



TENDER DOCUMENT

INVITATION TO TENDER

The Georgian National Communications Commission (hereinafter referred to as the Commission) hereby invites potential tenderers to provide consultancy service - Technical-economic Advice on Liberalization of the 900 MHz Spectrum Band

OBJECTIVES OF TENDER

The purpose of this tender is to engage the services of an experienced and qualified professional contractor to provide detailed technical and economic advice on the optimal strategy options for the liberalization of 900MHz spectrum band in Georgia

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DEFINITION OF TERMS

Purchaser -Contracting Authority- (buyer)

Tenderer - Company/person submitting Tender Proposal (Tender participant)

Tender Application/Tender Document- documentation issued by the Purchaser

Tender Proposal – Technical Documentation and Bid offered by the Tenderer

Bid-Tender price offered by the Tenderer

Bid Rate- minimum fixed value by which the bid can be reduced

CHAPTER I- General Guidelines for Participating in the Electronic Tender

Electronic procurement is conducted via the Unified Electronic System of State Procurement (hereinafter the System). Acceptance of Tender Proposals will start 5 days prior to the deadline for Tender submissions. For submitting Tender Proposals: potential Tenderers must (a) register in the system (b) get acquainted with and accept the affidavit (these can be performed only via the System); (c) present the Tender Guarantee and (d) pay the Tender Fee. The two last actions can be performed both online (via the System web) and without using the System. Without completing the mentioned steps potential Tenderer will not be able to submit the Tender Proposal and, respectively take part in the Electronic Bidding. The Tender Guarantee must be in the amount of 1% of the estimated cost indicated in the Tender Application. The Tender Fee is 50 GEL. The Tender Guarantee shall be nonrefundable in the following cases:

- a) If the Tenderer declines the submitted Tender Proposal;
- b) If the Tender Proposal and/or Eligibility Documentation of the Tenderer with best Bid (including after examination of the Technical Documentation of the Tenderer) do not correspond to the requirements of the Tender Application and the Tender Document;
- c) If the winner of the Tender refuses to conclude the Agreement or fails to submit the Performance Guarantee (if any) within the term established by the legislation;
- d) If the Tenderer acts dishonestly.

After completing the above mentioned steps potential Tenderer will be authorized to submit the Tender Proposal via the system. The Tender Proposal consists of the Technical Documentation and the Tender Price (Bid).

Technical Documentation shall mean any type of information about the object of procurement and about the Tenderer uploaded to the System that is required by the respective Tender Application and the Tender Document, other than those required for verifying eligibility criteria of the Tenderer.

After uploading Technical Documentations Tenderers can offer the Tender Price (Bid). If it is specified in the Tender Application that the Tender price (Bid) must be shown excluding the Value Added Tax (hereinafter VAT), the Tenderer shall indicate the Tender price (Bid) without the VAT, however, if the Tenderer is a VAT-payer, the corresponding amount will be included in the Agreement.

After placing the Bid Tenderer becomes entitled to participate in Electronic Bidding, divided into the basic time and 3 additional rounds.

During the basic time Tenderers may change Bids in descending order and in amount not less than the bid rate specified by the Purchaser. The bid rate is the minimum fixed value (predefined by the Purchaser and indicated in the corresponding field of the Tender Application) by which bids can be reduced.

During additional rounds Tenderer has the right to reduce the bid only once (one time during each additional round), for which 2 minutes are allocated. Participation in additional rounds is not obligatory and the Tenderer has the right to abstain from participating in the additional round. In such case the last bid fixed by the Tenderer shall remain valid. Participation in rounds means reduction of the offered Bid according to the above mentioned principle or leaving the same bid.

Only the Tenderers who have submitted the Tender Proposals according to the established procedure shall be entitled to participate in additional rounds. In each round and in each consequent round Tenderers are listed in descending order, in other words, the Tenderer with the lowest bid will offer the last bid. If equal bids are offered by the Tenderers the last offer shall be made by the Tenderer who has first proposed such price.

After finishing additional rounds the System groups the Tenderers according to the offered bids and Purchaser checks the Technical Documentation of the Tenderer with the lowest bid. If such Tenderer's Tender Proposal meets the requirements of the Tender Application and the Tender Document, the Purchaser shall request the Tenderer to submit the documents verifying the eligibility criteria.

Documents verifying the eligibility criteria are those issued by the respective administrative bodies to be presented by the Tenderer if any is requested by the Tender Application or the Tender Document. The dates of issue of the documents verifying Tenderer's eligibility criteria shall not precede the deadline for submission of Tender Proposals.

The Purchaser shall give the term of maximum 5 working days to the Tenderer for submitting the documents verifying his/her eligibility data. If the Tenderer with the lowest Bid successfully passes through all the above stages (is not disqualified), no later than after 5 working days upon submission of requested documents the Purchaser shall conclude the agreement on state procurement with the winner of the Tender.

In case the Technical Documentation of the Tenderer does not fully meet the requirements of the Tender Application and Tender Document, the Purchaser shall give him/her no more than 3 days to correct the documentation. Correction of the Technical Documentation that

may cause significant change in the Tender Proposal and affect the offered bid shall be inadmissible and the Tenderer shall be disqualified.

The Tenderer may be disqualified if he/she fails to submit the documents verifying his eligibility data and/or if presented documents contain inaccuracies. In such case the Purchaser shall be entitled to address the next Tenderer with the lowest offered Bid, if the Technical Documentation submitted by the next Tenderer meets the requirements of the Tender Application and the Tender Documents. In case the bid offered by the next Tenderer considerably exceeds (i) the price proposed by the disqualified Tenderer and/or (ii) the value of the procurement object, the Tender Commission shall be entitled to cancel the Tender.

The Draft agreement attached to this Tender Document shall be amended in accordance with the Tender Proposal of the Winner.

CHAPTER II- Eligibility Criteria

1. The Tenderers shall submit the following Eligibility documents:

1.1 For (resident/nonresident) legal entities and individual entrepreneurs:

- a) a certificate issued by the respective authority confirming that no insolvency proceeding is pending against legal entity/individual entrepreneur;
- b) extract from the Entrepreneurs'/Noncommercial Legal Entities Register issued by the respective authority;
- c) a certificate issued by the respective authority confirming that no restructuring and liquidation is pending against legal entity/individual entrepreneur.

1.2 For (resident/nonresident) physical persons:

- a) Reference about criminal record issued by the respective authorized body confirming that the person has not been convicted for entrepreneurial and economic activity crimes;
- b) Copy of ID or passport;

1.3 Documents proving the experience of the Tenderer in performing works similar to those specified in this Tender Document;

2. The Tenderer shall not be entitled to submit an alternative Tender Proposal.

3. The dates of issue of the documents verifying Tenderer's eligibility criteria (except those specified in sub-clause 1.3 of this Chapter) shall not precede the deadline for submission of Tender Proposals. Eligibility documents shall be submitted after completion of additional rounds upon request by the Purchaser. Eligibility documents of nonresident entities shall be submitted in original language along with the translation into Georgian language certified by a notary.

4. The Tender Guarantee (1% of the estimated cost indicated in the Tender Application) shall be valid least for 60 calendar days after the first date defined for the submission of Tender Proposals.

CHAPTER III –Technical Assignment (provision of consultancy service - Technical-economic Advice on Liberalization of the 900 MHz Spectrum Band (hereinafter referred to as the Study))

1. Tenderers shall submit written Technical Documentation of the Tender proposal in Georgian Language (if Technical Documentation is drafted in English Georgian translation shall be attached) clearly demonstrating their ability to conduct the Study, covering the following issues:

- (a) A detailed approach to the Study stating the Tenderer's understanding of the assignment and the work to be performed;
- (b) Details of the methodology, equipment, software and any modeling tools to be used;
- (c) Phases of the Study (including term of each phase) proposed by the Tenderer and price of each phase;
- (d) A detailed description of the individuals proposed for the assignment, in particular, their role/responsibility in the assignment and description of previous relevant experience;
- (e) Description of similar work completed to-date by the Tenderer;
- (f) The document signed by the duly authorized person of the Tenderer stating the validity term of the Tender Proposal. Tender Proposal shall be valid at least for 30 calendar days after it is uploaded to the System

2. General requirements of the Study:

- a) The Study should evaluate the impact of liberalizing 900MHz spectrum upon the 3G/4G mobile market. The objective is to analyze the economic impact of enabling operators to use the 900MHz band to deliver 3G/4G services, by assessing the costs and benefits of alternative options to liberalize 2G spectrum. The analysis should take account of the current distribution of spectrum amongst the three mobile operators in the Georgian market, analyze whether the existing assignment of 900 MHz spectrum is likely to distort competition in Georgian market in the longer term and consider optimal future spectrum re-assignment and distribution options, overcoming competition issues and taking into account the fact that it will be important for all operators to own adequate amount of 900MHz spectrum due to its superior propagation characteristics and the expected widespread availability of 900MHz equipment. This issue was considered in many European countries as a result of the adoption of European Directive 2009/114/EC in 2009, which amends the earlier European GSM Directive and provides the legal basis for national regulators to progress with the re-assignment of 900MHz frequencies.

b) The output of the Study should be to recommend a preferred strategy (or strategies) to liberalize 2G mobile (in particular 900MHz) spectrum, taking account of the need to stimulate competition in the market (including the scope for market entry by a fourth operator). The Study has to ensure that recommended strategy options are proportionate, non-discriminatory and can be fully justified and that the cost analysis of the identified options are based on comprehensive and sufficiently detailed methodology and modeling tools that take into account unique features of Georgian mobile market and fully supports regulatory decision making in relation to 900MHz liberalization.

3. Specific requirements of the Study- the Study shall include but shall not be limited to the following:

- a) Effectiveness of current 900 MHz spectrum utilization and potential for spectrum release
- b) Impact of wider distribution of 900 MHz spectrum on competition
- c) Options for partial mandatory release of 900MHz spectrum covering matters such as:
 - i) Spectrum caps in 900 MHz spectrum, taking into consideration the optimal amount of 900MHz spectrum that current incumbent mobile operators need to hold in order to maintain 2G services (including ability of the networks to support traffic growth) alongside with the roll-out of 3G/4G services.
 - ii) The optimal amount of 900MHz spectrum that new entrant will need to hold in order to effectively compete with incumbent operators
 - iii) Detailed calculations of costs associated with clearing different quantities of 900MHz spectrum (please note that the methodology and analysis based on computation/simulation technique used shall be comprehensive and sufficiently detailed)
- d) Potential benefits of 900 MHz spectrum liberalization;

4. The winner of the Tender shall:

- a) Present the bank guarantee for performance in the amount of 5% of the contractual price. The bank (performance) guarantee must be submitted before signing the respective Agreement. The validity term of the performance guarantee shall exceed the term of the respective Agreement by 30 days.
- b) Submit completed work (report) in electronic form in accordance with the phases and within the terms determined by the respective Agreement.
- c) Complete the work until September 30, 2011.

5. The Tender price (bid) shall include all costs of the Tenderer related to the provision of services under this Tender Document except for VAT. Costs not included in the Tender price (Bid) shall not be reimbursed. The Tender price (bid) shall be indicated in the system excluding the VAT. Payment under the Agreement concluded in the result of this Electronic Tender shall be effected from the budget of the Georgian National Communications Commission; the total value of the agreement shall include the Tender price (bid) offered by the winner of the Tender plus all taxes prescribed by the Georgian legislation

6. Payment shall be made within 15 calendar days after completion of each phase of (determined by the Agreement) of the Study and after submitting of the respective report and signing of the Act of Acceptance. Advance payment conditions shall not be considered.

7. The potential Tenderer shall get acquainted with and accept the terms of the affidavit, as provided in the Unified Electronic System of State Procurement, prior to the submission of the Tender Proposal.

8. Additional information can be obtained from the following contact persons:

Members of the Bidding Commission:

Mrs. Thea Tkeshelashvili - Tel: 311699 - E-mail: tkeshelashvili@gncc.ge

Mr. Grigol Sulikhia-Tel: 399669- E-mail: gsulukhia@gncc.ge

CHAPTER IV- Draft Agreement on State Procurement

Agreement No

This document is the draft agreement on state procurement to be concluded with the winner of the Tender after the completion of the Electronic Tender. The terms and conditions of the draft agreement shall be specified based on the Tender Proposal of the winner, which shall be attached to the agreement and form an integral part of thereof.

----- (hereinafter the Purchaser), represented by its Chairman
-----, on the one hand, and, ----- (hereinafter the Supplier) represented by its -----, on the other hand, on the basis of the Law on State Procurement and the Tender Proposal offered by the Supplier as a result of conducting the Electronic Tender conclude the present Agreement on State Procurement for the following:

1. Definition of terms used in the agreement

- 1.1. "Agreement on State Procurement" (hereinafter the Agreement) - the present Agreement made between the Purchaser and the Supplier, signed by the parties, with all enclosed documentation;
- 1.2. "Value of the Agreement" - total amount to be paid by the Purchaser to the Supplier for full and accurate fulfillment of contractual obligations;
- 1.3. "Day", "Week", "Month" - calendar day, week, month;
- 1.4. "Purchaser" – organization implementing the procurement;
- 1.5. "Supplier" – provider of services in the scope of this agreement;
- 1.6. "Services" – subject of the agreement as specified in Article 2 therein.
- 1.7. "Technical assignment" – Technical assignment of the Tender Document to be attached to the agreement as its integral part.

2. Subject of the Agreement

- 2.1. Consultancy service - Technical-economic Advice on Liberalization of the 900 MHz Spectrum Band;
- 2.2. Description of services provided by the agreement shall be given in the Technical Assignment of this Tender Document.

3. Value of the Agreement

3.1. Total value of the Agreement shall amount to _____

3.2. Total value of the Agreement shall include all costs of the Supplier related to the services under this Agreement and all taxes payable under the Georgian legislation.

3.3. Payment under this Agreement shall be made by the Purchaser's own funds. If the Supplier is the payer of VAT, the amount of VAT shall be charged to the value of the Agreement. In accordance with the aforesaid, the total value of the Agreement shall include the bid price proposed by the winner of the tender and the VAT amount charged to this price.

4. Form and terms of payment

4.1. Payment to the Supplier shall be made by bank transfer in local or foreign currency -----

4.2. Payment to the Supplier shall be made by installments. Interim payment shall be made on the basis of an interim Act of Acceptance of services under this Agreement and upon submission of an appropriate invoice.

4.3. Final payment shall be made on the basis of a final Act of Acceptance upon full completion of services under this Agreement and submission of an appropriate invoice.

5. Rule of service delivery-acceptance

5.1 After full or partial completion of services the Supplier shall submit to the Purchaser the Act of Acceptance.

5.3. Services shall be deemed fully completed as of the date of signing of the final Act of Acceptance.

5.4. person Authorized for signing of the Act of Acceptance on behalf of the Purchaser shall be designated for the date of signing of the Agreement.

6. Place and term of provision of services

6.1. The place of provision of services shall be the Purchaser's and/or Supplier's -----

6.2. Provision of services shall end not later than -----

7. Rights and responsibilities of the parties

7.1. The Purchaser shall have the right:

a) to perform at any time inspection of work and quality of the work to be performed by the Supplier;

b) to request necessary documents from the Supplier before completion of services.

7.2. The Purchaser shall be responsible:

a) to reimburse the cost of services rendered by the Supplier in accordance with the terms and conditions of this Agreement;

b) to designate a representative to supervise the working process, and provide appropriate consultations to the Supplier, if required.

7.3. The Supplier shall be entitled to request from the Purchaser reimbursement of services in accordance with the terms and conditions of the Agreement.

7.4. The Supplier shall be responsible:

a) to provide services of adequate quality and in full volume within the term specified in paragraphs ___ and ___ of the Agreement;

b) to ensure provision of services according to the Technical Assignment;

c) to observe confidentiality of documentation handed over to him by the Commission;

d) to submit to the Purchaser final work (report) in electronic format after full completion of services.

8. Performance Guarantee

8.1. The validity term of the Performance Guarantee shall exceed the term specified in paragraph 6.2 of this Agreement by 30 days.

8.2. The performance guarantee submitted by the Supplier in the amount of 5% of the total value of this Agreement shall be used for compensation of any losses that may be borne by the Purchaser due to non-fulfillment or inadequate fulfillment of the terms and conditions of this Agreement by the Supplier.

8.3. In case the Supplier ensures full and adequate performance of his obligations determined by this Agreement or if the Agreement is terminated due to reasons beyond his control, the Purchaser shall be responsible to ensure immediate return of the Performance Guarantee.

9 Inspection of contractual obligations

9.1. Inspection of contractual obligations of the Supplier shall be carried out by a person duly authorized by the Purchaser for the moment of signing this Agreement.

9.2. Inspection shall mean- control of terms and conditions of the work of the Supplier, as well as the quality of rendered services.

9.3. All costs related to elimination of any identified faults or defects shall be born by the Supplier as prescribed by the Georgian legislation.

10. Penalty for nonfulfillment

10.1. In case of delay in the fulfillment of contractual obligations the party will be charged with a penalty in the amount of 0,1% of the value of unfulfilled obligation for each day of delay.

10.2. If the total amount of the imposed penalty exceeds 10 (ten) percent of the total value of this Agreement, the Purchaser shall have the right to terminate the Agreement and request from the Supplier reimbursement of the penalty amount due for the date of termination of this Agreement.

10.3. Payment of the penalty shall not relieve the party from fulfillment of his principal obligations.

11. Amendment and termination of the Agreement

11.1. Any amendment or addition to this Agreement shall be made only in a written form upon mutual agreement of the parties.

11.2. Changing of the terms and conditions of this Agreement, including the price, is inadmissible, if these changes cause increase in the price of the total value of the Agreement or are worsening the conditions for the Purchaser, except in cases provided for by Article 398 of the Civil Code of Georgia. The terms and conditions of the Agreement may be revised in accordance with the procedure established by the Georgian legislation.

11.3. If circumstances specified by Article 398 of the Civil Code of Georgia should occur, increase in the total value of the Agreement for more than 10 (ten) percent shall be inadmissible.

11.4. If any of the parties fails to fulfill the terms and conditions of this Agreement, other party shall be entitled to make the decision on termination of the Agreement unilaterally.

11.5. The party shall be responsible to notify the other party in written or through electronic communication means about the decision made under paragraph 11.4 above no less than 5 calendar days earlier.

11.6. The Agreement may be terminated also at the parties' discretion based on mutual agreement.

12. Force-majeure

12.1 The parties shall be released from responsibility for nonfulfillment of contractual obligations if this is caused by effects of force-majeure. If such circumstances should occur, the party shall be responsible to notify the other party about the impossibility of fulfillment of assumed responsibilities.

12.2 If any of the parties cannot perform his obligations under this Agreement due to the force-majeure conditions, the party shall be responsible to notify the other party immediately (but not later than the next calendar day) about the occurrence and/or completion of such circumstances, otherwise the relevant party shall not be relieved from assumed responsibilities.

12.3 Responsibilities and obligations of the parties shall be resumed upon completion of the effect of force-majeure circumstances.

13. Resolution of disputes

All disputes that may arise during the validity term of this Agreement shall be resolved by mutual agreement between the parties. If the agreement cannot be reached, the parties may appeal to the court for resolution of disputes in accordance with the effective legislation of Georgia.

14. Validity of the Agreement

The Agreement shall come into force on the above indicated date and shall remain in effect through-----.

Purchaser:

Supplier:
