

## **Request for Proposal (RFP)**

**Reference No: AUAF-RFP-19-008**

**Issue Date: August 22, 2019**

**Deadline: September 1, 2019**

### **Project**

150/150 (1:1) from Microwave Backbone Internet Connection  
(Primary Link)

Required Proposals must be submitted in sealed two Envelopes,  
(1)“Technical Proposal” (2) “Financial Proposal

**Pre-Proposal Conference/Site Visit: August 29, 2019 at 02:00 PM**

**The Proposal will be accepted only from offerors who attend the Pre-Proposal Conference.**

**The Proposal will be accepted from 1:30 to 03:30 PM on September 1, 2019.**

**All Companies are required to sign the registration document at the gate at the time of submission of the proposal.**

The American University of Afghanistan  
Darul Aman Road,  
District 6, Kabul, Afghanistan

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## Annex 1 - Instructions to Offerors

**Introduction:** American University of Afghanistan (hereinafter referred to as “AUAF”), is issuing a Request for Proposals (RFP) for internet connection from Microwave Backbone 150/150 (1:1). The following RFP contains specific submission requirements, scope of Service, and requirements, as well as terms, conditions, and other pertinent information necessary for submitting a proposal.

The American University of Afghanistan (AUAF) is Afghanistan's only private, not-for-profit, institution of higher education, offering internationally-supported degree programs and education. AUAF is seeking qualified ISPs to submit their proposals for internet connection from Microwave Backbone 150/150 (1:1) as listed in Section 8 of this RFP. All interested ISPs who have similar experience and qualification in provision of internet connection are invited to submit their offers.

**Deadline and Protocol:** Offerors should submit their proposals for the anticipated Subcontract by hard copies to the AUAF Procurement Department on Darul Aman main road, Kabul, Afghanistan by no later than 03:30 pm Kabul time, on September 1, 2019.

**Pre-Proposal Conference:** AUAF realizes that offerors may have additional questions after reading this RFP. In response, AUAF is planning to hold a Pre-Proposal Conference/Site Visit at the AUAF's West campus at Darul Aman Road, Kabul, at 02:00 PM on August 29, 2019, to provide prospective ISPs an opportunity to learn more about the AUAF, to have questions about this RFP answered, to do a technical review of Scope of Service, and to learn more about the proposal and Subcontracting process. AUAF encourages all interested ISPs to attend the pre-proposal conference. Pre-registration to attend the proposal conference is required. **AUAF will not accept proposals from companies who have not attended the Pre-Proposal Conference.**

### Questions and Pre-Registrations:

Please send your requests of pre-registration for the pre-proposal conference and any advance questions to the AUAF Procurement Department by sending an email indicating your questions or attendance at the pre-proposal conference at [procurement@auaf.edu.af](mailto:procurement@auaf.edu.af) cc [bhaidari@auaf.edu.af](mailto:bhaidari@auaf.edu.af) no later than 04:00 PM on August 28, 2019. The email shall contain all questions. For pre-registration, AUAF needs the name(s), tazkira and/or passport number(s) of your representative(s) at least 24 hours before the pre-proposal conference. Failure to furnish this information will lead in disapproving your request for the pre-proposal conference.

**Note:** This RFP does not obligate AUAF to execute a Contract nor does it commit AUAF to pay any costs incurred in the preparation and submission of the proposals. Furthermore, AUAF reserves the right to reject any and all offers, if such action is considered to be in the best interest of AUAF.

### Chronological List of Proposal Events

The following calendar summarizes important dates in the solicitation process. Offerors must strictly follow these deadlines.

RFP announcement & Published	22 Aug 2019
Deadline for written questions	28 Aug 2019
Pre-Proposal conference Pre-registration deadline	28 Aug 2019
Answers provided to questions/clarifications	29 Aug 2019
Site visit and Pre-bid conference	29 Aug 2019
RFP due date	01 Sep 2019

The dates above may be modified at the sole discretion of AUAF. Any changes will be published in an amendment to this RFP.

**Annex 2 - RFP terms and Conditions (The Regulations, Terms and Conditions cited in this RFP will be applicable to the anticipated contract).**

**1. Government Withholding Tax**

Pursuant to Article 72 in the Afghanistan Tax Law effective March 21, 2009, AUAF is required to withhold "contractor" taxes from the gross amounts payable to all Afghan/International for-profit Contractors/vendors. In accordance with this requirement, AUAF shall withhold two percent (2%) tax from all gross invoices to Afghan Contractors/vendors under this contract with active business license. Before the signing of this contract, the Contractor/vendor will provide a copy of the organization's business license and TIN (Tax Identification Number). Amounts deducted from the invoices will be forwarded to the Ministry of Finance (MOF) Tax Division credited to the firm's TIN. Records of payments to the MOF shall be maintained on file with AUAF.

**2. Penalty Charges**

If the ISP fails to provide the specified services in the Statement of Works/Services of this RFP, AUAF shall, without prejudice to its other remedies under the Subcontract price, as liquidated damages, deduct a sum equivalent to the damages caused by not delivering required services until actual delivery.

**3. Eligibility for Fund:**

AUAF shall not award a contract/subcontract to any firm or firms' principals who are debarred, suspended, or otherwise considered ineligible by U.S. Government.

Terrorism Executive Order 13224

The Contractor must agree and certify to take all necessary actions to comply with Executive Order No. 13224 on Terrorist Financing; blocking and prohibiting transactions with persons who commit, threaten to commit, or support terrorism.

E.O. 13224 is available at:

<https://ustreas.gov/offices/enforcement/ofac/programs/terror/terror.pdf>. The attachment does not include 'Names of Those Designated' after 23 September 2001; therefore, Contractors are required to obtain the updated list at the time of procurement of goods or services. The updated list is available at: <http://www.treas.gov/offices/enforcement/ofac/sdn/>. Additional restricted party screening may also be performed through the Excluded Parties List System, which is available online at the following address: <https://www.epls.gov/>. AUAF will search against the company, President, and Vice President' names in the System for Award Management (SAM), Consolidated United Nations Security Council Sanctions List, and in the Office of Foreign Assets Control (OFAC), to verify whether they have not been debarred, excluded or suspended from Federal Government Procurement.

**4. Vetting Requests:**

In Addition to this, as per mission order 201.06 requirement, any award or cumulative awards value exceeding the \$25K threshold, AUAF will submit the vetting approval requests to the USAID's Vetting Support Unit (VSU) for firms' eligibility notices.

**5. Sub-contracting:**

In the event the Contractor requires the services of subcontractors, the Contractor shall obtain prior written approval of AUAF for all such subcontractors. The approval of AUAF shall not relieve the Subcontractor of any of obligations under the anticipated Subcontract, and the terms of any Subcontract shall be subject to and in conformity with the provisions of the anticipated contract.

## 6. Source, Origin and Nationality

The authorized USAID geographic code for this RFP and any resulting Contract is **Code 937**. Code 937 is defined as the United States, the cooperating country, and developing countries other than advanced developing countries, and excluding prohibited sources. A list of developing countries, advanced developing countries, and prohibited sources, is available in USAID's Automated Directives System, ADS 310 (<http://www.usaid.gov/policy/ads/300/310.pdf>). All commodities and services supplied under any Contract resulting from this RFP must meet this geographic code in accordance with the US Code of Federal Regulations (CFR), **22 CFR §228**.

The following applies to this RFP, all related correspondence, and any resulting Contract:

### A. Definitions:

1. **Cooperating Country:** "Cooperating country" means Afghanistan.
2. **Source:** "Source" means the country from which a commodity is shipped to the cooperating country or the cooperating country itself if the commodity is located therein at the time of purchase. However, where a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse.
3. **Nationality:** "Nationality" refers to the place of incorporation, ownership, citizenship, residence, etc. of suppliers of goods and services. If the Offer is an individual, the Offeror must be a citizen or lawful permanent resident (or equivalent immigration status to live and work on a continuing basis) of a country in **Code 937**. If the Offeror is an organization, the organization must (1) Be incorporated or legally organized under the laws of a country in **Code 937**; (2) Must be operating as a going concern in a country in **Code 937**, and either (3) Be managed by a governing body, the majority of whom are citizens or lawful permanent residents (or equivalent immigration status to live and work on a continuing basis) of countries in **Code 937**, or (4) Employ citizens or lawful permanent residents (or equivalent immigration status to live and work on a continuing basis) of a country in **Code 937**, in more than half its permanent full-time positions and more than half of its principal management positions.
4. **Prohibited Source:** Burma (Myanmar), Cuba, Iraq, Iran, Laos, Libya, North Korea, (North) Sudan, and Syria. The offeror resulting from this RFP may not supply any equipment, items, and goods that are manufactured or assembled in, shipped from, transported through, or otherwise involving any of the above listed prohibited sources.

B. Application: The source and nationality of all equipment and services in response to this RFP must meet the USAID geographic **Code 937** requirements in accordance with **22 CFR §228**.

C. No items, items with components from, or related services may be offered from any prohibited source. Related services include incidental services pertaining to any/all aspects of this work to be performed under a resulting Subcontract (including transportation, fuel, lodging, meals, and communications expenses).

All equipment and items proposed through any offer in response to this RFP must meet geographic **Code 937** and must be new and unused and must. In addition, all electrical commodities must operate on 240V, 50Hz.

## 7. Inspection

AUAF shall have reasonable time to inspect/monitor the internet connection & ISP's services and to reject acceptance if not conforming to the statement of Services of anticipated Subcontract.

### **Annex 3 -**

#### **8. Statement of Works/Services:**

The American University of Afghanistan (AUAF) intends to contract with an experienced and qualified ISP for 150/150 Mbps (1:1) from Microwave Backbone Internet connection to support existing and anticipated future data, voice, and video traffic. AUAF has many locally hosted application and online apps that requires very stable and fast connection. The Internet link shall not be from AFTEL fiber backbone. Details of the requirements are as follows.

#### **A. General Requirement:**

- The ISP must have experience with international NGO's providing large amount of bandwidth.
- The ISP must have a fully functional and 24/7 operational NOC (Network Operation Center), and customer service center situated in Kabul. And the related three level of contact details must be provided from the Management, Technical and the Help-Desk.
- The ISP must provide minimum of 99.5% uptime with full capacity of 150/150 Mbps.
- Prior notifications must be released for any service degradations, technical problems, and planned maintenance activities.
- The technical response time for resolving any faults must take less than an hour after reported.
- Maintenance & Operation, site visits, and etc. will be on ISP cost (AUAF won't pay any charges).
- Delivery and installation period of equipment must be one week.
- The ISP should provide us two weeks of trial period to test the service. In case there was an issue in providing the test service the trial period would be extended. Payment for actual service would start after the trail period ends successfully.
- References of three clients shall be filled in Appendix B.

#### **B. Specific Requirement:**

- A dedicated 150 /150 Mbps Domestic Microwave Backbone Internet connection.
- The connection from ISP to AUAF Main Campus could be through Microwave or WiMAX media and must use licensed frequency.
- The ISP must provide online/live MRTG bandwidth monitoring system like Cacti and such.
- Latency should be less than 50 msec from router port to a peering point in the U.S., such as Google.com.
- Trace-route to Google.com should not exceed 10 hops.
- Provide DNS servers.
- Bandwidth is as follows:
  - Provide us with Subnet /27 (30 usable Public IP's).
  - Our subnet/Link should not be behind any NAT/Proxy system.
  - Our subnet should be on a separate VLAN due to security concerns.
  - No content filtering should be applied on the provided link and IP subnet.
- ISP shall be capable to connect us to the Internet eBGP network; in case we might require to advertise our own public IPv4 subnet.

Minimum of 120/120 Mbps or 80% backup link from Microwave backbone should be provided, with specific backup link charging terms and conditions applied, as described in Penalty Charges case 2.

**C. Penalty Charges:**

**Case 1: Total Outage**

- 1.a:  
Guaranteed monthly SLA shall be **99.5%** or **716 hours and 24 minutes** in 30 days. If service level reduces from total of agreed **SLA** in a 30 days period, then price for **one day** service fee shall be deducted for **each 1 hour** of no Internet service beyond the **99.5% SLA**.
- 1.b:  
If in any situation AUAF Internet traffic is routed through AFTEL's fiber backbone, this will be considered as an outage and the same above penalty will be applied.

For instance, following is an example of downtime calculation procedure.

Outage From:	23-August-2017, 11:03 PM
Outage To:	24-August-2017, 08:46 AM
Total Hours of Outage:	9 Hours 43 Minutes
Agreed 0.5% Outage:	3 Hours 36 Minutes
Penalty Downtime:	6 Hours 07 Minutes

**Case 2: Partial Outage or in Backup Route**

- In case that the primary link at ISP side is down and our traffic is shifted to another route with minimum of 80% capacity or 120/120 Mbps bandwidth or above, then charges shall be made according to the capacity provided and the link would be considered as up.
- In case the primary link at ISP side is down and our traffic is shifted to another route with less than 80% capacity or 120/120 Mbps bandwidth, the service would be considered as complete down and outage penalty charges would be applied according to Case 1.

**D. Equipment:**

**Equipment:**

- ISP owned recommended equipment for free until end of agreement.
- The equipment's should be able to support twice our required bandwidth
- Any equipment's provided must be new and purchased from the manufacturer, not refurbished or purchased from "secondary markets" or "independent re-furbishers."

Equipment			
No	Description	Specification	Remarks
1			
2			
3			

**E. Install Deliverable:**

- Location for Microwave Internet setup is Darulaman Main Road, AUAF Compound, Kabul, Afghanistan.
- Provide online Cacti/MRTG reporting of the bandwidth usage.
- Standards should be followed by installation of the cable from the antenna to the router. Outdoor cable covered by plastic pipe.



**F. Final Presentation:**

- Provided connection will be tested with various tools (bandwidth monitor, traffic monitor, due meter, MRTG and etc.).
- Uptime and downtime will be tested using various protocols to different servers at US (google.com and yahoo.com).
- Packet loss shall not exceed 0%.

**G. Completion/Termination:**

The duration of Internet service contract will be for one year with the possibility of extension depending on the quality of service and AUAF may terminate the contract at any time due to poor performance, poor support and/or service, unavailability of funds, and or the ISP being ineligible for award by the Government.

**H. Other Conditions:**

- AUAF has to be informed 72 hours prior to any kinds of maintenance or any other disruption.
- AUAF has to be informed 1-month in advance before changing any public IP's.
- The ISP can change the public IP's only if AUAF has approved.
- Provided Public IPs should not be blacklisted in any domain, if it happened it is the ISP's responsibility to whitelist them.
- The ISP should have the capability of announcing public IP addresses owned by AUAF through their BGP

**I. Safety and Liability:**

The ISPs confirm and assume all responsibility for the safety of the workers on the job sites for this project. The vendors is liable for providing medical care and rehabilitation for workers injured as a result of an employment related accident.

In addition to the above, Subcontractors under federal contracts are also required to obtain DBA insurance provisions, and such coverage shall be included by AUAF as part of the anticipated Subcontract. If the subcontractor fails to obtain DBA coverage for its employees will lead to Termination for default of the anticipated Subcontract.

**J. Bill of Quantity**

ISPs interested to submit their proposals, may fill the following format. In the instances where this is not possible, ISPs may prepare a Bill of Quantity matching the one listed below on their own letter head and submit it with their financial proposal:

No	Generic Description	QTY	Unit	Unit Cost USD	Total 12 Cost USD
1	Provision of Internet Connection 150/150 Mbps from Microwave backbone, 1:1 Ratio Bandwidth; Based on the SOW described above. Any outages or failures will be deducted in the invoice or AUAF will reduce the payment accordingly.	12	Month		
<b>Total Price in USD for 12 months</b>					

The unit cost must inclusive of all ISP's internal and external charges, such as internet connection, installation, admin charges, equipment charges, tax, profit, and any other charges. The DBA cost must be submitted as a straight through cost to AUAF.

#### Annex 4-

#### 9. Evaluation and Basis for Award:

##### Eligibility of Proposals for Technical Evaluation Process:

#	Eligibility Terms	YES	NO
1	All interested offerors must attend the "Pre-Proposal Conference session which dues on <u>29 Aug 2019</u> . <i>Proposals will not be considered from offerors who do not attend the Pre-Proposal Conference and will be disqualified.</i>		
2	ISPs must have valid business licenses of ATRA and Ministry of Commerce & Industries. (Proves must be attached If any of the license renewal is under process.)		

In evaluating proposals, AUAF will use the following evaluation criteria:

The proposals will be evaluated by using the criteria set out below in determining the Best value to AUAF considering both technical and cost factors. AUAF will use the Trade-Off Process (FAR Part 15.101-1 and 2 CFR 200.323). The Contract will be awarded to the responsible firm whose proposal is the most advantageous to the program, with price and other factors considered.

AUAF may reject all of the proposals submitted for good cause. AUAF may negotiate price or service provided in terms with one or more of the bidders if it feels that negotiations would improve the chances that AUAF receives better proposals.

##### Technical Proposal Factors for award:

#	Parameter	Score
1	<b>Proposals to demonstrate that the ISP has clear understanding of the Scope of Services and its requirements:</b> <i>ISP has clear understanding that the primary link should be from AFTEL fiber backbone, and also has considered all other specific required details in SOS to meet the requirement.</i>	0-30
2	Proposals to demonstrate that the ISP has backup connectivity solution from microwave Internet backbone.	0-20
3	<b>ISP has 5 years of past performance experience in similar field:</b> <i>ISP should provide three or more contact details of its clients to which the ISP has provided Internet Services in the past. The more experience the ISP has the more scores will be given.</i>	0-20
4	Proposals to demonstrate the ISP's technical and qualified personnel have 5 years of experience in providing Internet Services in Afghanistan. CV's of at least 3 technical and 2 administrative staff need to be included. The ISP personnel need to be qualified in providing support incase link disruption or any other technical problem occurs.	0-10
5	Proposals to demonstrate that the ISP has fully functional NOC (Network Operations Center) in Kabul. Details of the NMS software need to be clearly mentioned in the technical proposal.	0-10
6	Proposals to demonstrate that the ISPs have reliable and capable core routing equipment to manage the Internet connection proposed to AUAF. Details of the equipment needs to be clearly mentioned in the technical proposal.	0-10
<b>Total</b>		<b>100</b>



### Sub-Criteria for Ratings Each Technical Factor:

Point No. 1 - Proposals to demonstrate that the ISP has clear understanding of the Scope of Services and its requirements:

<b>Proposals to demonstrate that the ISP has clear understanding of the Scope of Services and its requirements</b>	<b>Score</b>
Proposals to demonstrate that the ISP has <b>Excellent</b> understanding of the Scope of Services and its requirements	26 - 30
Proposals to demonstrate that the ISP has <b>Good</b> understanding of the Scope of Services and its requirements	20 - 25
Proposals to demonstrate that the ISP has <b>Acceptable</b> understanding of the Scope of Services and its requirements	15 - 19
Proposals to demonstrate that the ISP has <b>Superficial</b> understanding of the Scope of Services and its requirements	1 - 14
Proposals <b>Fails</b> to demonstrate that the ISP has clear understanding of the Scope of Services and its requirements	0

Point No. 2 - Proposals to demonstrate that the ISP has backup connectivity solution from microwave Internet backbone:

<b>Proposals to demonstrate that the ISP has backup connectivity solution from microwave Internet backbone</b>	<b>Score</b>
Proposals to demonstrate that the ISP has backup connectivity solution from microwave Internet backbone	1-20
Proposals fails to demonstrate that the ISP has backup connectivity solution from microwave Internet backbone.	0

Point No. 3 - ISP has 5 years of past performance experience in similar field and has provided contact details of its clients:

<b>ISP has 5 years of past performance experience in similar field and has provided contact details of its clients</b>	<b>Score</b>
ISP has 5 or more years of past performance experience in similar field and has provided contact details of its clients	17-20
ISP has 4 years of past performance experience in similar field and has provided contact details of its clients	13-16
ISP has 3 years of past performance experience in similar field and has provided contact details of its clients	9-12
ISP has 2 years of past performance experience in similar field and has provided contact details of its clients	5-8
ISP has 1 year of past performance experience in similar field and has provided contact details of its clients	1-4
ISP doesn't have any past performance experience in similar field and has not provided contact details of its clients	0

If a Vendor has more than 6 months' experience, then the score will be ½ the points in between.

Point No. 4 - Proposals to demonstrate the ISP's technical and qualified personnel have 5 years of experience and CV's of at least 3 technical and 2 administrative staff:

<b>Proposals to demonstrate the ISP's technical and qualified personnel have 5 years of experience and CV's of at least 3 technical and 2 administrative staff</b>	<b>Score</b>
Proposals demonstrate the ISP's technical and qualified personnel have 5 years of experience and CV's of at least 3 technical and 2 administrative staff	1-10
Proposals fail to demonstrate the ISP's technical and qualified personnel have 5 years of experience and CV's of at least 3 technical and 2 administrative staff	0

Point No. 5 - Proposals to demonstrate that the ISP has fully functional NOC (Network Operations Center) in Kabul and have provided details of the NMS software:

<b>Proposals to demonstrate that the ISP has fully functional NOC (Network Operations Center) in Kabul and have provided details of the NMS software</b>	<b>Score</b>
Proposals demonstrate that the ISP has fully functional NOC (Network Operations Center) in Kabul and have provided details of the NMS software	1-10
Proposals fail to demonstrate that the ISP has fully functional NOC (Network Operations Center) in Kabul and have provided details of the NMS software	0

Point No. 6 - Proposals to demonstrate that the ISPs have reliable and capable core routing equipment and have provided details of the equipment:

<b>Proposals to demonstrate that the ISPs have reliable and capable core routing equipment and have provided details of the equipment</b>	<b>Score</b>
Proposals demonstrate that the ISPs have reliable and capable core routing equipment and have provided details of the equipment	1-10
Proposals fail to demonstrate that the ISPs have reliable and capable core routing equipment and have provided details of the equipment	0

All evaluation factors other than cost or price, when combined, are significantly more than cost or price.

The evaluation criteria will be rated based on the below strengths, weaknesses, significant weakness, and deficiencies:

**Strength** is an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to AUAF during subcontract performance.

**Weakness** is a flaw in the proposal that increases the risk of an unsuccessful subcontract performance.

**Significant Weakness** in the proposal is a flaw that appreciably increases the risk of unsuccessful subcontract performance.

**Deficiency** is a material failure of a proposal to meet a requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful subcontract performance to an unacceptable level.

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

The Federal Acquisition Regulations 15.101-1 Tradeoff process shall be used and is defined as follows:

(a) A tradeoff process is appropriate when it may be in the best interest of AUAF is to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) This process permits tradeoffs among cost or price and non-cost factors and allows the AUAF to accept other than the lowest priced proposal.

#### **10. Negotiations**

Best offer proposals will be requested. It is anticipated that a contract will be awarded solely on the basis of the original offers received. However, AUAF reserves the right to conduct discussions, negotiations and/or request clarifications prior to awarding a Contract. Furthermore, AUAF reserves the right to conduct a competitive range and to limit the number of offerors in the competitive range to permit an efficient evaluation environment among the most highly-rated proposals. Highest-rated offerors, as determined by the technical evaluation committee, may be asked to submit their best prices or technical responses during a competitive range. At the sole discretion of AUAF, offeror may be requested to conduct oral presentations. If deemed an opportunity, AUAF reserves the right to make separate awards per component or to make no award at all.

**Annex 5-**

**11. Offer Deadline:**

Offerors shall submit their proposals in hard copies. Emailed and faxed offers will not be considered.

Hard-copy offers must be received from 1:30 to 03:30 PM Kabul local time, on September 1 2019, at the following address:

AUAF West Campus on Darul Aman Road, Next to Sanitarium Street, Kabul, Afghanistan.  
Barialai Haidari | Contracts Manager  
[bhaidari@auaf.edu.af](mailto:bhaidari@auaf.edu.af) | +93(0) 796 734 908

Offerors are responsible for ensuring that their offers are received in accordance with the instructions stated herein. Late offers may be considered at the discretion of AUAF. AUAF cannot guarantee that late offers will be considered.

**12. Proposal Submission guidelines:**

Proposals must be submitted in hard-copy only.

**Instructions for the Submission of Hard-Copies:**

Offerors wishing to respond to this RFP must submit proposals, in English, on A4 sized paper, 12-point Times New Roman font, single-spaced, in accordance with the following instructions.

All proposals must be submitted in two volumes, consisting of:

- Volume 1: Technical proposal
- Volume 2: Financial proposal

Proposal hard-copies must be submitted in sealed envelopes with one envelope containing the technical proposals and one envelope containing the cost proposal. Envelopes must be properly marked with the name of the offeror's company or organization. In case one or more companies or organizations are submitting a proposal in partnership, the name of the legally registered entity leading the partnership must be used. Names should be clearly printed on the envelope and addressed to the person designated in 11. Envelopes must be properly marked with the RFP number and title and state either "Technical Proposals" or "Cost Proposal", as applicable. An authorized representative of the company or organization submitting an offer must sign the cover page of each copy of the offer in blue ink. The Offeror's authorized representative must initial any changes hand-written on the hard-copies of the offer.

The signed/stamped copy of the technical and cost proposals must be submitted in a CD using software compatible with PDF. The CD must be included in the envelope containing the hard-copies of the cost proposal.

**13. General Requirements:**

AUAF anticipates issuing a subcontract to an Afghan based ISP, provided it is legally registered and recognized under the laws of Afghanistan and is in compliance with all applicable civil, fiscal, and other applicable regulations. Such a company or organization could include a private firm, non-profit, civil society organization, or university.

Companies and organizations that submit proposals in response to this RFP must meet the following requirements:

- (i) Companies or organizations, whether for-profit or non-profit, must be legally registered under the laws of Afghanistan upon award of the subcontract.
- (ii) Companies or organizations must have a local presence in Afghanistan at the time the subcontract is signed.
- (iii) Firms operated as commercial companies or other organizations or enterprises (including nonprofit organizations) in which foreign governments or their agents or agencies have a controlling interest are not eligible as suppliers of commodities and services.

Offerors may present their proposals as a member of a partnership with other companies or organizations. In such cases, the subcontract will be awarded to the lead company in the partnership. The leading company shall be responsible for making all partnership arrangements, including but not limited to division of labor, invoicing, etc., with the other company (ies). A legally registered partnership is not necessary for these purposes; however the different organizations must be committed to work together in the fulfillment of the subcontract terms.

#### **14. Required Proposal Documents:**

##### **1. Cover Letter**

The offeror's cover letter shall include the following information:

- i. Name of the company or organization
- ii. Type of company or organization
- iii. Address
- iv. Telephone
- v. Fax
- vi. E-mail
- vii. Full names of members of the Board of Directors and Legal Representative (as appropriate)
- viii. Taxpayer Identification Number
- ix. Official bank account information
- x. Other required documents that shall be included as attachments to the cover letter:
  - a) Copy of registration or incorporation in the public registry, or equivalent document from the government office where the offeror is registered.
  - b) Copy of company tax registration, or equivalent document.
  - c) Copy of trade license, or equivalent document.
  - d) Evidence of Responsibility Statement, whereby the offeror certifies that it has sufficient financial, technical, and managerial resources to complete the activity described in the scope of work, or the ability to obtain such resources. This statement is required by the Federal Acquisition Regulations in 9.104-1. A template is provided in Annex 3 "Required Certifications".

A sample cover letter is provided in Annex 3 of this RFP.

##### **2. Technical Proposal:**

The sections of the technical proposal stated above must respond to the detailed information set out in Section 8 "Statement of Works" and Section 9 "Evaluation and Basis for Award" of this RFP, which provides the understanding of the scope of services and requirement, past performance experience, technical and qualified personnel, NOC, reliable and capable core routing equipment.

### 3. Financial Proposal:

The financial proposal is used to determine which proposals represent the best value and serves as a basis of negotiation before award of a contract.

The price of the subcontract to be awarded will be an all-inclusive fixed price. No profit, fees, taxes, or additional costs can be added after award. Nevertheless, for the purpose of the proposal, offerors must include their detailed budget line items, e.g. materials, equipment, site planning, works, workmanships, salaries, allowances, travel costs, other direct costs, indirect rates, etc., as well as individual line items, e.g. salaries or rates for individuals, different types of allowances, rent, utilities, insurance, etc. Offers must show unit prices, quantities, and total price. All items, services, etc. must be clearly labeled and included in the total offered price. All cost information must be expressed in US Dollars.

Also the ISPs need to ensure to submit the DBA cost as a straight through cost to AUAF in their Financial Proposal.

The cost proposal shall also include a budget narrative that explains the basis for the estimate of every cost element or line item. Supporting information must be provided in sufficient detail to allow for a complete analysis of each cost element or line item. AUAF reserves the right to request additional cost information if the evaluation committee has concerns of the reasonableness, realism, or completeness of an offeror's proposed cost.

If it is an offeror's regular practice to budget indirect rates, e.g. overhead, fringe, G&A, administrative, or other rate, Offerors must explain the rates and the rates' base of application in the budget narrative. AUAF reserves the right to request additional information to substantiate an Offeror's indirect rates.

Under no circumstances may cost information be included in the technical proposal. No cost information or any prices, whether for deliverables or line items, may be included in the technical proposal. Cost information must only be shown in the cost proposal.

### 15. Others:

- (A) AUAF as a non-for-profit educational institution expects to be charged no more than standard humanitarian agency rates. AUAF will not pay any of the bidders' cost of preparing their proposals under this RFP.
- (B) Validity Period: Offerors' proposals must remain valid for 90 business days after the proposal deadline.

The following flow-down FAR Clauses are incorporated herein by reference and full text. If the following references are made in regards to the U.S. Government they shall mean "AUAF" for the following:

- 52.202-1 Definitions.
- 52.203-5 Covenant Against Contingent Fees.
- 52.203-7 Anti-Kickback Procedures.
- 52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights.
- 52.203-8 Cancellation, Recession, and Recovery of Funds for Illegal or Improper Activity.
- 52.203-13 Contractor Code of Business Ethics and Conduct.
- 52.203-16 Preventing Personal Conflicts of Interest.



52.203-6 Restrictions on Service Contract Sales to the Government. (Alt. 1) (Oct 1995)  
52.204-7 System for Award Management.  
52.249-8 Default (Fixed-Price Supply and Service).  
52.249-10 Default (Fixed-Price Construction).  
52.249-4 Termination for Convenience of the Government (Services) (Short Form).  
52.203-6 Restrictions on Service Contract Sales to the Government. (Alt. 1) (Oct 1995)  
52.204-19 Incorporation by Reference of Representations and Certifications (Dec 2014)  
52.212-4 Contract Terms and Conditions – Commercial Items (Jan 2017)  
52.212-5 Contract Terms and Conditions Required to Implement (Jan 2017) (Alt. 1 and 2)  
Representation and Certifications (Oct 2015)  
52.244-6 Subcontracts for Commercial Items (Nov 2017)

**Annex 6- Cover Letter**

[Offeror: Insert date]

[Insert name of point of contact for RFP]  
[Insert designation of point of contact for RFP]  
[Insert project name]  
[Insert project office address]

Reference: Request for Proposals [Insert RFP name and number]

Subject: [Offeror: Insert name of your organization]'s technical and cost proposals

Dear Mr./Mrs. [Insert name of point of contact for RFP]:

[Offeror: Insert name of your organization] is pleased to submit its proposal in regard to the above- referenced request for proposals. For this purpose, we are pleased to provide the information furnished below:

Name of Organization's Representative	_____
Name of Offeror:	_____
Type of Organization:	_____
Taxpayer Identification Number	_____
Address:	_____
Address:	_____
Telephone:	_____
Fax:	_____
E-mail:	_____

As required by section I, I.7, we confirm that our proposal, including the cost proposal will remain valid for [insert number of days, usually 60 or 90] calendar days after the proposal deadline.

We are further pleased to provide the following annexes containing the information requested in the RFP:

[Offerors: It is incumbent on each offeror to clearly review the RFP and its requirements. It is each offeror's responsibility to identify all required annexes and include them]

- I. Copy of registration or incorporation in the public registry, or equivalent document from the government office where the offeror is registered.
- II. Copy of company tax registration, or equivalent document.
- III. Copy of trade license, or equivalent document.
- IV. Evidence of Responsibility Statement.

Sincerely yours,

\_\_\_\_\_  
Signature  
[Offeror: Insert name of your organization's representative]  
[Offeror: Insert name of your organization]

## Annex 7- Required Certifications:

Federal Acquisition Regulation mandates certain certifications that offerors are required to sign as part of a request for Service Contract proposal (RFP) funded with United States federal funds. A list of required certifications should be included in the solicitation document for Service Contracts that have not been priced as part of the prime contract and Offerors must submit all the certifications to be responsive to the RFP.

The required certifications are as follows and their full text can be found in the following pages. Additional certifications may be required depending upon the prime contract terms and conditions.

- **Certification of independent price determination – (FAR 52.203-2).** Certifies that prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with other offeror or competitor relating to – prices, intention to submit an offer, or factors used to calculate prices offered.
- **Service Contractor certification and disclosure regarding payment to influence certain federal transactions received – (FAR 52.203-11).** Certifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, grant, loan, cooperative agreement, etc.
- **Service Contractor certification regarding debarment, suspension, proposed debarment, and other responsibility matters – (FAR 52.209-5).** Certifies that offeror/or any of its Principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
- **Evidence of Responsibility Statement –** Certification describing internal policies and procedures, listing authorized signatories, and stating that the company is able to comply with the terms and conditions of the Service Contract.
- **Certificate of current cost or pricing data – (FAR 15.406-2).** Cost or pricing data are data requiring certification in accordance with FAR 15.406-2.
- **Prohibition on Assistance to Drug Trafficking Participant Certification – (Section 487 of the Foreign Assistance Act/ADS 206).** Certifies that key individuals of Service Contractor are not or have not been involved in drug trafficking. Requirement for certification applies to Service Contractors in covered countries (identified annually by the President of the United States as major, illicit, drug-producing or drug-transit countries) and in principle is not required from most Service Contractors except for: (1) intermediate credit institutions (entity receiving USAID funds for the purpose lending to third parties) and; (2) Service Contractors specifically designated by USAID to receive or provide more than \$100,000 in covered assistance. Designation means that Service Contractor has been unilaterally selected by USAID as the Service Contractor. USAID approval of a Service Contractor, selected by another party, or joint selection by USAID and another party is not designation. To assess if this certification is required, check prime contract terms and conditions.

## 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

AS PRESCRIBED IN 3.103-1, INSERT THE FOLLOWING PROVISION. IF THE SOLICITATION IS A REQUEST FOR QUOTATIONS, THE TERMS "QUOTATION" AND "QUOTER" MAY BE SUBSTITUTED FOR "OFFER" AND "OFFEROR."

Certificate of Independent Price Determination (Apr 1985)  
\_\_\_\_\_(hereinafter called the "offeror")  
(Name of Offeror)

(A) THE OFFEROR CERTIFIES THAT—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to— (i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(B) EACH SIGNATURE ON THE OFFER IS CONSIDERED TO BE A CERTIFICATION BY THE SIGNATORY THAT THE SIGNATORY—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(C) IF THE OFFEROR DELETES OR MODIFIES PARAGRAPH (A)(2) OF THIS PROVISION, THE OFFEROR MUST FURNISH WITH ITS OFFER A SIGNED STATEMENT SETTING FORTH IN DETAIL THE CIRCUMSTANCES OF THE DISCLOSURE.

\_\_\_\_\_  
(Applicant)

BY (Signature) \_\_\_\_\_ TITLE \_\_\_\_\_

TYPED NAME \_\_\_\_\_ DATE \_\_\_\_\_

## 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

AS PRESCRIBED IN 3.808, INSERT THE FOLLOWING PROVISION:

### Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2007)

\_\_\_\_\_(hereinafter called the "offeror")  
(Name of Offeror)

(a) *Definitions.* As used in this provision— "Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) *Certification.* The Offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the Offeror with respect to this contract, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The Offeror need not report regularly employed officers or employees of the Offeror to whom payments of reasonable compensation were made. Page 2 of 4

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

**(F) SHOULD THE OFFEROR'S CIRCUMSTANCES CHANGE DURING THE LIFE OF ANY RESULTING SERVICE CONTRACT WITH RESPECT TO THE ABOVE, THE OFFEROR WILL NOTIFY BUYER IMMEDIATELY.**

BY (Signature) \_\_\_\_\_ TITLE \_\_\_\_\_

TYPED NAME \_\_\_\_\_ DATE \_\_\_\_\_



## 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS .

AS PRESCRIBED IN 9.409(A), INSERT THE FOLLOWING PROVISION:

### CERTIFICATION REGARDING RESPONSIBILITY MATTERS (MAY 2008)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, 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 public (Federal, state, or local) contract or Service Contract; 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 criminal tax laws, or receiving stolen property;

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have ☐, have not ☐, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has o has not o, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

PLEASE SIGN AND RETURN

Company Name \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## EVIDENCE OF RESPONSIBILITY STATEMENT

### 1. Authorized Negotiators

**Company Name** proposal for **Proposal or AUAF RFP Name** may be discussed with any of the following individuals. These individuals are authorized to represent **Company Name** in negotiation of this offer in response to **RFP No.**

**List Names of Authorized signatories**

These individuals can be reached at **Company Name** office:

**Address**

**Telephone/Fax**

**Email address**

### 2. Adequate Financial Resources

**Company Name** has adequate financial resources to manage this contract, as established by our audited financial statements (OR list what else may have been submitted) submitted in this proposal.

### 3. Ability to Comply

**Company Name** is able to comply with the proposed delivery of performance schedule having taken into consideration all existing business commitments, commercial as well as governmental.

### 4. Record of Performance, Integrity, and Business Ethics

**Company Name** record of integrity is (describe, e.g. outstanding), as shown in the Representations and Certifications. We have no allegations of lack of integrity or of questionable business ethics. Our integrity can be confirmed by our references in our Past Performance References, contained in the Technical Volume, Annex, etc.

### 5. Organization, Experience, Accounting and Operational Controls, and Technical Skills

(Service Contractor should explain which department will be managing the contract, type of accounting and control procedure they have to accommodate the type of Service Contract that is being considered)

### 6. Equipment and Facilities

(Service Contractor should state and explain that they have necessary facilities and equipment to carry out the contract)

### 7. Eligibility to Receive Award

(Service Contractor should state that they are qualified and eligible to receive an award under applicable laws and regulation and that they are not included in any list maintained by the US Government of entities debarred, suspended or excluded for US Government awards and funding. The Service Contractor should state whether they have performed work of similar nature under similar mechanisms for USAID. They should provide their DUNS number here if applicable.)

### 8. Commodity Procurement

(Service Contractor will explain its procurement policies and practice. State if a procurement/purchasing manual is in place, etc. This section could be deleted if the Service Contractor doesn't have this capacity or if Service Contract will not include procurement)

9. Cognizant Government Audit Agency

(Service Contractor should provide Name, address, phone of their auditors – whether it is DCAA or independent CPA)

10. Acceptability of Contract Terms

(Service Contractor should state its acceptance of the proposed Service Contract terms)

11. Recovery of Vacation, Holiday and Sick Pay

(Service Contractor should explain how they recover vacation, holiday, and sick leave)

12. Organization of Firm

(Service Contractor should explain how their firm is organized for example regionally or by technical practice)

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**KEY INDIVIDUAL CERTIFICATION NARCOTICS OFFENSES AND DRUG TRAFFICKING**

I hereby certify that within the last ten years:

1. I have not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any country concerning narcotic or psychotropic drugs or other controlled substances.
2. I am not and have not been an illicit trafficker in any such drug or controlled substance.
3. I am not and have not been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title/Position:

Organization:

Address:

Date of Birth:

**NOTICE:**

1. You are required to sign this Certification under the provisions of 22 CFR Part 140, Prohibition on Assistance to Drug Traffickers. These regulations were issued by the Department of State and require that certain key individuals of organizations must sign this Certification.
2. If you make a false Certification you are subject to U.S. criminal prosecution under 18 U.S.C. 1001.

**Annex 8**

**OFFEROR'S BUSINESS LICENSE**

**Please attach here**



## Annex 9

### SUMMARY OF RELEVANT CAPABILITY, EXPERIENCE AND PAST PERFORMANCE

Include projects that best illustrate your experience relevant to this (RFP) or similar activities, sorted by decreasing order of completion date.

Projects should have been undertaken in the past three years (i.e. 2014, 2015 and 2016).

No	Project Title and Description of Activities	Location Province/District	Client Name/Tel #	Cost in US\$	Start Dates	End Dates	Completed on Schedule (Yes/No)	Contractor or Prime Contractor?
1			Name: Designation: Mobile #: Email Add:					
2								
3								

# Annex 10 – THE AMERICAN UNIVERSITY OF AFGHANISTAN DRAFT SUBCONTRACT FOR ISP SERVICES

<b>Vendor/Subcontractor;</b>	<b>Issuing Office;</b>	<b>Subcontract #:</b>
<b>Subcontractor's U.S Taxpayer ID (FEIN) #:</b>	<b>DPAS Rated #: Cooperative Agreement #:</b>	<b>Contract Start Date: Contract End Date:</b>

Pricing Agreement:   X   Firm Fixed Price        Firm Fixed Unit Price

Item	Summary of work to be performed & Pricing)	Qty	Price	Extended
<b>001</b>	<b>**</b>	<b>12</b>		
	<b>Total Firm Fixed Price</b>			

There are no exemptions for business receipt tax, income tax, withholdings, duties, licenses, permits, registrations, and fees (taxes) imposed by any Government Entity including the Host Nation for the project and work. Subcontractor is to include the cost of any and all taxes required by any Government Entity or the Host Nation. In addition to other terms and conditions of the subcontract agreement, the requirements of section 2.12 Compliance with Laws and section 5.2 Tax Exemption of AUAF's terms and conditions (of the subcontract document) shall be strictly enforced.

Subcontractors are strictly forbidden from engaging in any business transactions, in the course of executing its obligations under this Agreement, with the Government of, or any business entity from the Countries of Cuba, Iran, Sudan, North Korea, and Burma. See Part B, Term 5 of this Agreement.

**No changes to this SUBCONTRACT shall be binding upon either party unless incorporated in a Subcontract signed by AUAF's contractual representative.**

In Witness Whereof, the duly authorized representatives of AUAF and the Subcontractor have executed this Agreement on the Dates shown.

**The American University of Afghanistan  
("AUAF")**

**SUBCONTRACTOR**

\_\_\_\_\_  
Name / Title

\_\_\_\_\_  
Name / Title

\_\_\_\_\_  
Signature / Date

\_\_\_\_\_  
Signature / Date

## **Sections:**

### **PART 1 CONTRACT TERMS AND CONDITIONS**

Part A General Terms and Conditions

Part B Deliverables

Part C Subcontractor's Responsibilities

Part D Authorized Representatives

Part E Contractor's Bid Requirements  
(Unbalanced Bids)

Part F Subcontract Agreement Amount

Part G Changes in Work

Part H Invoicing/Payment/Insurance

Part I Claims/Delay

Part J Termination of Contract

Part K Cancellation of Contract

Part L Other Requirements

### **PART 2 U.S. GOVERNMENT FLOW- DOWN CLAUSES**

### **PART 1 CONTRACT TERMS AND CONDITIONS**

#### **PART A. GENERAL TERMS AND CONDITIONS**

##### **1. SCOPE OF WORK / TERM / CONTRACT DOCUMENTS**

- 1.1. Scope of Work. Subcontractor agrees to timely and accurately perform all services, duties, and obligations as specified in the Contract Documents, including but not limited to those items listed in the Statement of Work and Schedule, and to procure and furnish all services, labor, materials, equipment and other facilities required or inferable there from (the "Work")
- 1.2. Subcontractor is required to complete all of its Work within the time requirements and prior to the date for final completion since as shown in – Statement of Work and Schedule (Final Completion Date), time being of the essence. AUAF has the right to pursue any remedies for any delays to the Work or the Project caused in whole or in part by Subcontractor
- 1.3. Within this Subcontract, wherever the terms, conditions or clauses cites "the U.S. Government" or "Government" it shall mean "AUAF" as the "replacement" or "in place of". If the FAR terms, conditions or clauses refer to the Agreement Officer of Contracting Offer, it shall refer to the AUAF Director of Procurement.

#### **PART B. DELIVERABLES (This Part updates Annex 3 of RFP)**

#### **PART C SUBCONTRACTOR'S RESPONSIBILITIES**

Skill and Ability. The Subcontractor agrees to furnish its best skill and judgment in the performance of the Work, to timely perform all of its Work efficiently and with the requisite expertise, skill, competence, and ability, to satisfy the requirements of the Contract Documents and Project schedule requirements, and to cooperate with AUAF so that AUAF may fulfill its obligations to the Client.

- 3.1 **Independent Contractor.** Subcontractor shall be an independent contractor in the performance of the Work hereunder, and Subcontractor shall maintain complete control of its employees and operations. Neither Subcontractor nor anyone employed by Subcontractor shall be deemed the agent, representative, or employee of AUAF in the performance of work hereunder. Nothing in the Sub-Contract Documents shall be construed to create a contractual relationship between subcontractor and USAID or between any other persons or entities besides AUAF and the Subcontractor.

**3.2 Subcontractor's Representative.** Subcontractor's Representatives for Technical and Contractual matters are:

S-No.	Technical	
1	Name:	
	Phone Number:	
	Email ID:	
S-No.	Contractual	
1	Name:	
	Phone Number:	
	Email ID:	
2	Name:	
	Phone Number:	
	Email ID:	

**Notices:** Unless otherwise agreed to in advance and in writing between the Parties, all notices, requests, demands, changes, deficiencies, delays, claims, disputes or other communications which are required or may be given pursuant to the terms of the Contract Documents will be in writing and will be deemed to have been duly provided if delivered by email or hand to the address and Designated Representative listed above.

**3.4 Site Examination.** Subcontractor shall, prior to commencing the Work, examine the Site and familiarize itself with the Work, the laws, rules, and regulations relating to the Project; the participants in the Project; and the contractual and regulatory provisions of governmental agencies, USAID and AUAF affecting the participants in the Project and the Work. No allowance will be made to Subcontractor for not having made such examination and review, or for requirements which a reasonable examination, inquiry, or review would have disclosed. Subcontractor shall promptly report to AUAF any errors, inconsistencies, omissions, or violations of legal requirements Subcontractor discovers. Subcontractor shall be liable to AUAF for any damages resulting from any such errors, inconsistencies, omissions, or violations of legal requirements which Subcontractor discovers or should have reasonably discovered and fails to report to AUAF.

### **3.5 Self performance of Work.**

Subcontractor shall not voluntarily or involuntarily transfer, assign, or subcontract this Agreement or any portion of its Work without the prior written consent of AUAF Procurement Director.

Subcontractor shall self-perform 100% of the dollar amount of the Work, and shall not subcontract any of the dollar amount of the Work without prior written permission from AUAF. AUAF reserves the right to request proof of self-performance, including but not limited to documented evidence of work performed such as Network Operation Center (NOC), Host Network Operator (HNO), payroll records, HUB, plans and schedules or other proof of self-performance.

### **3.6 Health and Safety.**

a. Subcontractor acknowledges that it is familiar with the Work, the inherent hazardous conditions of the Project Site, and the necessity for the safety of its personnel and others during the performance of its work. Subcontractor shall comply with all applicable safety laws and regulations including, but not limited to, safety and health acts. If required by AUAF, Subcontractor shall comply with the more stringent of those safety programs and procedures. Subcontractor shall provide evidence of its drug testing policy, upon request, as well as a statement as to the last date it had any accidents.

b. Subcontractor agrees to abide by both its own internal Health and Safety and Quality Control Plans, as approved by AUAF. All Subcontractor employees, to include initial, added, and replacement personnel, must participate in a site orientation session led by AUAF's safety representative and complete all site specific safety training required, prior to commencing with any work duties. The subcontractor further agrees to ensure that all personnel under their control understand the pertinent requirements of the Health and Safety and Quality Control Plans.

c. Any accidents, or injuries, or quality incidents to Subcontractor's employees or operations shall be promptly reported by Subcontractor. Subcontractor understands and agrees that all Subcontractor injuries, or other Health and Safety Environmental, Safety, and Quality (ESQ) incidents or accidents shall be documented into the Subcontractor's record, and not to AUAF's. The recording of worker's compensation issues for the Subcontractor's employees shall also accrue to the Subcontractor's record and not AUAF's.

d. **Notification of Accident or Injury.** Subcontractor shall provide prompt written notice to AUAF of any accident, which has caused any personal injury, or that could have resulted in serious bodily injury, whether or not such injury actually did occur.

### **3.7 Warranty.**

a. Subcontractor represents and warrants that the rates charged for the materials, goods, and/or services supplied as a part of the Work or pursuant to the Contract Documents shall be no higher than Subcontractor's current rates to any other client for the same quality and quantity of such materials, goods, or services for a firm-fixed price contract related to substantially similar work conditions in Afghanistan. All representations and warranties of Subcontractor together with its service warranties and guarantees, if any, shall flow to the Client USAID. The foregoing warranties shall survive any delivery, inspection, acceptance, or payment by AUAF.

b. **Removal of Liens:** Subcontractor shall neither file nor cause to be filed any lien with respect to the work performed hereby and waives any right to file or cause such a lien to be filed. In the event any such claim has been asserted against Subcontractor, AUAF, or its client, or any lien has been filed with respect to the work performed, further payment shall not become due until all such claims or liens have been released and/or discharged without cost or expense to AUAF. If Subcontractor fails to cause any such lien to be expunged with ten (10) days after written demand by AUAF to remove such lien or notice of suit or other proceeding from any property, AUAF shall be entitled to use whatever means in its discretion it may deem appropriate to cause such removal or dismissal, together with all reasonable attorney's fees that shall be immediately due and payment to AUAF by the Subcontractor and may be set off against any payments due to Subcontractor.

### **3.8 Standard of Care.**

a. Subcontractor agrees and warrants that all of its Work: (a) will conform with the terms of the Contract Documents; (b) will be performed in a good, skillful, and workmanlike manner; (c) will be performed by the proper number of experienced, skilled, and licensed personnel, qualified by education and/or experience to perform their assigned tasks; and (d) to the extent professional services are rendered, will conform to the standard of care, skill, and diligence exercised by other similar professionals performing the same or similar services.

b. Subcontractor shall furnish competent, skilled employees experienced in the Work to be performed. Subcontractor shall provide equipment, material and personnel fully capable of performing immediate first line emergency, accident and spill response activities. Subcontractor shall, when

requested by AUAF, promptly remove any person considered by AUAF to be incompetent, unsatisfactory, or undesirable.

c. In addition to other warranties contained in the Contract Documents, the Subcontractor warrants that the Work will conform to the requirements of the Contract Documents, and will be free from any defects in equipment, material, design, or workmanship performed by the Subcontractor or any Subcontractor or supplier at any tier.

**3.9 Correction of Defective Work. (This Section is only applicable as it pertains to the Subcontractor's Scope of Work).**

a. Subcontractor shall, within ten (10) calendar days of receipt of written notice from AUAF that the Work is not in conformance with the Contract Documents, shall take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work or the Project affected by the nonconforming Work. If Subcontractor fails to commence the necessary steps within such ten (10) calendar day period, AUAF, in addition to any other remedies provided under the Task Order, may commence correction of such nonconforming Work with its own forces. If AUAF does perform such corrective Work within thirty (30) days, Subcontractor shall be responsible for all reasonable costs incurred by AUAF in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the ten (ten) day period identified herein shall be deemed inapplicable.

b. The thirty 30 days referenced in § 2.11(a) above applies only to Subcontractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies AUAF may have regarding Subcontractor's obligations under the Contract Documents.

**3.10 Compliance with Laws.** Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances, codes, and regulations (Laws) applicable to the Work. Subcontractor shall be liable to AUAF and USAID for all loss, cost, and expenses attributable to any acts of or omissions by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, all fines, penalties, or corrective measures.

**3.11 Confidentiality.** Unless otherwise provided and except in the case of emergencies, Subcontractor shall direct all communications regarding the project to AUAF Procurement Director. Subcontractor further agrees that its personnel and subcontractors will maintain the confidentiality of the Project. Subcontractor's personnel shall not disclose any data or information to any party other than AUAF personnel concerning the Project Site or the Project, including, without limitation, the nature or results of the Work performed by Subcontractor hereunder, and Subcontractor shall direct all third-party inquiries or comments to a designated AUAF representative. Subcontractor agrees that it shall not communicate directly with USAID regarding any AUAF-Subcontractor matters, arising out of the subcontract. Subcontractor agrees that any unauthorized communications with USAID shall be deemed a material breach of the Contract Documents.

**3.12 Disclosure.** The Subcontractor shall not publicly disclose any information and shall not issue any news releases, advertisements, publications, papers, or marketing materials concerning any aspect of the Project, the Work, or the Contract Documents without the express prior written approval of AUAF's authorized representative.

**3.13 Protection of Owner's Property.** Subcontractor understands and agrees that it is to safeguard and not harm, damage, or destroy in any way the property and other facilities and structures of AUAF or USAID, including those adjacent thereto, and those connected in any way with the Work or the Project.

**3.14 Ownership of Documents.** All maps, photographs, drawings, reports, test results, specifications, and other documents, materials, and electronic data prepared or furnished by



Subcontractor to AUAF under the Contract Documents (“Work Product”) are deemed to be the property of AUAF, and AUAF shall retain the ownership and property interests therein, including the copyrights thereto. AUAF shall have the right to obtain and use all Work Product.

#### **PART D AUAF’s AUTHORIZED REPRESENTATIVE**

The following authorized representatives are hereby designated for this Project:

S-No.	Technical	
1	Name:	
	Phone Number:	
	Email ID:	
S-No.	Contractual	
1	Name:	
	Phone Number:	
	Email ID:	
2	Name:	
	Phone Number:	
	Email ID:	

**NO CHANGES TO THIS AGREEMENT SHALL BE BINDING UPON EITHER PARTY UNLESS INCORPORATED IN A WRITTEN MODIFICATION TO THE AGREEMENT AND SIGNED BY AUAF'S CONTRACTUAL REPRESENTATIVE OR DESIGNEE.**

#### **Notices:**

Unless otherwise agreed to in advance and in writing between the Parties, all notices requests, demands, changes, deficiencies, delays, claims, disputes or other communications which are required or may be given pursuant to the terms of the Contract Documents will be in writing and will be deemed to have been duly provided if delivered by hand or e-mailed to the address and Designated Representative listed above.

#### **PART F SUBCONTRACT AGREEMENT AMOUNT**

5.1 **Agreement Amount.** The Agreement Amount, as set forth on the cover page of this Agreement, includes all taxes, permits, fees, costs of insurance, and bonding, and other charges incident to the Work unless specifically agreed to otherwise herein.

5.2 **Tax Exemption.** There are no Tax Exemptions in this Subcontract. Subcontractor shall pay any and all taxes and/or duties.

#### **PART G CHANGES IN WORK**

6.1 **Change Orders.** AUAF may, by written Change Order to Subcontractor, make changes, additions, or deductions to the Work. If any such change causes any increase or decrease in the cost of, or time required for performance of the Agreement Amount, an equitable adjustment shall (as applicable) be made to the price or schedule, or both, and this Agreement shall be modified in writing accordingly. Equitable adjustments for Changes that are Govt. Client-imposed, will be made in accordance with Term 9 of this Agreement. The failure by Subcontractor to request in writing a Change Order in advance of performing changed or extra work prevents AUAF from considering cost and time saving measures and alternatives. Therefore, Subcontractor hereby waives any right to compensation

for any changed or extra work performed without prior written authorization from AUAF's authorized representative. Additionally, Subcontractor waives any compensation for work performed on a time-and-materials basis on any day for which records of labor, materials and equipment are not kept and submitted to AUAF's project manager for approval.

**6.2 Basis of Change Order.** In the event of any Change Order increasing or decreasing the cost of the Work or the Agreement Amount, the amount of increase or decrease shall be determined as follows:

- By mutual acceptance of a Firm Fixed Price Subcontract Modification, the Subcontractor agrees to properly itemized and supported by sufficient substantiating data to permit evaluation and approval by AUAF;
- By unit prices stated in the Contract Documents or subsequently agreed upon;
- By cost to be determined in a manner agreed upon by the Parties; or
- By determining the reasonable actual costs of and/or savings to those performing the work or services attributable to the change, including a reasonable allowance for overhead and profit.
- With respect to all Change Orders, Subcontractor shall keep and present, in such form as AUAF may require and request, an itemized accounting together with all appropriate supporting data. AUAF shall have the right to audit Subcontractor's costs for any Change Order or proposed Change Order upon reasonable notice and within normal business hours.

**6.3 Change Order form.** All Change Orders agreed to and signed by AUAF or proposed or requested by Subcontractor shall be finalized on standard AUAF-prepared and issued forms.

**6.4 Accord and Satisfaction.** Agreement on any Change Order shall constitute a final settlement and an accord and satisfaction of all costs and changes to the Work or the applicable schedule date(s) relating to or arising out of the change in the Work that are the subject of the Change Order, including but not limited to all claims for direct and indirect costs, impacts, overtime, accelerations, inefficiencies, congestion, trade stacking, delays, interference, lost productivity, additional work, and the effect or accumulation of the changed work or services on any other work, services, or activities.

**6.5 Option to Extend Services.** For Agreements with a fixed Term, AUAF may require continued performance of the Work or any services within the limits and at the rates specified in the Contract Documents. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed twelve (12) months. AUAF may exercise the option by written notice to the Subcontractor at any time prior to final closeout of this Agreement.

#### **6.6 Evaluation of Options**

Except when it is determined in accordance with FAR 17.206(b) not to be in the AUAF's best interests, AUAF will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

#### **6.7 Option to Extend the Term of the Contract**

(a) AUAF may extend the term of this contract by written notice to the Contractor within 60 days provided that AUAF gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the AUAF to an extension.

(b) If AUAF exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 1 years unless amended, cancelled or terminated for any reason.

(d) By submission of offer, the Contractor is committing to perform the base period plus option year; however, AUAF maintains the unilateral right to exercise said options.

(End of Provision)

## **PART H INVOICING / PAYMENT/INSURANCE**

7.1 Invoices. Subcontractor shall invoice AUAF directly for all services provided under this Subcontract.

a. Final acceptance for each project consists of: completion of all tasks as specified in the Subcontractor's Technical proposal, including delivery of all samples and project deliverables as specified therein, and joint final site inspection by AUAF and the Subcontractor to verify proper reclamation and remediation of all affected areas.

b. Invoices shall be submitted to AUAF by the fifth (5<sup>th</sup>) day of the month following the month when the services were completed. AUAF will review the invoice for errors or inconsistencies, and if approved, forward them for processing of payment. If the invoice is rejected it shall be returned to the Subcontractor for correction.

c. Late Invoices. Subcontractor's failure to invoice AUAF within ninety (90) days of Subcontractor's completed Work shall result in Subcontractor's waiver of rights as to request payment for any work completed and not invoiced.

d. Denial. A denial of all or a portion of Subcontractor's invoice by AUAF shall preclude Subcontractor from having any claim against AUAF for the denied portion of the invoice if and only if such denial is substantiated by proof that the invoice is inaccurate or that the subcontractor failed to perform within the terms of this agreement. Dispute of the validity or accuracy of an invoice by either the Client or AUAF shall not be construed as proof of invalidity or inaccuracy of the invoice. In the event that all or any portions of the Subcontractor's invoice is/are disputed by the AUAF, the Subcontractor shall be permitted to communicate with AUAF in order to resolve such dispute or any claims made by the AUAF that may lead to delays in payment of the Subcontractor.

e. Payment from Client is Condition Precedent to Payment to Subcontractor. Subcontractor shall bear the risk of non-payment by USAID for any or all of its Work. AUAF shall have no obligation to make any payment to Subcontractor for any interim or final invoice or payment application, or any part thereof.

f. Format. All invoices must contain the following information: Contract Number; AUAF point of contact; Subcontractor point of contact and phone number; and Project name and location. Failure to include this information on the face of the invoice may result in payment being delayed.

g. Bank Wiring Instructions.

Bank Name:	
Bank Address:	
SWIFT BIC:	
BENE ACCT NAME:	
BENE ACCT NO:	

7.2 No Advance Payments. Under no circumstances are advance payments to the Subcontractor permitted.

7.3 Offsets. Subcontractor agrees and understands that AUAF may deduct from any payments otherwise due to the Subcontractor the amount of any liquidated or unliquidated claim or amounts due to AUAF or USAID from Subcontractor, whether arising under this Agreement or other unrelated agreements.

7.4 Right to Withhold. AUAF may withhold from current and future payments due to Subcontractor amounts necessary to protect AUAF from loss if in the good faith opinion of AUAF, the following events have occurred or are likely to occur:

- a. If applicable, claims filed by supplier of Subcontractor.
- b. Damage by Subcontractor to the Work of a third party.
- c. Reasonable doubt that Subcontractor can complete the Work for the unpaid Agreement Amount.
- d. Subcontractor is in default of any term or provision of the Contract Documents.
- e. Notice by the Afghan Government of any wage and/or law violations.

7.5 Reserved

7.8 Audit. At any time prior to final payment, AUAF or USAID may request an audit of the invoices or payment applications and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts on preceding invoices or payment applications that are found by AUAF not to have been properly payable and shall also be subject to reduction for overpayments or to increase for under payments. The final invoice or payment application, and supporting documentation, shall be submitted by the Subcontractor as promptly as practicable following completion of the Work, but in no event, later than ninety (90) days from the date of completion, unless longer period is first approved in writing by AUAF.

7.9 Acceptance of Final Payment. Acceptance of final payment by Subcontractor shall constitute a waiver of all Claims by Subcontractor through the date of final payment except those previously made in writing and identified by Subcontractor as being unsettled on the Final Waiver of Lien and Release.

## 8.0 INDEMNIFICATION, INSURANCE, WAIVER OF SUBROGATION AND BONDS

### 8.1 Indemnification.

- a. Subcontractor agrees to indemnify, save harmless, and defend AUAF and USAID, its officers, directors, agents, and employees (Indemnified Parties) from and against any and all liabilities, claims, damages, penalties, fines, forfeitures, suits, and the costs incident thereto (including without limitation costs of defense, settlement, and attorney's fees) which any of the indemnified parties may hereafter incur, become responsible for, or pay out as a result of events that occur directly because of or are directly attributable to the Subcontractor or its officer's, director's, agent's or employee's, negligent or willful acts or omissions in the performance of work or by the breach of any term or provision set forth in the Contract Documents including: (a) death or bodily or personal injury to any person or destruction or damage to any property (including loss of use), (b) contamination of, or adverse effects on the environment, or (c) any actual violation of any law, statute, ordinance, rule, regulation or order.

- b. Intellectual Property Rights. Subcontractor shall indemnify AUAF and USAID; and its officers, directors, agents and employees against any liability, including costs and attorney fees, for infringement of any U.S. patent, copyright, trademark or other proprietary right arising out of the manufacture or delivery of supplies, the performance of services, or the construction, modification, alteration, or repair of real property under this Agreement. Subcontractor shall provide written notice within ten (10) days of becoming aware of any claim or notice of patent, copyright, trademark, trade secret, or other proprietary infringement. Patent indemnification shall include all goods and services used by Subcontractor under this Agreement.
- c. In all such cases where the indemnity provisions of the Contract Documents apply, Subcontractor and/or its insurer shall, upon demand by AUAF or USAID, provide a competent defense of all indemnified claims and shall remain responsible for all of the costs of defense of the claim, and any damages awarded to the claimant by settlement, mediation, arbitration, litigation, or otherwise.

## 8.2 Insurance Requirements.

- a. Types of Insurance. Without prejudice to Subcontractor's liability to indemnify AUAF as stated in any indemnification provision contained in the Contract Documents, The Subcontractor shall procure at its expense and maintain for the duration of this Agreement, and ensure that any of its subcontractors used in connection with this Agreement procure and maintain, the insurance policies required below with financially responsible insurance companies, and with policy limits not less than those indicated below:
  - i. Workers' Compensation: Defense Base Act (DBA).
  - ii. All others as required by applicable Afghanistan Law.
- b. Coverage.
- c. Subcontractor agrees to procure and maintain all forms of insurance required by Afghan law.
- d. Waiver of Subrogation. All policies shall be endorsed to provide that underwriters and insurance companies of Subcontractor shall not have any right of subrogation against AUAF or Client or any of its parents, subsidiaries, agents, employees, invitees, subcontractors, insurers, underwriters, and such other parties as they may designate.
- e. Insurance certificates shall include specific language as required by Client, if any.
- f. Insurance-Work on the AUAF Installation.
- g. Before commencing work under the Agreement, the Subcontractor shall notify AUAF in writing that the required insurance has been obtained (DBA and as required by Afghan Law), and Subcontractor shall provide current Certificates of Insurance to AUAF prior to initiation of any work hereunder. Such Certificates of Insurance shall reflect all of the required coverage and endorsements.
- h. Subcontractor shall also supply complete copies of all insurance policies to AUAF promptly upon request.
- i. Defense Base Act applies and the Work is performed under a public work contract outside the United States, or the Agreement or Project will be approved or financed under the Foreign Assistance Act. In such instance, the Subcontractor shall: (a) provide, before commencing performance under this Agreement, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651 et seq.) requires; and (b) continue to maintain it until performance is completed. The Subcontractor shall insert, in all lower tier subcontracts under this

Agreement to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those lower tier subcontractors this requirement to comply with the Defense Base Act.

j. Current Certificates of Insurance must be provided to AUAF prior to initiation of any work hereunder. Such Certificates of Insurance shall reflect all of the required coverage and endorsements and shall indicate that AUAF will be provided with thirty (30) days advance written notice of any material change or cancellation.

k. Failure to maintain the DBA insurance coverage as required by this Section 8 shall be deemed to be a material breach of this Agreement.

## **PART I CLAIMS / DELAY**

9.1 Notice and Performance. If any dispute arises between AUAF and Subcontractor involving performance of the Work or any alleged change in the Work or arising out of the Contract Documents or the Project, Subcontractor, unless directed otherwise in writing by AUAF, shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the Work within forty-eight (48) hours after commencement of the disputed work. If Subcontractor's failure to give written notice within the 48 hours prejudices AUAF's ability to recover the funds from the Client, Subcontractor agrees that it will receive no extra compensation for that portion that is determined by the USAID to have been affected by the lack of proper notice for the disputed work.

9.2 Prime Contract. Notwithstanding the foregoing, if the Cooperative Agreement between AUAF and USAID contains notice provisions that are more stringent than those contained in this Agreement, then Subcontractor shall comply with the provisions of the Cooperative Agreement and, in addition, shall give AUAF proper notice to comply with the provisions of the Cooperative Agreement. For purposes of meeting these provisions, AUAF shall make a copy of the applicable portions of the Cooperative Agreement available to Subcontractor upon request.

9.3 Differing Site Conditions, Client Changes. With regard to claims arising from differing conditions, changes directed by USAID or others, or which otherwise are not solely the fault of AUAF, Subcontractor shall be entitled to such portion of the additional compensation received by AUAF from Client on account of such matters as is equitable under all of the circumstances. Subcontractor agrees to be bound by Client's determination and by the determination in any proceeding in which Client is involved, regardless of whether Subcontractor was a party to such proceeding. Subcontractor and AUAF shall cooperate in the prosecution of such claims, and Subcontractor shall pay a pro rata share of the costs and expenses incurred in connection therewith, to the extent that said claim is made by AUAF on behalf of Subcontractor, regardless of the amount of recovery, if any, paid to Subcontractor. Nothing herein shall require AUAF to pursue such a claim on behalf of Subcontractor. Note that claims arising from Subcontractor related to Differing Site Conditions will only be valid if Subcontractor notified AUAF in writing of the differing conditions prior to Subcontractor's disturbance of the differing site conditions.

9.4 Resolution of claims. AUAF shall respond in writing to timely Subcontractor claims as soon as possible. If applicable, AUAF shall submit Subcontractor's claim to AUAF for consideration as a request for equitable adjustment or claim to the Prime Contract.

9.5 Requirements for Immediate Notice. The Subcontractor shall give AUAF immediate notice in writing regarding the following: (a) Any action, including any proceedings before a federal, state or local governmental or civilian agency, filed against the Subcontractor arising out of the performance of this Agreement; (b) Any claim by a third party against the Subcontractor, the cost and expense of which is, or may be allowable under this Agreement; (c) Any hazardous waste spill or release. In the event of

the occurrence of any of the above, the Subcontractor shall immediately furnish to AUAF copies of all pertinent papers and documents received by the Subcontractor with respect to such action or claim.

9.6 Prime Contract Liquidated Damages or Delay Damages. If AUAF suffers any costs, including those under the Sub-Contract for liquidated damages, and / or other damages for delays, AUAF may recover such costs and damages from Subcontractor in proportion to Subcontractor's responsibility for such delay and damages. Any damages for delay caused by Subcontractor shall be deducted by AUAF from the agreed price for said work, subject however, to the options of AUAF to terminate the Agreement for default or convenience as herein elsewhere provided.

9.7 Client Delays. AUAF shall not be liable to the Subcontractor for delay to Subcontractor's Work by the act, neglect or default of the Client, or by reason of strikes, lockouts, or on account of any acts of God, or any other cause, beyond AUAF's control but AUAF will cooperate with Subcontractor to enforce any just claim against the USAID for delay.

9.8 AUAF Delays. Should Subcontractor's work be delayed solely by AUAF, Subcontractor may request an equitable adjustment, if such delay (i) is not also due to the fault, error, omission, or negligence of Subcontractor those for whom Subcontractor is responsible; (ii) directly affects the performance of the Work, (iii) was not reasonably foreseeable and mitigatable, (iv) causes Subcontractor to achieve completion of the Work beyond the Final Completion Date, which must be supported by critical path schedule analysis, and (v) cannot otherwise be reduced or eliminated by a work around plan. Subcontractor must provide AUAF written notification of the delay so that AUAF's ability to mitigate the delay is not prejudiced. Subcontractor acknowledges its obligation to take all reasonable actions to mitigate damages resulting from such delays. Under no circumstances will AUAF be liable for damages resulting from delays to Subcontractors work caused by the Govt. or delays caused by other parties such as Material Vendors or other Subcontractors.

9.9 Recovery from Client. In the event that AUAF in its sole discretion shall seek compensation from the Client as a result of any delay, Subcontractor shall be entitled to an equitable portion of any amount recovered by AUAF less an equitable share of the cost of pursuing said claim. This provision shall be the sole remedy that Subcontractor shall have for any delays experienced on the Project caused in whole or in part by the Client. This provision shall not be construed to require AUAF to pursue any claim against the Client or any other party.

9.10 Subcontractor Remedy. To the greatest extent permitted by law, the remedies set forth at subsections 9.8, 9.9, and 9.10 shall constitute Subcontractor's exclusive remedies for delay, disruption, acceleration, or similar issues relating to schedule or timely performance (Delay Claims), regardless of cause. Unless allowed under the Cooperative Agreement between AUAF and USAID, and accepted and paid for by Client, in no instance shall AUAF be liable to Subcontractor for: (1) profit on any delay, acceleration, or impact costs, (2) loss of anticipated profit, (3) indirect expenses, (4) home office overhead whether calculated pursuant to the *Eichleay* formula or other method, (5) consequential damages, including without limitation, lost work, lost opportunities, or insolvency, (6) claims preparation expenses or expert fees, and (7) costs calculated on a *quantum meruit* or "total cost" basis.

## **PART J TERMINATION of CONTRACT**

### **10. TERMINATION FOR CONVENIENCE**

10.1 Procedure. AUAF may, at its option, and for any reason or no reason, terminate for convenience the Subcontractor's Work in whole or, from time to time, in part, at any time by written notice to Subcontractor. Such notice shall specify the extent to which the performance of Work is terminated and the effective date of such termination. Upon receipt of such notice Subcontractor shall: (a) immediately discontinue the affected Work on the date and to the extent specified in the notice and place no further

orders or sub-subcontracts for materials, service, or facilities, other than as may be required for completion of such portion of the Work that is not terminated; (b) promptly obtain cancellation upon terms satisfactory to AUAF on all purchase orders, sub-subcontracts, rentals, or any other agreements existing for the performance of the terminated work or assign those agreements to AUAF as directed; (c) assist AUAF in the maintenance, protection, and disposition of Work in progress, plant, tools, equipment, property, and materials acquired by Subcontractor or furnished by Subcontractor under this Agreement; and (d) complete performance of the Work which is not terminated.

10.2 Costs. Upon any such termination, AUAF shall have no liability for any damages, including loss of anticipated profits. As its sole right and remedy, Subcontractor shall be paid the following: (a) all amounts due and not previously paid to Subcontractor for the Work performed in accordance with the Contract Documents prior to such notice of termination, and for Work thereafter completed as specified in such notice; (b) reasonable administrative costs of settling and paying claims arising out of the termination of Work under sub-subcontracts or purchase orders; (c) reasonable costs incurred in demobilization and the disposition of residual material, plant and equipment; (d) and a reasonable profit on items (b) and (c) of this paragraph.

## **11. TERMINATION FOR DEFAULT**

11.1 Procedure. If Subcontractor is in material default under any provisions of the Contract Documents, including, but not limited to, failure, refusal, or neglect to provide all submittals as set forth in the Subcontract documents, supply materials/equipment by due dates as set forth in the Subcontract Documents, required skilled personnel and labor to complete the Work within the schedule set forth within the Subcontract Documents, or to promptly correct, replace or repair defective items, material or workmanship, AUAF may give Subcontractor written notice describing the default and immediately terminate all or part of the Work if AUAF deems it appropriate, or AUAF will provide a cure period of at least 10 calendar days to remedy the default. If a cure period is granted and Subcontractor does not remedy the default within the period prescribed in the notice, AUAF may terminate all or any part of the Work under this Agreement and may then complete or have others complete all such terminated work. In addition to partial or complete termination of noted elements of the Subcontractor's scope of work, AUAF may, as an alternative and at its discretion, following the same notification requirements for Termination stated above, provide the Subcontractor with "Scope Execution Assistance" relative to an element or elements of the Subcontractor's scope of work. This includes, but is not limited to the following:

- a. Procurement of materials and equipment when Subcontract's failure to do so is impacting or will impact the project schedule critical path.
- b. Providing of labor resources or other subcontractors to augment the Subcontractor's labor force and progress on the project. This may be initiated for reasons such as to aid with Subcontractor's schedule recovery or ensure sufficiently trained and qualified persons are assigned to the work when Subcontractor has failed to do so. Interference by the subcontractor with the work or access of the additional labor resources or other subcontractors will be grounds for immediate termination; whereby AUAF will immediately proceed with drawing the letter of credit/bank guarantee furnished by the subcontractor.
- c. Paying a deposit for equipment and/or materials that are required for the execution of the project, but where the subcontractor has been unable to pay such deposit to their vendor or lower-tiered subcontractor to get the items ordered. Any such deposit paid by AUAF will be deducted from the balance to be paid to subcontractor for their work. In the event that the specified equipment and/or material fail to meet the subcontract specifications and requirements; AUAF may deduct from the



subcontractor's progress payments, retention, balance of contract, and/or letter of credit/bank guarantee; the amount of such deposit paid by AUAF.

In case of such termination or scope execution assistance, Subcontractor shall not be entitled to receive further payment until the terminated work is completed and accepted by AUAF and Client. If the costs incurred by AUAF, including costs incurred by AUAF in performing additional services to complete the Work, exceed the unpaid balance of the Agreement Amount, Subcontractor shall reimburse AUAF the excess within ten (10) days after receipt of an invoice therefore. Subcontractor can expect the back-charge relative to terminated scope or scope execution assistance will equate to all direct costs incurred by AUAF from third party entities (subcontractors, vendors, consultants, etc.) along with AUAF indirect costs incurred as a result of managing the termination or scope execution assistance actions.

To the extent Subcontractor in good faith disputes any portion of such invoice, AUAF shall pay the undisputed portion and the disputed portion shall be resolved pursuant to the Disputes provisions of the Contract Documents. If the unpaid amount due Subcontractor for the Work completed prior to termination exceeds the costs and charges to complete, AUAF will pay such excess to Subcontractor. The rights and remedies provided in this clause are in addition to the rights and remedies provided by law, equity, or under any other provisions of the Contract Documents.

11.2 Remaining Materials, Equipment. If AUAF performs work under this Section 11, or subcontracts such work to be performed, immediately upon completion of the Work any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

11.3 Bankruptcy or Insolvency. This Agreement may be terminated upon five (5) days written notice by AUAF if Subcontractor (i) becomes insolvent or involved in a liquidation or termination of its business, (ii) is generally not paying its debts as they become due, (iii) commences any proceedings relating to such party under any federal or state law relating to bankruptcy, insolvency, reorganization or similar laws, (iv) applies for the appointment of a trustee, liquidator, or receiver of any part of its assets, (v) has a proceeding commenced against it relating to the appointment of a trustee, liquidator or receiver or pursuant to any proceedings under any federal or state law relating to bankruptcy, insolvency, reorganization, or similar laws (if not dismissed within 30 days of filing), (vi) becomes involved in an assignment for benefit of its creditors, (vii) becomes adjudicated bankrupt, or (viii) defaults on payment obligations owed to other business or teaming partners of AUAF.

11.4 Converted to Termination for Convenience. If after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for convenience.

11.5 Consequential Damages Waiver. In no event will AUAF and the Subcontractor be liable to each other for any special, indirect or consequential damages, however any such liability may arise in connection with the Project, the Work, or this Agreement.

11.6 Cumulative Rights and Remedies. The rights and remedies of AUAF in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

11.7 Definition of Default. Default shall be considered any material breach by Subcontractor of any duty under the Agreement, including, but not limited to the following:

- a. Failure to commence work when required.
- b. Failure to properly maintain the Project.

- c. Failure to maintain the project schedule as agreed prior to Notice to Proceed for an individual project.
- d. Failure to provide work in accordance with the Statement of Work for this Agreement.
- e. Failure to perform change order work as directed by AUAF.
- f. Failure to pay lower tier subcontractors in a timely manner.
- g. Failure to provide and maintain insurance and bonds as required by the Contract Documents.
- h. Failure to provide product warranties and guarantees as required by the Contract Documents.

## **PART K CANCELLATION OF CONTRACT**

### **Cancellation Under Multi-Year Contracts**

- (a) “Cancellation,” as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer—
  - (1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or
  - (2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.
- (b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.
- (c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.
- (d) The cancellation charge will cover only—
  - (1) Costs—
    - (i) Incurred by the Contractor and/or subcontractor;
    - (ii) Reasonably necessary for performance of the contract; and
    - (iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and
  - (2) A reasonable profit or fee on the costs.
- (e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date—
  - (1) Of notification of the non-availability of funds; or
  - (2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.
- (f) The Contractor’s claim may include—
  - (1) Reasonable nonrecurring costs (see Subpart 15.4 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

- (2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;
- (3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and
- (4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

- (1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;
- (2) Any cost already paid to the Contractor;
- (3) Anticipated profit or unearned fee on the canceled work; or
- (4) For service contracts, the remaining useful commercial life of facilities. “Useful commercial life” means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

## **PART L OTHER REQUIREMENTS**

### **13. DISPUTE RESOLUTION**

13.0 Negotiation. AUAF and Subcontractor agree to enter into negotiation to resolve any dispute. Both Parties agree to negotiate in good faith to reach a mutually agreeable settlement within a reasonable amount of time.

Any dispute that cannot be resolved amicably may be referred by either party to arbitration under the then-current rules of the International Chamber of Commerce. The site of any arbitration shall be Dubai, UAE, and the language of the arbitration proceedings shall be English.

Work Continuation and Payment. Pending final resolution of any disputed payment or Change Order requested by Subcontractor, any claim, or any negotiation, arbitration, mediation, or litigation (if applicable), and unless otherwise agreed in writing, Subcontractor shall proceed diligently with the timely performance of its Work and all obligations under the Contract Documents, and subject to the provisions contained herein, AUAF shall continue to make payment to Subcontractor of any non-disputed amounts in accordance with the Contract Documents.

No Limitations of Rights or Remedies. Nothing in this Agreement shall limit any rights and remedies not expressly waived by AUAF which AUAF may have under law or any payment or performance bonds.

**13.1 Assignments and Subcontracts.** This Agreement shall inure to the benefit of and be binding upon each of the Parties hereto and their respective successors and assigns. It may not be assigned in whole or in part by either Party without the prior written consent of the other Party, except upon the merger, consolidation, sale or other transfer of all or substantially all of the assets of either Party.

**13.2 Applicable Law and Compliance.** This Agreement shall be governed by and construed in accordance with the laws of the Islamic Republic of Afghanistan. Subcontractor agrees to comply with the applicable provisions of any local law or ordinance and all orders, rules and regulations issued there under.

**13.3 Severability and Waiver.** The partial or complete invalidity of any one or more provisions of the Contract Documents shall not affect the validity or continuing force and effect of any other provisions. The failure of AUAF to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Contract Documents or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance, under any federal, state, or local law.

**13.4 Inconsistencies and Omissions.** Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Subcontractor to notify AUAF in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, AUAF shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with AUAF's instructions. Each party has reviewed the Contract Documents and any question of interpretation shall not be resolved by any rule of interpretation providing for interpretation against the drafting party. This Agreement shall be construed as though drafted by both Parties.

**13.5 Statutory Costs.** In the event suit, action or arbitration is instituted to enforce any right granted herein, and on appeal, if any, each party shall bear its own fees and costs.

**13.6 Order of Precedence.** The Contract Documents are meant to be complementary. In the event, however, of any inconsistency, conflict, or ambiguity between or among the Contract Documents, or between the Contract Documents and applicable laws, codes, rules, ordinances, and lawful orders, Subcontractor shall be required to (1) follow all applicable U.S. Government terms and conditions, including FAR and, AIDAR and 2 CFR 200; (2) provide the better quality or greater quantity of Work, and (3) comply with the more stringent requirement (in favor of AUAF), unless specified otherwise herein or directed otherwise by AUAF in writing.

**13.7 Entire Agreement.** The Parties hereby agree that this Agreement, including all of the Contract Documents, shall constitute the entire agreement and understanding between the Parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.

## **PART 2 - U.S. GOVERNMENT SUBCONTRACT FLOW-DOWN CLAUSES** (Replaces Section 4, Page 14 of 52 in RFP)

*These terms and conditions are applicable to all U.S. Government subcontracts; in the event the Subcontract is not a U.S. Government Subcontract, these Part B terms and conditions are only applicable as the 2 CFR 200 and FAR requires; and all other requirements of the Contract Documents shall control.*

## **PART I - FAR CLAUSES**

### **7 DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meanings set forth below:

- a. The terms "Subcontractor" or "Subcontractor" mean the party executing this Agreement with AUAF;
- b. The terms "Contractor", "Purchaser" or "AUAF" means the American University of Afghanistan (AUAF);
- c. The terms "Government" or "Client" mean the United States of America;
- d. The terms "Subcontract" or "Agreement" means this Agreement, including all exhibits and attachments, whether physically attached or incorporated by reference;
- e. The term "Prime Contract" means the Government Contract under which this Order is issued.
- f. The term "Contracting Officer" means that person executing the Prime Contract on behalf of the Government and any other officer or civilian employee of the Government who is a properly designated as a Contracting Officer for purpose of administering or terminating the Prime Contract;
- g. The term "FAR" means the Federal Acquisition Regulation, and "FAR AGENCY SUPPLEMENT" means the FAR supplements of other Federal agencies, including the various military departments and subsidiary commands thereof. All such documents are obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. and/or from the particular agency responsible from promulgation of the regulation at issue.
- h. "Subcontract Data Requirements List" or "SDRL" are the data requirements established by the CDRL requirements of the Prime Contract; to the extent such Prime Contract CDRL requirements are within the scope of Work performed by Subcontractor under a Task Order.
- i. "Subcontract Line Item Number" or "SLIN" identify the specific supplies and services and prices and costs for each, mirroring the Contract Line Item Numbers of the Prime Contract at Part I, § B thereof.

### **8 FAR REQUIREMENTS.**

**8.2** Subcontractor shall comply fully with all applicable Federal Acquisition Regulation requirements. In particular, Subcontractor shall, when required, execute and deliver to AUAF all representations and certifications ("reps and certs") and other documents, and take all such other actions, which may be required by FAR provisions. All such "Reps and Certs" shall be updated upon AUAF's request. FAR contract provisions, which are required to be "flowed down" to Subcontractor in the case of Federal projects, shall be deemed to be incorporated herein by reference and apply to any work performed under this Agreement. Certain portions of the clauses or certain clauses themselves may be self-deleting due to the nature of the Work to be performed. Where there are any compliance time requirements in the clause these time frames are reduced by fifty percent (i.e. 1 year becomes 6 months, 90 days becomes 45 days, etc.) for this Agreement. In all cases citations should be construed to apply to the Subcontractor as they apply to AUAF as prime contractor. The sum and substance of each regulation shall also be applied to all additional lower-tiered subcontractors, vendors or entities utilized to perform any work under this Agreement, and Subcontractor shall include this provision in all other contracts. The terms "Contractor" and "Contracting Officer" as used in the clauses incorporated by this reference shall be deemed to refer to the "Subcontractor," "Government," and "Contracting Officer" as used in the clauses incorporated by this reference shall

be deemed to refer to the “Subcontractor,” “AUAF,” and “AUAF’s Procurement Director” respectively.

- 8.3** The Subcontractor has no right of direct appeal to the USAID Government Contracting Officer or the Government. Therefore, when “dispute” or “Dispute Clause” is referenced in any clause, it shall be deemed to be a dispute between the Subcontractor and AUAF. The Prime Contract between AUAF and Government agency is incorporated by reference and is available upon request by Subcontractor.

## **9 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

Subcontractors are strictly forbidden from engaging in any business transactions, in the course of executing its obligations under this Agreement, with the Government or any business entity from the Countries of Cuba, Iran, Sudan, North Korea, and Burma. Forbidden transactions include any purchase of materials, supplies, equipment, services etc. The shipment of goods through these countries is also strictly forbidden. Subcontractors are strictly forbidden from bringing any materials or equipment from these countries to the AUAF / Govt. project sites associated with this agreement. These restrictions must be passed down by the Subcontractor to all of its lower tier suppliers and vendors. The regulation which specifies these restrictions is FAR 52.225-13. For information about enforcement of these restrictions and penalties associated with violations of said restrictions, please visit the Office of Foreign Assets Control Website at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> or contact AUAF’s Procurement Director

## **10 PURCHASES. AGREEMENT CLAUSES – FAR and USAID MISSION ORDERS**

a. The following clauses of the FAR, 2 CFR 200 and AIDAR set forth below are hereby incorporated by reference in this Agreement. The obligations of AUAF to the Government as provided in said clauses shall be deemed to be the obligations of Subcontractor to AUAF. Clauses referenced below shall be those in effect on the effective date of this Agreement and the affiliated WAs. If there is a conflict or addition in a clause in effect on the effective date of this Agreement and a clause of the Prime Contract, the Prime Contract clause shall govern.

b. Wherever necessary to make the context of the clauses set forth in this Section applicable to this Agreement, the term "Contractor" shall mean Subcontractor; the term "Subcontractor" shall mean direct Prime Subcontractor; the term "Contract" shall mean this Agreement; and the terms "Government," "Contracting Officer," and equivalent phrases shall mean AUAF. However, the terms "Government" and "Contracting Officer" do not change (1) in the phrases "Government Property," "Government-Owned Property," "Government Equipment," "Government-Furnished Property," and "Government-Owned Equipment;" (2) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or his duly authorized representative; (3) when access to proprietary financial information or other proprietary data is required; (4) when title to property is to be transferred directly to the Government; (5) where specifically modified as noted below; and (6) in FAR’s 52.215-2, 52.227-1, and 52.227-2.

c. Clauses Applicable to All Orders or Agreement may be seen at <http://farsite.Hil.af.mil/VFFARa.htm>.

## **12, SPECIFIC FAR AND 2 CFR 200 CLAUSES APPLICABLE**

### **FAR Clauses**

52.202-1	Definitions
52.203-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203.6	Restrictions on Subcontractor Sales to the Government
52.203-7	Anti-Kickback Procedures
52.203-13	Contractor Code of Business Ethics and Conduct
52.203-16	Preventing Personal Conflicts of Interest
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

### **2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses**

Requirements under the Uniform Rules, as applicable.

In accordance with 2 C.F.R. 200, Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. §200.326

1. Remedies.
  - a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, if A.
  - b. Applicability: This requirement applies to all grant and cooperative agreement programs.
2. Termination for Cause and Convenience.
  - a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, if B.
  - b. Applicability. This requirement applies to all grant and cooperative agreement programs.
3. Debarment and Suspension.
  - a. Applicability: This requirement applies to all grant and cooperative agreement programs.
  - b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).
  - c. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, if I; and Chapter IV, if 6.d and Appendix C, if 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. §80.530; Chapter IV, if 6.d and Appendix C, if 2.

d. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include sub-awards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and sub-recipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless accepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and sub-recipient.

e. Specifically, a covered transaction includes the following contracts for goods or services:  
(1) The contract is awarded by a recipient or sub-recipient in the amount of at least \$25,000.

(2) The contract requires the approval of USAID, regardless of amount.

(3) The contract is for federally-required audit services.

(4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or sub-recipient and requires either the approval of USAID

f. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified: "Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of sub-recipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of sub-recipient), the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

4. Byrd Anti-Lobbying Amendment.

a. Applicability: This requirement applies to all grant and cooperative agreement programs.

b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, if J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, if 4.

c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, if 6.c and Appendix C, if 4.



## APPENDIX A, 44 C.F.R. PART 18-CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative AgreementsThe undersigned [Contractor] certifies, to the best of his or her Knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file. The required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any. Signature of Contractor's Authorized Official Name and Title of Contractor's Authorized Official Date"

### 10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all grant and cooperative agreement programs.

[END SUBCONTRACT]