shall recommended methods to adjust these frameworks, if necessary.

5.2 The Contractor shall develop an implementation strategy for the new law/amendment and regulations. The Contractor shall recommend appropriate structures, operations and enforcement mechanisms for the Grantee and other government agencies which would be involved, so that these can be put in place prior to passage of the law/amendments.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 5 and present to the Grantee for review and comment.

Task 6: Development Impact Analysis

6.1 The Contractor shall analyze developmental impacts related to project implementation. The analysis shall focus on what development impact is likely if the project is implemented according to TA recommendations. While specific focus shall be paid to the immediate impact of the project, analysis shall also include any additional developmental benefits that may result from the Project's implementation, including spin-off and demonstration effects.

The Contractor's analysis shall include an assessment of each of the following categories with respect to the leasing initiative's potential developmental impact:

- Infrastructure: The Contractor shall provide a statement on the infrastructure impact, giving a brief synopsis and specific examples on impact in infrastructure. For example: 'As a result of expanding operating leasing in rural areas, it is expected that over 100 kilometers of rural roads will be constructed for the transport of 10,000 tons of products from farms to markets.'
- Market – Oriented Reform: The Contractor shall provide a description of any regulation, laws, or institutional changes that are recommended and the effect they would have if implemented. The Contractor shall be specific in terms of the recommended reforms.
- Human Capacity Building: The Contractor shall assess the number and type of local positions that would be needed in the leasing industry, as well as the number of local people who would receive training; describe such potential training programs to train lessors, equipment suppliers, mining employees, financial institutions, government regulators, etc.
- Technology Transfer and Productivity Enhancement: The Contractor shall provide a description of any advanced technologies that would be utilized as a result of the leasing initiative. The Contractor shall provide specific reporting of the possible new technologies to be imported into the Host Country and how productivity will be enhanced in the specific sectors identified.
- Other: The Contractor shall describe any other developmental impacts or benefits that would result from the leasing initiative taking effect on specific

industries. Examples might include impact of equipment availability on mining practices or commercial developments, increased financial competition, improvement to banking governance or improved financial revenue flows to the host country.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 6 and present to the Grantee for review and comment.

Task 7: Preliminary Environmental Impact

7.1 The Contractor shall conduct an assessment of the potential environmental impacts that may result from the implementation of recommendations from the Project. This assessment shall identify potentially negative impacts, discuss the extent to which they can be mitigated, and describe plans for a more detailed environmental and social impact assessment, if needed.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 7 and present to the Grantee for review and comment.

Task 8: Final Report

The Contractor shall prepare and deliver to the Grantee and USTDA a substantive and comprehensive final report of all work performed under these Terms of Reference ("Final Report"). The Final Report shall be organized according to the above tasks, and shall include all deliverables and documents that have been provided to the Grantee. The Final Report shall be prepared in accordance with Clause I of Annex II of the Grant Agreement.

Notes:

(1) The Contractor is responsible for compliance with U.S. export licensing requirements, if applicable, in the performance of the Terms of Reference.

(2) The Contractor and the Grantee shall be careful to ensure that the public version of the Final Report contains no security or confidential information.

(3) The Grantee and USTDA shall have an irrevocable, worldwide, royalty-free, non-exclusive right to use and distribute the Final Report and all work product that is developed under these Terms of Reference.

Annex II

USTDA Mandatory Contract Clauses

A. USTDA Mandatory Clauses Controlling

The parties to this contract acknowledge that this contract is funded in whole or in part by the U.S. Trade and Development Agency ("USTDA") under the Grant Agreement between the Government of the United States of America acting through USTDA and the Government of Mongolia, acting through the Ministry of Finance ("Client"), dated __________ ("Grant Agreement"). The Client has selected ______________ ("Contractor") to perform the feasibility study ("Study") for the Operating Leasing Law project ("Project") in Mongolia ("Host Country"). Notwithstanding any other provisions of this contract, the following USTDA mandatory contract clauses shall govern. All subcontracts entered into by Contractor funded or partially funded with USTDA Grant funds shall include these USTDA mandatory contract clauses, except for clauses B(1), G, H, I, and J. In addition, in the event of any inconsistency between the Grant Agreement and any contract or subcontract thereunder, the Grant Agreement shall be controlling.

B. USTDA as Financier

(1) USTDA Approval of Contract

All contracts funded under the Grant Agreement, and any amendments thereto, including assignments and changes in the Terms of Reference, must be approved by USTDA in writing in order to be effective with respect to the expenditure of USTDA Grant funds. USTDA will not authorize the disbursement of USTDA Grant funds until the contract has been formally approved by USTDA or until the contract conforms to modifications required by USTDA during the contract review process.

(2) USTDA Not a Party to the Contract

It is understood by the parties that USTDA has reserved certain rights such as, but not limited to, the right to approve the terms of this contract and amendments thereto, including assignments, the selection of all contractors, the Terms of Reference, the Final Report, and any and all documents related to any contract funded under the Grant Agreement. The parties hereto further understand and agree that USTDA, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing the Study and shall not be construed as making USTDA a party to the contract. The parties hereto understand and agree that USTDA may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the Project with the parties to the contract or any subcontract, jointly or separately, without thereby incurring any responsibility or liability to such parties. Any approval or failure to approve by USTDA shall not bar the Client or USTDA from asserting any right they might have against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Client or USTDA.

C. Nationality, Source and Origin

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and services funded by USTDA under the Grant Agreement: (a) for professional services, the Contractor must be either a U.S. firm or U.S. individual; (b) the Contractor may use U.S. subcontractors without limitation, but the use of subcontractors from Host Country may not exceed twenty percent (20%) of the USTDA Grant amount and may only be used for specific services from the Terms of Reference identified in the subcontract; (c) employees of U.S. Contractor or U.S. subcontractor firms responsible for professional services shall be U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the U.S.; (d) goods purchased for performance of the Study and associated delivery services (e.g., international transportation and insurance) must have their nationality, source and origin in the United States; and (e) goods and services incidental to Study support (e.g., local lodging, food, and transportation) in Host Country are not subject to the above restrictions. USTDA will make available further details concerning these provisions upon request.

D. Recordkeeping and Audit

The Contractor and subcontractors funded under the Grant Agreement shall maintain, in accordance with generally accepted accounting procedures, books, records, and other documents, sufficient to reflect properly all transactions under or in connection with the contract. These books, records, and other documents shall clearly identify and track the use and expenditure of USTDA funds, separately from other funding sources. Such books, records, and documents shall be maintained during the contract term and for a period of three (3) years after final disbursement by USTDA. The Contractor and subcontractors shall afford USTDA, or its authorized representatives, the opportunity at reasonable times for inspection and audit of such books, records, and other documentation.

E. U.S. Carriers

(1) Air

Transportation by air of persons or property funded under the Grant Agreement shall be on U.S. flag carriers in accordance with the Fly America Act, 49 U.S.C. 40118, to the extent service by such carriers is available, as provided under applicable U.S. Government regulations.

(2) Marine

Transportation by sea of property funded under the Grant Agreement shall be on U.S. carriers in accordance with U.S. cargo preference law.

F. Workman's Compensation Insurance

The Contractor shall provide adequate Workman's Compensation Insurance coverage for work performed under this Contract.

G. Reporting Requirements

The Contractor shall advise USTDA by letter as to the status of the Project on March 1st annually for a period of two (2) years after completion of the Study. In addition, if at any time the Contractor receives follow-on work from the Client, the Contractor shall so notify USTDA and designate the Contractor's contact point including name, telephone, and fax number. Since this information may be made publicly available by USTDA, any information which is confidential shall be designated as such by the Contractor and provided separately to USTDA. USTDA will maintain the confidentiality of such information in accordance with applicable law.

H. Disbursement Procedures

(1) USTDA Approval of Contract

Disbursement of Grant funds will be made only after USTDA approval of this contract. To make this review in a timely fashion, USTDA must receive from either the Client or the Contractor a photocopy of an English language version of a signed contract or a final negotiated draft version to the attention of the General Counsel's office at USTDA's address listed in Clause M below.

(2) Payment Schedule Requirements

A payment schedule for disbursement of Grant funds to the Contractor shall be included in this Contract. Such payment schedule must conform to the following USTDA requirements: (1) up to twenty percent (20%) of the total USTDA Grant amount may be used as a mobilization payment; (2) all other payments, with the exception of the final payment, shall be based upon contract performance milestones; and (3) the final payment may be no less than fifteen percent (15%) of the total USTDA Grant amount, payable upon receipt by USTDA of an approved Final Report in accordance with the specifications and quantities set forth in Clause I below. Invoicing procedures for all payments are described below.

(3) Contractor Invoice Requirements

USTDA will make all disbursements of USTDA Grant funds directly to the Contractor. The Contractor must provide USTDA with an ACH Vendor Enrollment Form (available from USTDA) with the first invoice. The Client shall request disbursement of funds by

USTDA to the Contractor for performance of the contract by submitting the following to USTDA:

(a) Contractor's Invoice

The Contractor's invoice shall include reference to an item listed in the Contract payment schedule, the requested payment amount, and an appropriate certification by the Contractor, as follows:

(i) For a mobilization payment (if any):

"As a condition for this mobilization payment, the Contractor certifies that it will perform all work in accordance with the terms of its Contract with the Client. To the extent that the Contractor does not comply with the terms and conditions of the Contract, including the USTDA mandatory provisions contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA. "

(ii) For contract performance milestone payments:

"The Contractor has performed the work described in this invoice in accordance with the terms of its contract with the Client and is entitled to payment thereunder. To the extent the Contractor has not complied with the terms and conditions of the Contract, including the USTDA mandatory provisions contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA."

(iii) For final payment:

"The Contractor has performed the work described in this invoice in accordance with the terms of its contract with the Client and is entitled to payment thereunder. Specifically, the Contractor has submitted the Final Report to the Client, as required by the Contract, and received the Client's approval of the Final Report. To the extent the Contractor has not complied with the terms and conditions of the Contract, including the USTDA mandatory provisions contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA."

(b) Client's Approval of the Contractor's Invoice

(i) The invoice for a mobilization payment must be approved in writing by the Client.

(ii) For contract performance milestone payments, the following certification by the Client must be provided on the invoice or separately:

"The services for which disbursement is requested by the Contractor have been performed satisfactorily, in accordance with applicable Contract provisions and the terms and conditions of the USTDA Grant Agreement."

(iii) For final payment, the following certification by the Client must be provided on the invoice or separately:

"The services for which disbursement is requested by the Contractor have been performed satisfactorily, in accordance with applicable Contract provisions and terms and conditions of the USTDA Grant Agreement. The Final Report submitted by the Contractor has been reviewed and approved by the Client. "

(c) USTDA Address for Disbursement Requests

Requests for disbursement shall be submitted by courier or mail to the attention of the Finance Department at USTDA's address listed in Clause M below.

(4) Termination

In the event that the Contract is terminated prior to completion, the Contractor will be eligible, subject to USTDA approval, for reasonable and documented costs which have been incurred in performing the Terms of Reference prior to termination, as well as reasonable wind down expenses. Reimbursement for such costs shall not exceed the total amount of undisbursed Grant funds. Likewise, in the event of such termination, USTDA is entitled to receive from the Contractor all USTDA Grant funds previously disbursed to the Contractor (including but not limited to mobilization payments) which exceed the reasonable and documented costs incurred in performing the Terms of Reference prior to termination.

I. USTDA Final Report

(1) Definition

"Final Report" shall mean the Final Report described in the attached Annex I Terms of Reference or, if no such "Final Report" is described therein, "Final Report" shall mean a substantive and comprehensive report of work performed in accordance with the attached Annex I Terms of Reference, including any documents delivered to the Client.

(2) Final Report Submission Requirements

The Contractor shall provide the following to USTDA:

(a) One (1) complete version of the Final Report for USTDA's records. This version shall have been approved by the Client in writing and must be submitted in full in both the English and Mongolian languages. It is the responsibility of the Contractor to ensure that confidential information, if any, contained in both these versions be clearly marked. USTDA will maintain the confidentiality of such information in accordance with applicable law.

and

(b) One (1) copy of the Final Report suitable for public distribution ("Public Version"). The Public Version shall have been approved by the Client in writing and must be in the English language. As this version will be available for public distribution, it must not contain any confidential information. If the report in (a) above contains no confidential information, it may be used as the Public Version. In any event, the Public Version must be informative and contain sufficient Project detail to be useful to prospective equipment and service providers.

and

(c) Two (2) CD-ROMs, each containing a complete copy of the Public Version of the Final Report. The electronic files on the CD-ROMs shall be submitted in a commonly accessible read-only format. As these CD-ROMs will be available for public distribution, they must not contain any confidential information. It is the responsibility of the Contractor to ensure that no confidential information is contained on the CD-ROMs.

The Contractor shall also provide one (1) copy of the Public Version of the Final Report to the Foreign Commercial Service Officer or the Economic Section of the U.S. Embassy in Host Country for informational purposes.

(3) Final Report Presentation

All Final Reports submitted to USTDA must be paginated and include the following:

(a) The front cover of every Final Report shall contain the name of the Client, the name of the Contractor who prepared the report, a report title, USTDA's logo, USTDA's mailing and delivery addresses. If the complete version of the Final Report contains confidential information, the Contractor shall be responsible for labeling the front cover of that version of the Final Report with the term "Confidential Version." The Contractor shall be responsible for labeling the front cover of the Public Version of the Final Report with the term "Public Version." The front cover of every Final Report shall also contain the following disclaimer:

> "This report was funded by the U.S. Trade and Development Agency (USTDA), an agency of the U. S. Government. The opinions, findings, conclusions or recommendations expressed in this document are those of the author(s) and do not necessarily represent the official position or policies of USTDA. USTDA makes no representation about, nor does it accept responsibility for, the accuracy or completeness of the information contained in this report."

(b) The inside front cover of every Final Report shall contain USTDA's logo, USTDA's mailing and delivery addresses, and USTDA's mission statement.

Camera-ready copy of USTDA Final Report specifications will be available from USTDA upon request.

(c) The Contractor shall affix to the front of the CD-ROM a label identifying the Host Country, USTDA Activity Number, the name of the Client, the name of the Contractor who prepared the report, a report title, and the following language:

> "The Contractor certifies that this CD-ROM contains the Public Version of the Final Report and that all contents are suitable for public distribution."

(d) The Contractor and any subcontractors that perform work pursuant to the Grant Agreement must be clearly identified in the Final Report. Business name, point of contact, address, telephone and fax numbers shall be included for Contractor and each subcontractor.

(e) The Final Report, while aiming at optimum specifications and characteristics for the Project, shall identify the availability of prospective U.S. sources of supply. Business name, point of contact, address, telephone and fax numbers shall be included for each commercial source.

(f) The Final Report shall be accompanied by a letter or other notation by the Client which states that the Client approves the Final Report. A certification by the Client to this effect provided on or with the invoice for final payment will meet this requirement.

J. Modifications

All changes, modifications, assignments or amendments to this contract, including the appendices, shall be made only by written agreement by the parties hereto, subject to written USTDA approval.

K. Study Schedule

(1) Study Completion Date

The completion date for the Study, which is December 15, 2011 is the date by which the parties estimate that the Study will have been completed.

(2) Time Limitation on Disbursement of USTDA Grant Funds

Except as USTDA may otherwise agree, (a) no USTDA funds may be disbursed under this contract for goods and services which are provided prior to the Effective Date of the Grant Agreement; and (b) all funds made available under the Grant Agreement must be disbursed within four (4) years from the Effective Date of the Grant Agreement.

L. Business Practices

The Contractor agrees not to pay, promise to pay, or authorize the payment of any money or anything of value, directly or indirectly, to any person (whether a governmental official or private individual) for the purpose of illegally or improperly inducing anyone to take any action favorable to any party in connection with the Study. The Client agrees not to receive any such payment. The Contractor and the Client agree that each will require that any agent or representative hired to represent them in connection with the Study will comply with this paragraph and all laws which apply to activities and obligations of each party under this Contract, including but not limited to those laws and obligations dealing with improper payments as described above.

M. USTDA Address and Fiscal Data

Any communication with USTDA regarding this Contract shall be sent to the following address and include the fiscal data listed below:

U.S. Trade and Development Agency
1000 Wilson Boulevard, Suite 1600
Arlington, Virginia 22209-3901
USA

Phone: (703) 875-4357
Fax: (703) 875-4009

Fiscal Data:

Appropriation No.:	11 10/11 1001
Activity No.:	2010-31063A
Reservation No.:	2010310080
Grant No.:	GH2010310025

N. Definitions

All capitalized terms not otherwise defined herein shall have the meaning set forth in the Grant Agreement.

O. Taxes

USTDA funds provided under the Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in Host Country. Neither the Client nor the Contractor will seek reimbursement from USTDA for such taxes, tariffs, duties, fees or other levies.

ANNEX 5

TERMS OF REFERENCE

Purpose/Objective

The purpose of this TA is to assist in the development of an operating leasing law which addresses all aspects relevant to the Mongolian economy, and can be presented to lawmakers for ultimate passage.

There are two basic types of commercial leasing arrangements: capital leasing and operating leasing. A capital lease is a contract that allows the lessor, as owner, to retain ownership of an asset while transferring the risks and rewards of ownership to the lessee. In contrast, an operating lease is essentially a rental contract for the temporary use of an asset by the lessee. An operating lease is commonly used to acquire equipment on a relatively short-term basis, such as heavy machinery or airplanes.

Task 1: Legal Context and Research

1.1 The Contractor shall conduct research into all relevant Host Country laws and regulations including, but not limited to the following:

- (xiii) the Law of Mongolia on International Treaties (December 1993);
- (xiv) the Constitution of Mongolia (1992);
- (xv) the Law of Mongolia on Coordination of Foreign Loans and Grant Aid (2003);
- (xvi) the Land Law of Mongolia (2004);
- (xvii) the Civil Code of Mongolia (2002);
- (xviii) the Foreign Investment Law of Mongolia and other laws related to foreign investment;
- (xix) the Unfair Competition Law of Mongolia;
- (xx) the Company Law of Mongolia;
- (xxi) Import and Export Regulations and Procedures, including the Customs Law of Mongolia;
- (xxii) The Law on State and Local Property of Mongolia (1996);
- (xxiii) The Public Procurement Law of Mongolia (2006); and
- (xxiv) The Law on Financial Leasing (2006).

1.2 The Contractor shall research international law in the area of operating leasing and identify standards and best practices in other countries (both developed and developing) which could be applicable to the Host Country. In particular, the Contractor shall examine the International Institute for the Unification of Private Law (UNIDROIT) Convention on International Financial Leasing and the UNIDROIT Model Law on Leasing.

1.3 The Contractor shall examine technical assistance projects conducted by international finance institutions, in particular but not limited to the International Finance Corporation (IFC), in order to develop potential legal and institutional adjustments in the Host Country.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 1 and present to the Grantee for review and comment.

Task 2: Research Commercial Context and Interactions with Private Sector Interests

2.1 The Contractor shall conduct research into the current system of product leasing in the Host Country. In particular, the Contractor shall examine the changes in the leasing industry which have occurred since the implementation of the Law on Financial Leasing in 2006. The Contractor shall examine the market in practice, i.e., taking into account both the typical and non-typical arrangements utilized by leasing companies, financial institutions (both bank and non-bank) and other stakeholders.

2.2 The Contractor shall conduct interviews with international and local firms which lease products and identify areas in which operating leasing is hampered based on the current legal framework. The Contractor shall contact international producers (which have a presence in the Host Country) of equipment that is typically leased (for example, but not limited to, the mining, construction and transportation industries) for similar insight. Based on these discussions, the Contractor shall identify specific issues and/or gaps within the existing legal framework and regulatory structure in which the new and/or amended legislation could address. For U.S. companies which are interviewed, the Contractor shall estimate the effects of the proposed law in terms of U.S. exports of equipment and services.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 2 and present to the Grantee for review and comment.

Task 3: Develop Draft Operating Leasing Law and System for Managing New Legal Framework

3.1 Based on the analyses conducted in Tasks 1 and 2, the Contractor shall either develop a draft operating leasing law or suitable amendments to existing law. The Contractor shall ensure that the new law or amendments do not conflict with or contradict existing laws of the Host Country. The law/amendments shall be consistent with international law, standards and best practices as identified in Task 1.

3.2 The Contractor shall draft implementing regulations for the Grantee to oversee leasing companies and other stakeholders. These regulations shall clearly outline the regulatory role of the government, corporate governance regulations, integration of leasing companies and other stakeholders with existing capital market instruments and institutions, public budget provisions to ensure economically sustainable government intervention in the industry, and other relevant aspects developed in consultation with the Grantee.

3.3 The Contractor shall present the draft law/amendment to the Grantee for review and comment, and shall organize and execute at least one public presentation/seminar for lawmakers and other government officials, representatives from industry and other stakeholders. The draft shall be presented in both the English and Mongolian languages, and the presentation(s) shall include interpretation in Mongolian and translated handouts. If venue or other logistical costs are incurred in executing the presentation, these shall be the responsibility of the Contractor.

3.4 Following the receipt of Grantee comments and comments received following the public presentation(s), the Contractor shall recommend any adjustments to the law/amendments it believes are warranted. The Contractor shall provide explanations for any items it deems inappropriate for inclusion in the final draft.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 3 and present to the Grantee for review and comment.

Task 4: Economic Analysis

4.1 The Contractor shall ascertain the economic impacts of potential provisions in the proposed operating leasing law, including both positive and negative impacts, on various industries expected to be impacted by the legislation, as well as government entities.

4.2 While cross border leasing arrangements are not expected to be significantly affected by an operating leasing law, the Contractor shall nonetheless examine existing arrangements in this area and identify potential impacts.

4.3 The Contractor shall outline potential changes in the industry which could occur if an operating leasing law is implemented (or existing legislation amended). The objective of this subtask is to develop a document to present the business case for the proposed legislation to relevant lawmakers, as well as allow the Grantee and other stakeholders to plan accordingly if the legislation is passed.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 4 and present to the Grantee for review and comment.

Task 5: Regulatory Analysis and Implementation Arrangements

5.1 The Contractor shall examine existing accounting laws/regulations, tax laws, customs regulations and classifications, and other regulatory and/or institutional frameworks that could be affected by the proposed operating leasing law. The Contractor shall recommended methods to adjust these frameworks, if necessary.

5.2 The Contractor shall develop an implementation strategy for the new law/amendment and regulations. The Contractor shall recommend appropriate structures, operations and enforcement mechanisms for the Grantee and other government agencies which would be involved, so that these can be put in place prior to passage of the law/amendments.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 5 and present to the Grantee for review and comment.

Task 6: Development Impact Analysis

6.1 The Contractor shall analyze developmental impacts related to project implementation. The analysis shall focus on what development impact is likely if the project is implemented according to TA recommendations. While specific focus shall be paid to the immediate impact of the project, analysis shall also include any additional developmental benefits that may result from the Project's implementation, including spin-off and demonstration effects.

The Contractor's analysis shall include an assessment of each of the following categories with respect to the leasing initiative's potential developmental impact:

- Infrastructure: The Contractor shall provide a statement on the infrastructure impact, giving a brief synopsis and specific examples on impact in infrastructure. For example: 'As a result of expanding operating leasing in rural areas, it is expected that over 100 kilometers of rural roads will be constructed for the transport of 10,000 tons of products from farms to markets.'
- Market – Oriented Reform: The Contractor shall provide a description of any regulation, laws, or institutional changes that are recommended and the effect they would have if implemented. The Contractor shall be specific in terms of the recommended reforms.
- Human Capacity Building: The Contractor shall assess the number and type of local positions that would be needed in the leasing industry, as well as the number of local people who would receive training; describe such potential training programs to train lessors, equipment suppliers, mining employees, financial institutions, government regulators, etc.
- Technology Transfer and Productivity Enhancement: The Contractor shall provide a description of any advanced technologies that would be utilized as a result of the leasing initiative. The Contractor shall provide specific reporting of the possible new technologies to be imported into the Host Country and how productivity will be enhanced in the specific sectors identified.
- Other: The Contractor shall describe any other developmental impacts or benefits that would result from the leasing initiative taking effect on specific

industries. Examples might include impact of equipment availability on mining practices or commercial developments, increased financial competition, improvement to banking governance or improved financial revenue flows to the host country.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 6 and present to the Grantee for review and comment.

Task 7: Preliminary Environmental Impact

7.1 The Contractor shall conduct an assessment of the potential environmental impacts that may result from the implementation of recommendations from the Project. This assessment shall identify potentially negative impacts, discuss the extent to which they can be mitigated, and describe plans for a more detailed environmental and social impact assessment, if needed.

Deliverable: The Contractor shall prepare an Interim Report on the work conducted during Task 7 and present to the Grantee for review and comment.

Task 8: Final Report

The Contractor shall prepare and deliver to the Grantee and USTDA a substantive and comprehensive final report of all work performed under these Terms of Reference ("Final Report"). The Final Report shall be organized according to the above tasks, and shall include all deliverables and documents that have been provided to the Grantee. The Final Report shall be prepared in accordance with Clause I of Annex II of the Grant Agreement.

Notes:

(4) The Contractor is responsible for compliance with U.S. export licensing requirements, if applicable, in the performance of the Terms of Reference.

(5) The Contractor and the Grantee shall be careful to ensure that the public version of the Final Report contains no security or confidential information.

(6) The Grantee and USTDA shall have an irrevocable, worldwide, royalty-free, non-exclusive right to use and distribute the Final Report and all work product that is developed under these Terms of Reference.

ANNEX 6

COMPANY INFORMATION

A. Company Profile

Provide the information listed below relative to the Offeror's firm. If the Offeror is proposing to subcontract some of the proposed work to another firm(s), the information below must be provided for each subcontractor.

1. Name of firm and business address (street address only), including telephone and fax numbers:

2. Year established (include predecessor companies and year(s) established, if appropriate).

3. Type of ownership (e.g. public, private or closely held).

4. If private or closely held company, provide list of shareholders and the percentage of their ownership.

5. List of directors and principal officers (President, Chief Executive Officer, Vice-President(s), Secretary and Treasurer; provide full names including first, middle and last). Please place an asterisk (*) next to the names of those principal officers who will be involved in the Technical Assistance.

6. If Offeror is a subsidiary, indicate if Offeror is a wholly-owned or partially-owned subsidiary. Provide the information requested in items 1 through 5 above for the Offeror's parent(s).

7. Project Manager's name, address, telephone number, e-mail address and fax number .

B. Offeror's Authorized Negotiator

Provide name, title, address, telephone number, e-mail address and fax number of the Offeror's authorized negotiator. The person cited shall be empowered to make binding commitments for the Offeror and its subcontractors, if any.

C. Negotiation Prerequisites

1. Discuss any current or anticipated commitments which may impact the ability of the Offeror or its subcontractors to complete the Technical Assistance as proposed and reflect such impact within the project schedule.

2. Identify any specific information which is needed from the Grantee before commencing contract negotiations.

D. Offeror's Representations

Please provide exceptions and/or explanations in the event that any of the following representations cannot be made:

1. Offeror is a corporation *[insert applicable type of entity if not a corporation]* duly organized, validly existing and in good standing under the laws of the State of ______________. The Offeror has all the requisite corporate power and authority to conduct its business as presently conducted, to submit this proposal, and if selected, to execute and deliver a contract to the Grantee for the performance of the Technical Assistance. The Offeror is not debarred, suspended, or to the best of its knowledge or

belief, proposed for debarment, or ineligible for the award of contracts by any federal or state governmental agency or authority.

2. The Offeror has included, with this proposal, a certified copy of its Articles of Incorporation, and a certificate of good standing issued within one month of the date of its proposal by the State of __________. The Offeror commits to notify USTDA and the Grantee if they become aware of any change in their status in the state in which they are incorporated. USTDA retains the right to request an updated certificate of good standing.

3. Neither the Offeror nor any of its principal officers have, within the three-year period preceding this RFP, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal or state criminal tax laws, or receiving stolen property.

4. Neither the Offeror, nor any of its principal officers, is presently indicted for, or otherwise criminally or civilly charged with, commission of any of the offenses enumerated in paragraph 3 above.

5. There are no federal or state tax liens pending against the assets, property or business of the Offeror. The Offeror, has not, within the three-year period preceding this RFP, been notified of any delinquent federal or state taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied. Taxes are considered delinquent if (a) the tax liability has been fully determined, with no pending administrative or judicial appeals; and (b) a taxpayer has failed to pay the tax liability when full payment is due and required.

6. The Offeror has not commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law. The Offeror has not had filed against it an involuntary petition under any bankruptcy, insolvency or similar law.

The selected Offeror shall notify the Grantee and USTDA if any of the representations included in its proposal are no longer true and correct at the time of its entry into a contract with the Grantee.

Signed: ___________________________
(Authorized Representative)

Print Name: ________________________

Title: _____________________________

Date: ______________________

E. Subcontractor Profile

1. Name of firm and business address (street address only), including telephone and fax numbers.

2. Year established (include predecessor companies and year(s) established, if appropriate).

F. Subcontractor's Representations

If any of the following representations cannot be made, or if there are exceptions, the subcontractor must provide an explanation.

1. Subcontractor is a corporation *[insert applicable type of entity if not a corporation]* duly organized, validly existing and in good standing under the laws of the State of ______________. The subcontractor has all the requisite corporate power and authority to conduct its business as presently conducted, to participate in this proposal, and if the Offeror is selected, to execute and deliver a subcontract to the Offeror for the performance of the Technical Assistance and to perform the Technical Assistance. The subcontractor is not debarred, suspended, or to the best of its knowledge or belief, proposed for debarment or ineligible for the award of contracts by any federal or state governmental agency or authority.

2. Neither the subcontractor nor any of its principal officers have, within the three-year period preceding this RFP, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal or state criminal tax laws, or receiving stolen property.

3. Neither the subcontractor, nor any of its principal officers, is presently indicted for, or otherwise criminally or civilly charged with, commission of any of the offenses enumerated in paragraph 2 above.

4. There are no federal or state tax liens pending against the assets, property or business of the subcontractor. The subcontractor, has not, within the three-year period preceding this RFP, been notified of any delinquent federal or state taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied. Taxes are considered delinquent if (a) the tax liability has been fully determined, with no pending administrative or judicial appeals; and (b) a taxpayer has failed to pay the tax liability when full payment is due and required.

5. The subcontractor has not commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law. The subcontractor has not had filed against it an involuntary petition under any bankruptcy, insolvency or similar law.

The selected subcontractor shall notify the Offeror, Grantee and USTDA if any of the representations included in this proposal are no longer true and correct at the time of the Offeror's entry into a contract with the Grantee.

Signed: ______________________________
(Authorized Representative)

Print Name: __________________________

Title: ________________________________

Date: ________________________________