



# ETISALAT AFGHANISTAN



## SECTION 1

### INSTRUCTIONS AND CONDITIONS

#### FOR

### ETISALAT AFGHANISTAN TENDERS

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## 1.1 DEFINITIONS

The following words and expressions shall have the meanings hereby assigned to them. The (Title of Project) in accordance with the Contract Conditions set forth hereunder and the Technical Specifications attached thereto.

1.1 The "Tenderer" means a person or persons, a firm or a company submitting a Tender.

2.1 The "Purchaser" means Etisalat Afghanistan and shall include its successors and assigns.

## 1.2 INSTRUCTIONS TO TENDERERS

1.2.1 In case the Tender document has been bought by a Local Party (Agent) and the bid is to be submitted by different Principal/Overseas Vendor(s), then one set of Tender Document will have to be bought for each Principal Vendor submitting a bid.

1.2.2 In case more than one company under a group of companies submit multiple bids, then each company should submit along with their Offer(s) a Declaration in separate company letter heads stating that their affiliated company is also bidding for the same Tender.

## 1.3 ENQUIRIES:

Any question which may arise with regard to the interpretation of the Tender or any additional information required to clarify the Invitation to Tender, including the specification is to be submitted to Purchaser marked for the attention of the Director Procurement, and must arrive at least 5 working days before the closing date. Both question and answer will be copied simultaneously to all prospective Tenderers, with no indication as to the source of the enquiry.

## 1.5 VALIDITY OF OFFERS:

The Tenders must be valid for a minimum of 120 days from the Tender closing date, or as may be specified by Purchaser in the Tender documents.

## 1.6 CURRENCY:

The prices quoted must be in USD for foreign portion and Afghanis for local portion and services. Offers in other currencies shall not be considered.

## 1.7 ACCEPTANCE OF OFFERS

1.7.1 Purchaser is not bound to accept the lowest Tender, or any Tender, or to give reasons for rejection of any Tender.

1.7.2 Unless Letter of award/Letter of Intent/written instructions to proceed have been issued by Purchaser, or until a formal Contract has been concluded, no Tender shall be deemed to have been accept



# ETISALAT AFGHANISTAN

## SECTION 2

### INSTRUCTIONS AND CONDITIONS

#### FOR

### ETISALAT AFGHANISTAN TENDER

## DOCUMENTS TO ACCOMPANY TENDER

2.1 ISRAEL BOYCOTT DECLARATION

2.2 INFORMATION OF TENDER/MANUFACTURER

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2.4 REGISTRATION/LEGAL DOCUMENTS OF THE TENDER



## 2.1 ISRAEL BOYCOTT DECLARATION

The Tenderer must include in his offer with a written signed declaration, the wording of which shall be exactly and precisely as follows:

"We ..... (Name of Company) on behalf of all branches, acknowledge that the Import and Customs Laws and Regulations of the Islamic Republic of Afghanistan with regard to Israel Boycott shall apply to the furnishing and shipment of any products or components thereof to the Republic of Afghanistan."

## 2.4 REGISTRATION/LEGAL DOCUMENTS OF THE TENDERER

The Tenderer shall include in his proposal, copies of registration documents such as the Certificate of Registration, Trade License, Chamber of Commerce Certificates, Memorandum of Association (for Limited Liability Company) which shall be legalized as follows:

### **For Foreign companies:**

Legal extract of companies register showing the title & name of authorized signatory. If Authority is delegated to lower position then appropriate delegation of authority should be submitted along with the offer. The successful Tenderer shall legalize such documents by attesting through their jurisdictional Notary Public.

### **For Local Companies:**

The power of Attorney shall be attested by the authority empowered for such attestations.



# ETISALAT AFGHANISTAN

## SECTION 3

### INSTRUCTIONS AND CONDITIONS

#### FOR

### ETISALAT AFGHANISTAN TENDER

## CONDITIONS OF CONTRACT

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### 3.1 DEFINITIONS:

In the "Conditions of Contract" detailed herein, the following words and expressions shall have the meanings assigned to each of them as defined hereunder, except where the context otherwise requires:

**The "Purchaser"** means Etisalat Afghanistan, and shall include its successors and assigns.

**The "Seller" or "Contractor"** means the person or persons, firm or company whose Tender has been accepted by the Purchaser and includes the Contractor's personnel, authorized representatives, successors by mergers, sale, takeover, amalgamation or any other arrangement and permitted assigns.

**The "Contract"** means the agreement concluded between the Purchaser and the Contractor named therein incorporating the contract conditions, and all appendices and/or annexure thereto, as well as subsequent amendment(s) which may be agreed to in writing between the Purchaser and the Contractor.

**"Contract Price"** means the price payable to the Contractor by the Purchaser under the Contract for the full and proper performance by the Contractor of his part of the Contract.

**"Deductions"** means any sums payable by the Contractor to the Purchaser or which otherwise may be deducted from the Contract Price or any part thereof.

**"Contract date"** means the date on which the Contract is signed by both parties.

**"Effective Contract Date"** means the date on which the Contract shall come into force.

**"Completion Date"** means the date specified in the Contract, by which the contractor is to complete supply and installation of the system in a ready for service condition.

**"Actual Completion Date"** means the date specified in the statement of ready for service by which the system or part thereof has been completely installed and become ready for service in accordance with the Contract Conditions.

**"System"** means the entire Project complete with all facilities as described in the Specification including alterations in Contract Amendments, if any.



**“Delivery Date”** means the date specified in the Contract by which the Contractor is to complete delivery of the Equipment/System(s) / Services

**“Statement of Ready for Service”** means a written statement conforming in substance to the standard format indicated in Appendix I attached in Section 4 issued by the Purchaser for the system or part thereof as specified in the Contract indicating that the system or part thereof has been installed, programmed and satisfactorily tested in Compliance with The statement shall also indicate the actual completion date of the system or part thereof in conformity..

**“Force Majeure”** shall include, but not be limited to events which are unpredictable, unforeseeable, and irresistible and beyond the Contractor’s control, such as acts of God, acts or regulations of any governmental or supranational authority, war or national emergency, accident, fire, strikes, lock-outs, industrial disputes or epidemics.

**“Singular and Plural”** : Words using singular only also include the plural and vice-versa where the context requires.

## 3.2 PERFORMANCE BOND:

3.2.1 Within 10 working days from the date of Contract/placement of Order / issuing Letter of Intent (whichever is earlier); the Contractor shall submit a Performance Bond in the form of an irrevocable and unconditional Bank Guarantee, in the aggregate sum of not less than ten percent (10%) of the total value of the Contract/Order.

3.2.2 The Performance Bond shall be in USD or Afghani and shall be issued on behalf of the Contractor by an approved bank in Afghanistan (National or International). Performance Bonds issued by banks in foreign countries are not acceptable.

3.2.3 The Performance Bond shall remain valid for a minimum period of 6 months from the agreed contract completion date. The validity of the Performance Bond shall be extended if required by purchaser. The Performance Bond shall conform in substance to the standard format indicated in Appendix

3.2.4 The Performance Bond shall be released without interest upon expiry or issuance of Final Acceptance Certificate, whichever is later.

3.2.5 In the event whereby the Contractor fails to fulfill all or any part of his obligations under the Contract as the Purchaser may determine or where the Completion Date is delayed beyond 10 weeks, the Purchaser shall be entitled to confiscate the Performance Bond and/or terminate the Contract in which case the Performance Bond shall be unconditionally confiscated in full and without recourse.



### **3.2.6 Payment Terms:**

Payment will be made on quarterly basis for the services provided/rendered subject to achievement of KPIs and SLAs set in the RFP/Contract are achieved

### **3.2.7 Invoices**

All invoices should state the account number and name of the Bank to which funds shall be transferred. All invoices shall be paid in Afghani within 30 days of receipt of the invoice by the Purchaser. Payments shall only be made by the Purchaser against presentation by the Contractor of invoices in duplicate in such form as the Purchaser may require quoting the Contract Number/ Order Number, and where appropriate the item number of the Schedule of Service and Deliverables supported by such proofs and certified documentary evidence as the Purchaser may require. Payment shall be effected by means of Bank transfer to the Bank account number designated by the Contractor. Any sums payable by the Contractor to the Purchaser under the Contract may be deducted from the Contract Price or any part thereof.

## **3.3 PENALTY:**

3.7.1 If the contractor fails to complete the supply of services on or before the Completion Date, the Contractor shall pay to the Purchaser as and by way of Penalty resulting from the delay, the aggregate sum of one percent (1%) of Total Contract price of the delayed services for each week and pro-rata for parts of week, for delay beyond the specified date, subject to a **maximum** of ten percent (10%) of the Total Contract Price of the service(s). In the event that delay is only in respect of small items which do not affect the effective utilization of the system, penalty shall be chargeable only on the value of such delayed items.

3.3.1 Any penalty chargeable to the Contractor shall be deducted from the invoice amounts submitted by the Contractor for payment, without prejudice to the Purchaser's rights

3.3.2 The payment of penalty, shall not relieve the Contractor from the obligation to complete the services/deliverables or from any other liabilities or obligations under the Contract, or from meeting performance requirements and the provisions under the Performance Bond.

## **3.4 CONSTRUCTION OF CONTRACT:**

The Contract shall be deemed to have been concluded in the Islamic Republic of Afghanistan and shall be governed by and construed in accordance with Islamic Republic Afghanistan Law.

## **3.5 TERMINATION OF THE CONTRACT BY THE PURCHASER:**

3.5.1 If during the course of the Contract, the Contractor shall be in breach of the Contract and the Purchaser shall so inform the Contractor by notice in writing, and should the breach continue for more than seven days (or such longer period as may be specified by the Purchaser) after such notice then the Purchaser may immediately terminate the Contract by notice in writing to the Contractor.



**3.5.2** Upon termination of the Contract the Purchaser may at his option continue work either by himself or by sub-contracting to a third party. The Contractor shall if so required by the Purchaser within 14 days of the date of termination assign to the Purchaser without payment the benefit to any agreement for the supply of services and/or the execution of any work for the purposes of this Contract. In the event of the services/jobs being completed and ready for utilization by the Purchaser or a third party and the total cost incurred by the Purchaser in so completing the required services/jobs being greater than which would have been incurred had the Contract not been terminated then the Contractor shall pay such excess to the Purchaser.

**3.5.3** The Performance Bond shall be unconditionally confiscated in full without recourse if the Contract is terminated by the Purchaser.

### **3.6 TERMINATION OF THE CONTRACT BY THE CONTRACTOR:**

**3.6.1** The Contractor shall not have the right to terminate or abandon the Contract except for reasons of force majeure.

**3.6.2** In the event of the Contract being terminated by the Contractor as indicated in sub-para no. 3.23.1, the Contract Price payable by the Purchaser to the Contractor (after taking into account amounts previously paid under the Contract) shall be the Price, as specified in the Contract, of the services received and accepted at the date of termination.

### **3.7 TRANSFER AND SUB-LETTING:**

The Contractor shall not give, bargain, sell, assign, sublet or otherwise dispose of the Contract or any part thereof, or of the benefit or advantage of the Contract or any part thereof, without the previous consent in writing of the Purchaser. The Contractor shall not change the sub-contractors without the prior consent in writing of the Purchaser. Such consent shall not relieve the Contractor from any obligation under the Contract.

### **3.8 CONTRACTOR'S PERSONNEL:**

**3.8.1** The Contractor shall ensure that all personnel provided for the purpose of rendering Services and supervision are adequately qualified, experienced and suited in skill, health and temperament for the conditions and environment in which the job is to be executed.

**3.8.2** The Contractor shall take all reasonable measures to ensure that the personnel he provides are not suffering from any communicable diseases.

**3.8.3** The Contractor shall at the Purchaser's request promptly replace any of the Contractor's personnel who proves to be unsuitable or misbehaves in any manner considered unacceptable to the Purchaser.



### **3.9 CONTRACTOR'S LIABILITY, INSURANCE AND INDEMNITY:**

- 3.9.1** The Contractor shall be liable for, and shall indemnify the Purchaser against, any liability, loss, claim and/or proceedings, whatsoever arising under any statute or common law in respect of personnel injury to and/or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of this Contract, unless due to any proven act of neglect of the Purchaser.
- 3.9.2** The Contractor shall be liable for, and shall indemnify the Purchaser against any expense liability, loss, claim and/or proceedings in respect of any loss, injury and/or damage whatsoever to any property movable and/or immovable insofar as such loss, injury and/or damage arises out of or in the course of and/or by reason of the carrying out of this Contract, and provided always that the same is due to any negligence, omission and/or default of the Contractor, his servants or agents or of any sub-contractor, his servants or agents.
- 3.9.3** Without prejudice to liability for fraud, corrupt practices and for liabilities the Contractor shall not be liable for consequential, incidental, and indirect damages including loss of business and / or profit.
- 3.9.4** Without limiting his liabilities under the Contract, the Contractor shall not be liable to the Purchaser for any damage or injury caused by or arising from the acts of omissions of the Purchaser. Without limiting his liabilities and obligations under the Contract, the Contractor shall insure in the joint names of the Contractor and the Purchaser for their respective rights and interests against any damage, loss or injury, which may occur to property or to any person by or arising out of the carrying out of the Contract.
- 3.9.5** The Contractor shall indemnify and hold harmless Purchaser from any loss, damage, liability or expense including all costs and expenses paid for or incurred in disputing and/or defending against any act or omission of the Contractor, arising in connection with its performance of the Contract.

### **3.10 LOCAL TAXES, DUES AND LEVIES:**

- 3.10.1** Except where the delivery term has been agreed as DDP, the Contractor shall not be liable for the payment of local customs and/or import duties on any item(s) of equipment necessary for the execution of the Contract within Afghanistan. Notwithstanding the above, a supporting letter addressed to the local authorities may be issued by the Purchaser, if so requested by the Contractor.
- 3.10.2** The Contractor shall be responsible for all other taxes, dues and levies, including personal income tax, which are not and may be payable in the Afghanistan or elsewhere.

### **3.11 PATENT RIGHTS AND ROYALTIES:**

- 3.11.1** The Contract Price shall include all amounts payable (including, without limitation, royalties) for patent rights, copyrights, registered designs and any other intellectual



property rights on or in respect of the equipment and the Contractor shall indemnify and keep indemnified the Purchaser against all actions or claims for infringement of such patents, copyrights, registered designs, or other intellectual property rights by reason of the purchase, possession or use of the equipment.

3.11.2 The indemnity shall not extend to infringement resulting from use or adoption by the Contractor of the Purchaser's parts, designs or specific instructions or from use or sale in a manner or for a purpose not disclosed to the Contractor before the Contract Date.

3.11.3 Each party of the Contract shall promptly inform the other of any claims in respect of patent rights, copyrights, registered designs or other intellectual property rights and shall make no settlement thereof without giving to the other prior notice of the claim and a reasonable opportunity to deal with the same.

### **3.12 SETTLEMENT OF DISPUTES:**

3.12.1 All disputes arising out of or in connection with this Contract shall be finally decided by the Courts of Islamic Republic of Afghanistan. Such decision shall be binding to parties. For this purpose the parties shall be deemed to have agreed to submit to the jurisdiction of the Courts of Islamic Republic of Afghanistan and to have waived any immunity that may be claimed in this respect.

3.12.2 Notwithstanding that a dispute may have been referred to the Court both parties shall, if required by the Purchaser, proceed with their contractual obligations.

### **3.13 BANKRUPTCY AND LIQUIDATION:**

The Purchaser may at any time, by notice in writing, summarily terminate the Contract without compensation to the Contractor, if the Contractor shall pass a resolution or any Court shall make an Order, that the Contractor shall be wound up or if a trustee in bankruptcy liquidator, receiver, or manager on behalf of a creditor shall be appointed or if circumstances shall arise which would entitle the Court or a creditor to make a winding up order, provided always that any such termination by the Purchaser shall be without prejudice to any claim, action or remedy which shall accrue thereafter to the Purchaser.

### **3.14 CORRUPT PRACTICES:**

3.14.1 The Contractor shall not offer or give or agree to give to any person any gift or consideration of any kind as an inducement or reward for doing of fore-bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract with the Purchaser or for showing or forbearing to show favor or disfavor to any person in relation to this or any other Contract with the Purchaser.

3.14.2 The Contractor shall not enter into this or any other Contract with the Purchaser in the event that any such commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made, particulars of any such commission and of terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Purchaser.



**3.14.3** Any breach of this condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall entitle the Purchaser to terminate the Contract.

### **3.15 PUBLICITY AND CONFIDENTIALITY:**

**3.15.1** The Contractor shall not, and shall ensure that none of his sub-contractors will, advertise or otherwise disclose the appointment of the Contractor or his sub-contractors or the terms of the Contract (save insofar as may be required by law or may be necessary for the due performance of the Contract) without the prior approval in writing of the Purchaser. All copy of material relating to this Contract which is intended for publication in any form by the Contractor or any sub-contractor, must first be submitted in draft form to the Purchaser for approval indicating the countries in which it will appear.

**3.15.2** The Contractor shall ensure that he and / or his sub-contractors (including their personnel) shall not disclose the location, nature, purpose, details of equipment; technical specifications, customized /tailored designs etc. or other confidential / site specific information given to him as a result of awarding the Contract or gained by him from his association with other Contractors of the Purchaser in the same site, area or field to a third party, without obtaining prior approval in writing from the Purchaser.

**3.15.3** If so desired by the Purchaser, the Contractor shall be requested to sign a Non-Disclosure Agreement (NDA) that shall include additional terms and conditions.



# ETISALAT AFGHANISTAN

## INSTRUCTIONS AND CONDITIONS

### FOR

## ETISALAT AFGHANISTAN

### SECTION 4

#### ANNEXURES / FORMS TO BE USED BY TENDER

APPENDIX A - FORMS OF TENDER

APPENDIX B- STANDARD FORMAT FOR PERFORMANCE BOND

APPENDIX C- STATEMENT OF COMPLIANCE WITH CONDITIONS OF CONTRACT



## APPENDIX A

### FORM OF TENDER

#### ETISALAT AFGHANISTAN

P. O. BOX 800  
Kabul Afghanistan

Tenderer's Ref .....  
Etisalat Afghanistan Tender No .....  
For: (Name of Project .....)

GENTLEMEN,

Etisalat Tender No..... at the prices and within the period stated in the attached Schedules and in conformity with the Technical Specifications. All costs necessary to fulfill the requirements of Purchaser's Specifications are included therein.

Laws and will include the Conditions of Contract specified in Etisalat of the said Tender and declare that any other terms or Conditions of Contract or any general reservations which may be printed on any correspondence or documents emanating from us in connection with this Tender shall not form part of any resulting Contract, unless specifically agreed to by Purchaser and included in the Contract.

- 1) We hereby undertake to execute and complete (Title of Project) defined in the conditions of
  - 2) This Tender is valid for 120 days from.....
  - 3) We agree that any Contract placed as a result of this Tender will be in accordance with the Afghanistan
  - 4) We also enclose herewith the following documents:
    - vii) Schedules of Quantity and Cost of Services and deliverables
    - viii) Schedule of Implementation.
    - ix) Other enclosures .....
- M/s. (NAME OF COMPANY) .....**



(ADDRESS) .....

Telephone No..... Fax No..... E-mail.....

As represented by : .....

In the capacity of : .....  
duly authorized to sign tenders on behalf of the said Company

Signature : .....

Witnessed by : .....

In the capacity of : .....

Address : .....

Signature : .....

Dated this : ..... day of ..... 20 .....

- ii) Israel Boycott Declaration.
- iii) Quality Assurance Document(s).
- iv) Name and Address of Afghanistan Partner/Agent.
- v) Registration Certificate
- vi) Schedule of Compliance with:

- a) Contract Conditions.
- b) Technical Specifications.



## APPENDIX B PERFORMANCE BOND

Date: .....

ETISALAT AFGHANISTAN  
P.O. BOX 800  
KABUL AFGHANISTAN

Dear Sirs,

PERFORMANCE BOND NO.....  
FOR DIRHAMS.....

We, the undersigned (Name of Bank) whose registered office is at ----- have taken notice of Contract No.----- signed on----- between Etisalat Afghanistan Corporation, whose Head Office is situated at Supreme Tower Shar-e-Naw Kabul Afghanistan hereinafter referred to as "Etisalat" and (Name of Contractor) whose Head Office is at ..... hereinafter referred to as "the Contractor" for (Name of Project) in the total Contract Price of Afghanis. .... (Afghanis .....). In consideration of the above, we, (Name of Bank) as Guarantor, hereby irrevocably and unconditionally guarantee and undertake on behalf of the Contractor to pay Etisalat, any sum or sums up to a maximum of Afghanis..... (Afghanis ----- ) which represents 10% (ten percent) of the total Contract Price upon receipt of Etisalat's written request addressed to us stating that the Contractor failed to fulfill all or any of his obligations under the above mentioned Contract, at first demand and such payment shall be made without any restriction or conditions and without recourse and not withstanding any objection from the Contractor. This Guarantee shall be valid for 15 months from the agreed Contractual Ready for Service date and shall be extended as may be requested by Etisalat Afghanistan, if so required.

Yours faithfully,  
FOR AND ON BEHALF OF  
(NAME OF BANK)

SIGNED : .....  
(AUTHORISED SIGNATURE)



## APPENDIX C

FROM : .....

TO : .....

Dear Sir,

### STATEMENT OF COMPLIANCE

### WITH CONDITIONS OF CONTRACT (Tender No. ....)

This Statement lists (in the attached Appendix F) in numerical order all Articles and Sub-Paragraphs of the Purchaser's Contract Conditions and any Annexures and in each case an acceptable form of response is stated. In case of non-compliance, sufficient detailed information is provided to enable the Purchaser to rapidly ascertain the exact degree of non-compliance. Unless specifically indicated, we undertake to abide by all that is required in our proposal including Tender Bond, Performance Bond, Tender Documents, Number of Copies, Terms of Payment, Bank Guarantees, Invoices, Israel Boycott Declaration, Certificates of Origin of Goods, etc.

Signed by (Name) .....

In the capacity of .....

For and on behalf of .....

Signature .....

Dated .....

#### NOTE:

The Tenderer shall furnish a signed statement and a Schedule of Compliance clearly Indicating the Tenderer's response to each individual Article of the Conditions of Contract. The aforementioned shall conform in substance to Appendix E and F attached hereto and shall be signed by the Tenderer's authorized representative. Responses are acceptable only in the following forms : 'Compliant' – When the Tender meets all the minimum requirements of the Contract Conditions.

Tenderers may add comments if they wish.



“Non-Compliant” – When the Tender does not meet all the minimum requirements of the Contract Conditions. Tenderers must add comments to enable the extent to which the Tender is non-compliant to be clearly understood.

“Noted” – When a statement is made in the Contract Conditions which does not call for the Tenderer to meet a specific requirement. The term “Noted” will be accepted as acknowledgement that the Tenderer has read and understood the information.