

# **TERMS AND CONDITIONS OF REAL PROPERTY AUCTION SALE**

**January 2007**

## **Samoon Dried Fruit Enterprise in Liquidation, a/k/a Samoon Fruit Enterprise, a/k/a Samoon Dried Fruit Export Enterprise**

### **1. GENERAL INFORMATION**

These Terms and Conditions are regulated and based on Article 102 of the Procurement Law of the Islamic Republic of Afghanistan as well as the Law of State Owned Enterprises and its Amendments.

The placement of a successful bid at a State Owned Enterprise of the Islamic Republic of Afghanistan auction establishes a legally binding agreement between the successful bidder and the Ministry of Finance, being the legal representative of the State Owned Enterprise in Liquidation, with full force and authority, in accordance with the laws stated above.

The Auctioneer's announcement of the highest bid amount and the bidder's number establishes the agreement, which is subject to final acceptance by the Liquidation Committee. The auction sale is bound by these Terms and Conditions in accordance with the Auction Sale Agreement. The successful bidder is legally bound to pay for any and all real/immovable and movable assets ("Property") awarded in accordance with his/her bid.

### **2. ELIGIBILITY OF BIDDERS**

The Bidder warrants that he/she/it is NOT:

- (a) under 18 years of age;
- (b) a member of the Liquidation Committee or an immediate family member of a member of the Liquidation Committee;

- (c) a legal entity owned fully or partially by a member of the Liquidation Committee, nor a legal entity owned fully or partially by an immediate family member of any member of the Liquidation Committee;
- (d) an individual with a criminal record evidencing any felony conviction;
- (e) an agent or representative for a non Afghan Citizen or entity; nor
- (f) an agent or representative for any person classified in (b), (c) or (d).

The Bidder warrants he/she/it is:

- (a) an Afghan Citizen; or
- (b) a legal person under the Laws of the Islamic Republic of Afghanistan.

### 3. REGISTRATION OF BIDDERS

Persons wishing to participate in the bidding process of the sale of the Enterprise's Property are required to obtain, fill out, and deliver a bidder Registration Packet, (by courier or hand delivery) at least fifteen (15) days prior to the Auction Date of the Enterprise's Property. Potential bidders must indicate which Property they are interested in buying. No bids for specific Property will be accepted from individuals nor entities who have not registered their interest in the specified Property. **Potential bidders' COMPLETED Registration Packets must be received in the office of the State-Owned Enterprise Information Center, located at the Afghanistan Information Support Agency in Kabul, Afghanistan NO LATER THAN 15 days PRIOR to the sale date.** Under no circumstances will Registration Packets be accepted after this time. For further information please contact 0799 239 538 or via e-mail at soesinfo@gmail.com.

The Registration Packet, which must be submitted to the Liquidation Committee, as representative for the Enterprise, shall contain all of the following documents:

- (a) Registration Form - (See Schedule 1 attached hereto);
- (b) Photo ID;
- (c) Wire transfer confirmation/receipt of the Initial Deposit - being 5% of the minimum sale price of each auction property the potential bidder wishes to participate;

(d) Letter from reputable bank – (See Schedule 2 attached hereto);

(Potential Bidders acknowledge that they must provide a letter from a reputable bank acknowledging that the bidder has the suitable means in anticipation of purchasing the auction Property and that the origin of the funds to be used to purchase the Property, as it is understood, are not from illegal activities.)

(e) Power of Attorney, if applicable;

(f) Company Resolution, if applicable; and

(g) Checklist of all documents required to be submitted

**In the event a submitted Registration Packet is incomplete in any way, the potential bidder will NOT be allowed to participate in the auction process for that particular Enterprise Property. A potential bidder will be notified within 24 hours by the State-Owned Enterprise Information Center, indicating whether or not their Registration Packet has been accepted or not. If the Registration Packet is not accepted, an explanation will be provided so that the problems with its submission may be rectified.**

Once a completed Registration Packet has been received the potential bidder becomes a Registered Bidder and may participate in the auction sale of the Enterprise. At this point the Registered Bidder must collect an Enterprise Auction Packet (“Auction Packet”). The Auction Packet shall consist of the following:

(a) Bidder Registration Number;

(b) Auction Sale Agreement; and

(c) Affirmation of Familiarity with Documents and Property.

In the event a person is bidding on behalf of another party, an original notarized Power of Attorney must be included in the Registration Packet. The Power of Attorney must include the buying party's name, address, phone number, and Passport or tazkera information.

If the potential bidder is planning to bid in the name of a legal entity, he/she must have the appropriate official documentation to show proof of eligibility to bid on behalf of that legal entity, including but not limited to a corporate resolution to act on their behalf for the purchase the Property, corporate resolution to appoint an agent and a notarized Power of Attorney. The Power of

Attorney must include the buying party's name, address, phone number, corporate information and Passport or tazkera information.

An individual's signature on the bidder registration form, be it for or on behalf of a natural person or legal entity, is an acknowledgment of his/her full and complete understanding of all terms and conditions and his/her agreement to be bound thereby. **Bidders are cautioned to carefully read all applicable terms and conditions contained in this document and the sales flyer, before signing the bidder registration card.**

The Registered Bidder agrees that, should he/she be the successful bidder of the Property, the following information regarding the transaction shall be published on the Ministry of Finance's Privatization website, ([www.mof.gov.af/eng/index.asp](http://www.mof.gov.af/eng/index.asp)), AISA website ([www.aisa.org.af](http://www.aisa.org.af)) and the State-Owned Enterprise Information Center website ([www.privatization.mof.gov.af](http://www.privatization.mof.gov.af)) noting: (1) the Registered Bidder's name; (2) the Property's address; (3) the Purchase Price.

#### **4. INSPECTION OF PROPERTY**

The Registered Bidder is invited, urged and cautioned to inspect the Property prior to submitting a Bid. Failure to inspect the Property shall not constitute cause for cancellation of sale. Property will be available for inspection/open house at the times specified by the Liquidation Committee and as advertised by the sale flyer or other publication. Other than the scheduled inspection/open house dates, absolutely no access to the Property will be allowed without prior authorization of the Liquidation Committee. At their own expense, Registered Bidders may have Property inspectors examine the Property during regularly scheduled inspection/open houses.

An Affirmation of Familiarity of Documentation and Property (in substantially the form of Schedule 2, hereto) must be signed prior to commencement of the auction by all Registered Bidders.

#### **5. REAL PROPERTY DESCRIPTIONS**

The Bidder understands and agrees that the Property is offered by the Seller and purchased and accepted by the Buyer "AS IS" and subject to any and all restriction and regulations including but not limited to zoning requirements. The Liquidation Committee, the Ministry of Finance, the Enterprise in Liquidation and their agents make no warranties or guarantees whatsoever whether written, oral, or implied as to the quality, condition or habitability of the Property.

All information contained in the sale flyer or other publications was derived from sources believed to be correct, but there is no guarantee. Buyer acknowledges that he/she relied entirely on his/her own information, judgment and inspection of the Property.

Due diligence information pertaining to the Property will be made available during the scheduled viewing(s) which times are set out in the sale flyer and publicly advertised

## **6. OFFERING OF PROPERTY FOR AUCTION AND SUBMISSION OF BIDS**

The auctioneer will offer each Property in accordance with sale flyer sequence or by special announcement. Bidders will communicate their bid amounts through the use of Bid Cards, which shall be issued to each Registered Bidder in attendance at the Auction Sale.

Property will be sold to the highest bidder when the Liquidation Committee accepts its bid amount unless its bid or the bidder is rejected as provided herein. If the highest bid at the end of the auction sale is not equal to or exceeding the Liquidation Committee's reserve price, being the estimated valuation of the property and setting the starting price of the auction, the auctioneer will close the bidding and deem the auction a failed auction.

The Bidder who placed the bid accepted by the Liquidation Committee is legally bound to pay for the Property in accordance with the successful bid. Payment of the Purchase Price must be made within 10 days of the successful Enterprise auction sale.

Once the auctioneer recognizes the highest bid, a contract is established and the successful bidder may not withdraw its bid. The Successful Bidder must sign the Auction Sale Agreement at that time. The auctioneer will not accept unilateral conditions asserted by any bidder, and if any such conditions are raised, the auctioneer may award the Property to the second highest bid, if it is equal to or exceeds the Liquidation Committee's reserve price and if the second highest bidder accepts the Liquidation Committee's offer of the award of the Property.

In the event of a dispute as to the amount offered by the Successful Bidder, the Liquidation Committee reserves the right to review the video tape of the auction, if any, for clarification or to auction the Property again if the evidence does not appear to be sufficiently clear.

## **7. COLLUSION**

Practices that eliminate competition, such as collusive bidding or intimidation, may result in criminal, civil, and/or administrative action against the participants.

## **8. CONSIDERATION OF BIDS**

The Liquidation Committee reserves the right to reject any or all bids for legitimate reasons only, and to waive any technical defects in bids. The Property is sold with a minimum reserve price, being the minimum starting price. If the minimum reserve price is not achieved, the Liquidation Committee may withdraw the Property from the auction at any time before the sales contract is executed.

## **9. FORM OF PAYMENT**

Acceptable forms of payment are ONLY as follows: a wire transfer from a reputable domestic or international bank, payable to the account of Samoon Dried Fruit Export Enterprise, Da Afghanistan Bank, Account No. 9113/8, Personal or business checks, bank letters, cash, or letters of credit are not acceptable.

Payment for the full Purchase Price must be received no later than 10 calendar days from the successful Enterprise auction sale. In the event the Buyer does not pay within 10 calendar days from the successful auction, the Buyer will lose his/her deposit and the auction will be deemed a failed.

## **10. FINANCING**

This is a cash sale. The buyer is responsible for obtaining his or her own financing arrangements, if any. The Government does not provide financing for the purchase of any Property offered through an Enterprise Auction Sale. Bidders are strongly recommended to investigate and secure financing arrangements, if necessary, prior to participating in any Auction Sale.

Failure to obtain financing does not relieve the buyer of his/her legal responsibility and obligation to complete the contract. Failure to comply with all provisions of the Auction Sale Agreement regarding payment of funds may result in termination of the contract due to Buyer's default and may result in the forfeiture of any deposit held by the Seller.

## **11. DEPOSITS**

Unsuccessful Bidders will have their Deposits returned within ten (10) calendar days after the Auction Sale.

## **12. CUSTOMARY CLOSING**

Customary Closing will be held within 10 calendar days of the successful Auction Sale in accordance with the Auction Sale Agreement. Buyer and Seller may mutually agree in writing to extend this deadline, but no longer than 14 calendar days from the 10 day deadline.

Buyer must make all payments by the dates and in the manner specified in the Auction Sale Agreement. Failure to comply with these payment provisions shall cause the Buyer to be in default of the Auction Sale Agreement and thereby forfeiting his/her earnest money deposit.

## **13. APPLICABLE TAXES**

Buyer is responsible for the payment of any and all applicable taxes imposed by the Laws of the Islamic Republic of Afghanistan, as and when they become due and payable.

## **14. TITLE**

Buyer shall be responsible for bearing all costs associated with registration of the Property as set out in the Auction Sale Agreement. Customary Title will be provided to the Buyer at the time full payment is made to the Seller and the Auction Sale Agreement has been signed. Buyer shall abide by the title registration procedures set out in the Auction Sale Agreement.

## **15. DEFAULTS**

Failure to make the required payments and/or comply with the time frames specified in the Auction Sale Agreement shall be deemed a cause of default by the Buyer and may result in cancellation of the Auction Sale Agreement and the forfeiture of the Deposit and any rights, title and interest the Buyer may have acquired in the Property. In this case, title to the Property will remain with the Government, the Auction Sale will be deemed a failed auction and the Property will be set for a subsequent auction at an appropriate time.

## **16. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

It is the Buyer's responsibility to ascertain and comply with all applicable laws, ordinances and regulations pertaining to the registration, licensing, sale, use or disposal of the Property.

The Buyer of the Property is not excused from any violation of such laws or regulations either because the Government is a party to this sale or has had any interest in the Property at any time.

Schedule 1

BIDDER REGISTRATION FORM

BIDDER NUMBER

DESCRIPTION OF THE ASSET THAT YOU ARE BIDDING ON

Name of Legal Entity (if representing a legal entity)      Type of business

First Name      Last Name

Mailing Address

City      Province      Country

Passport Number      Telephone Number

Bank Name and SWIFT Code      Account Number  
(This information is required so that your deposit can be returned in case you do not purchase the asset being auctioned.)

Number, Date, and Amount of Conditional Transfer (Deposit)

Bidder certifies that he/she is not:

- under 18 years of age
- a member of the Liquidation Committee or an immediate family member of a member of the Liquidation Committee;
- a legal entity owned by a member of the Liquidation Committee, nor a legal entity owned by an immediate family member;
- an individual with a criminal record with a conviction of a felony;
- an agent or representative for any person classified in (b), (c) or (d).

The Bidder warrants that he/she/it is:

- an Afghan Citizen; or
- a legal person under the Laws of the Islamic Republic of Afghanistan.

Bidder agrees that, should the registrant be the successful bidder of the asset(s), the following information regarding the transaction shall be published on the Ministry of Finance Privatization website, AISA website and State Owned Enterprise Information Center website noting: (1) the registered bidder's name; (2) the property's address; (3) the purchase price of the property.

Name on Title Documents:      Signature

\_\_\_ Bidder Name    \_\_\_ Business Name

Schedule 2

Draft Bank Letter

TO WHOM THIS MAY CONCERN

Dear Sirs:

To the best of our knowledge, at the present time Mr/Ms/Corp \_\_\_\_\_ is in a good credit standing with our bank. He/She/It should have access to sufficient funds in anticipation of purchasing the property to be auctioned on \_\_\_\_\_, 2007 under the State Owned Enterprise Privatization Program of the Islamic Republic of Afghanistan, as informed in the (Publicly Disclosed Information dated \_\_\_\_\_) on the auction, and we have no reasons to believe that his/her/its monies with our bank are the result of illegitimate activities.

Sincerely,

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Schedule 3

AFFIRMATION OF FAMILIARITY WITH THE DOCUMENTS AND PROPERTY

I, \_\_\_\_\_, a bidder at the auction conducted by the Liquidation Committee of the (Enterprise) through the Ministry of Finance, affirm that I have familiarized myself with the documents and property of said Enterprise.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date