BỘ NGOẠI GIAO

CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

Số: 03/2017/TB-LPQT

Hà Nội, ngày 24 tháng 02 năm 2017

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định tại Điều 56 của Luật Điều ước quốc tế năm 2016, Bộ Ngoại giao trân trọng thông báo:

Công hàm trao đổi liên quan đến hợp tác viện trợ không hoàn lại cung cấp trang thiết bị góp phần tăng cường năng lực đảm bảo an toàn giao thông đường thủy giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Nhật Bản, ký tại Hà Nội ngày 16 tháng 01 năm 2017, có hiệu lực từ ngày 16 tháng 01 năm 2017.

Bộ Ngoại giao trân trọng gửi Bản sao Công hàm theo quy định tại Điều 59 của Luật nêu trên./.

TL. BỘ TRƯỞNG
Q. VỤ TRƯỞNG
VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ

Lê Thị Tuyết Mai

EMBASSY OF JAPAN
HANOI

Hanoi, January 16, 2017

Sir,

I have the honour to refer to the recent discussions held between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam (hereinafter referred to as "the Recipient") concerning Japanese economic cooperation to be extended with a view to promoting the economic and social development of the Socialist Republic of Viet Nam, and to propose on behalf of the Government of Japan the following understanding:

1. For the purpose of contributing to the implementation of the Economic and Social Development Programme (hereinafter referred to as "the Programme") by the Recipient, the Government of Japan shall extend to the Recipient, subject to the relevant laws and regulations and budgetary appropriations of Japan, a grant of three hundred million Japanese Yen (¥300,000,000) (hereinafter referred to as "the Grant").

2. (1) The Grant and its accrued interest shall be used by the Recipient properly and exclusively for the purchase of the products and/or services necessary for the implementation of the Programme, enumerated in a list to be mutually agreed upon between the authorities concerned of the two Governments (hereinafter respectively referred to as the "Products" and the "Services"), as well as for the payment of such fees necessary for the implementation of the Programme, provided that the Products are produced in eligible source countries and the Services are provided by nationals of eligible source countries.

(2) The list mentioned in sub-paragraph (1) above will be subject to modifications which may be agreed upon between the authorities concerned of the two Governments.

(3) The scope of the eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

3. (1) The Recipient shall open a yen ordinary deposit account at a bank in Japan in the name of the Recipient (hereinafter referred to as "the Account") within fourteen days after the date of entry into force of the present understanding and shall notify in writing the Government of Japan of the completion of the procedure for opening the Account within seven days after the date of the opening of the Account.

(2) The sole purpose of the Account is to receive the payment in Japanese Yen by the Government of Japan referred to in paragraph 4 as well as to make payments necessary for the purchase of the Products and/or the Services, and such other payment as may be agreed upon between the authorities concerned of the two Governments.

Sir
Mr. LE QUY VUONG
Vice Minister of Public Security
of the Socialist Republic of Viet Nam

4. The Government of Japan shall execute the Grant by making payment in Japanese Yen of the amount referred to in paragraph 1 to the Account during the period between the date of receipt of the written notification referred to in sub-paragraph (1) of paragraph 3 and March 31, 2017. The period may be extended by mutual consent between the authorities concerned of the two Governments.

5. (1) The Recipient shall take necessary measures:

(a) to ensure that the Grant and its accrued interest be completely disbursed from the Account to be ready for the purchase of the Products and/or the Services and for the payment of the fees referred to in sub-paragraph (1) of paragraph 2 within a period of twelve months after the date of the execution of the Grant unless the period is extended by mutual consent between the authorities concerned of the two Governments and to refund the remaining amount upon the completion of the Programme to the Government of Japan;

(b) to ensure that customs duties, internal taxes and other fiscal levies which may be imposed in the country of the Recipient with respect to the payment carried out for and the income accruing from the supply of the Products and/or the Services be exempted or be borne by its designated authority and shall not be covered by the Grant;

(c) to give due environmental and social consideration in the use of the Grant and its accrued interest;

(d) to present to the Government of Japan a report prepared in a written form acceptable to the Government of Japan on the transactions on the Account together with copies of contracts, vouchers and other documents concerning the relevant transactions without delay when the Grant and its accrued interest are completely used for the purchase of the Products and/or the Services and for the payment of the fees referred to in sub-paragraph (1) of paragraph 2, or upon request by the Government of Japan;

(e) to ensure that the Products and/or the Services be maintained and used properly and effectively for the implementation of the Programme, and not be used for military purposes;

(f) to ensure that the Products and/or the Services be utilized, in principle, by end-users including the Recipient itself, for non-commercial purposes;

(g) to ensure prompt unloading, customs clearance and internal transportation in the country of the Recipient of the Products;

(h) to accord the Japanese physical persons and/or physical persons of third countries whose services may be required in connection with the supply of the Products and/or the Services such facilities as may be necessary for their entry into the country of the Recipient and stay therein for the performance of their work;

(i) to bear all the expenses, other than those covered by the Grant and its accrued interest, necessary for the implementation of the Programme; and

(j) to provide the Government of Japan with a final report on the Programme upon its completion.

(2) While ensuring fair treatment of sources of information, the Recipient shall provide the Government of Japan with necessary information, including information on corrupt practice, related to the Grant and its accrued interest.

(3) With regard to the shipping and marine insurance of the Products, the Recipient shall refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

(4) The Products and/or the Services shall not be exported or re-exported from the country of the Recipient.

6. Further procedural details for the implementation of the present understanding shall be agreed upon through consultation between the authorities concerned of the two Governments.

7. The two Governments shall consult with each other in respect of any matter that may arise from or in connection with the present understanding.

I have further the honour to propose that this Note and your Note in reply confirming on behalf of the Recipient the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of your Note in reply.

I avail myself of this opportunity to extend to you the assurance of my high consideration.

梅田邦夫

UMEDA KUNIO
Ambassador Extraordinary
and Plenipotentiary of Japan

Agreed Minutes on Procedural Details

With reference to the Exchange of Notes between the Government of the Socialist Republic of Viet Nam (hereinafter referred to as "the Recipient") and the Government of Japan dated January, 16, 2017 concerning Japanese economic cooperation to be extended with a view to promoting the economic and social development of the Socialist Republic of Viet Nam (hereinafter referred to as "the Exchange of Notes"), the representatives of the Recipient and of the Government of Japan wish to record the following procedural details, as agreed upon between the authorities concerned of the two Governments:

1. List of Eligible Products and/or Services and Eligible Source Countries

The products and/or the services referred to in sub-paragraph (1) of paragraph 2 of the Exchange of Notes (hereinafter respectively referred to as the "Products" and the "Services") and the eligible source countries referred to in sub-paragraph (3) of paragraph 2 of the Exchange of Notes shall be those enumerated in Appendix I.

2. Procurement

(1) The grant referred to in paragraph 1 of the Exchange of Notes (hereinafter referred to as "the Grant") and its accrued interest shall be used for the purchase of the Products and/or the Services as well as for such fees necessary for the implementation of the Programme.

(2) In order to ensure compliance with such requirements, it is required that the Recipient employ an independent and competent agent for procurement of the Products and/or the Services.

The Recipient shall, therefore, conclude an employment contract, within three months after the date of entry into force of the Exchange of Notes, with Japan International Cooperation System (hereinafter referred to as "the Agent") to act on behalf of the Recipient in accordance with the Scope of the Agent's Services as set forth in Appendix II.

(3) The said employment contract shall become effective upon the approval by the Government of Japan in a written form.

(4) The contracts for the purchase of the Products and/or the Services shall be concluded in Japanese Yen between the Agent and Japanese nationals, unless otherwise agreed upon between the authorities concerned of the two Governments (The term "Japanese nationals" in the present Agreed Minutes on Procedural Details means Japanese physical persons or Japanese juridical persons controlled by Japanese physical persons.).

(5) The Products and/or the Services shall be procured in accordance with the procurement guidelines designated by the Government of Japan, which set forth, inter alia, the procedures of tendering to be followed except where such procedures are inapplicable or inappropriate.

(6) The Recipient shall take necessary measures to expedite utilization of the Grant and its accrued interest, including facilitation of the existing import procedures.

(7) The Recipient shall ensure that any official of the Recipient does not undertake any part of the work of Japanese nationals and/or the work of nationals of third countries on purchase of the Products

and/or the Services (The term "nationals of third countries" in the present Agreed Minutes on Procedural Details means physical or juridical persons of third countries.).

3. The Committee

(1) After the date of entry into force of the Exchange of Notes, the two Governments shall appoint their representatives who will be members of a consultative committee (hereinafter referred to as "the Committee"), the role of which shall be to discuss any matter that may arise from or in connection with the Exchange of Notes. After the approval of the employment contract referred to in sub-paragraph (3) of paragraph 2 above, the Agent shall appoint its representative who will participate in the Committee meetings as an adviser.

(2) The Committee shall be chaired by the representative of the Recipient. Representatives of other organizations than the Agent may, when necessary, be invited to participate in the Committee meetings to provide advisory services.

(3) The terms of reference of the Committee shall be as set forth in Appendix V.

(4) The first meeting of the Committee shall be held after the approval by the Government of Japan of the employment contract referred to in sub-paragraph (3) of paragraph 2 above. Further meetings will be held upon request of either the Government of Japan or the Recipient. The Agent may advise the two Governments on the necessity to call a meeting of the Committee.

4. Disbursement Procedure

Disbursement procedure relating to the procurement of the Products and/or the Services and the Agent's fees under the Grant and its accrued interest shall be as follows:

(1) The Recipient (or its designated authority) and the bank in Japan referred to in sub-paragraph (1) of paragraph 3 of the Exchange of Notes (hereinafter referred to as "the Bank") shall conclude an arrangement regarding transfer of funds in which the Recipient shall designate the Agent as the representative acting in the name of the Recipient concerning all transfers of funds to the Agent.

(2) The Agent shall make requests to the Bank for transferring of funds to cover expenses necessary for the procurement of the Products and/or the Services and the Agent's related services set forth in Appendix II. Each of the requests shall be accompanied by a detailed estimate of the expenses which is to be covered by the funds transferred and a copy of the approval by the Government of Japan of the contract referred to in sub-paragraph (3) of paragraph 2 above. A copy of the request and of the estimation shall be sent at the same time to the Recipient.

(3) Pursuant to the Agent's request as per sub-paragraph (2) above, the Bank shall notify the Recipient of the request made by the Agent. The Bank shall pay the amount to the Agent from the account referred to in sub-paragraph (1) of paragraph 3 of the Exchange of Notes (hereinafter referred to as "the Account") unless the Recipient makes opposition to such payment within ten working days after the notification by the Bank. The Agent shall make payments to suppliers of the Products and/or the Services from the funds received (hereinafter referred to

as "the Advances") in accordance with the terms of the contracts with them.

After such payments, the Agent may use the remaining amount of the Advances, if any, for the procurement of other eligible Products and/or the Services without transferring the said amount back to the Account.

(4) When the total of the remaining amount in the account of the Agent (hereinafter referred to as "the Remaining Amount") is less than three per cent (3%) of the Grant and its accrued interest, the Recipient may request the Agent to reimburse the Remaining Amount to the Recipient for payments which have already been made by the Recipient for the procurement of the Products and/or the Services and have not been covered by the Grant and its accrued interest, provided that such payments have been made on or after the date of entry into force of the Exchange of Notes. In this case, the eligible source countries of the said Products and/or the Services may be all countries and areas except the Socialist Republic of Viet Nam, notwithstanding the provisions of Appendix I.

When the Agent deems the request by the Recipient appropriate and a Certificate of Eligible Procurement for the Remaining Amount certified by both the Recipient and the Agent as per the form set forth in Appendix IV is issued, the Agent shall reimburse the Remaining Amount to the Recipient.

(5) With respect to (a) of sub-paragraph (1) of paragraph 5 of the Exchange of Notes, no further disbursement shall be made after the period mentioned in the said sub-paragraph expires, unless otherwise agreed between the authorities concerned of the two Governments.

5. Refund of the Remaining Amount

With respect to (a) of sub-paragraph (1) of paragraph 5 of the Exchange of Notes, when the Government of Japan finds, upon the receipt of the final report, that the use of the Grant and its accrued interest is incomplete, it shall notify the Recipient of the procedures for refunding of the remaining amount in the Account and the Remaining Amount. The Recipient shall refund such amount to the Government of Japan without delay through such procedures as notified above.

Hanoi, January 16, 2017

Mr. LE QUY VUONG
Vice Minister of Public Security of the Socialist Republic of Viet Nam

UMEDA KUNIO
Ambassador Extraordinary and Plenipotentiary of Japan

Appendix I

List of Eligible Products and/or Services and Eligible Source Countries

1. Eligible Products and/or Services

(1) Eligible Products
- Equipment for building capacity to ensure public security

- Related equipment and materials for the operation and maintenance of equipment for building capacity to ensure public security

(2) Eligible Services
- Services necessary for the transportation of the Products mentioned in 1.(1) above

- Training services and other necessary services for the operation and maintenance of equipment for building capacity to ensure public security

- Consultant services

2. Eligible Source Countries

The eligible source country shall be Japan, unless otherwise decided upon by mutual consent between the authorities concerned of the two Governments

Appendix II

Scope of the Agent's Services

1. Provision of information and advice to the Committee meetings

2. Ensuring that the Recipient and the end-users fully understand the procedures to be employed, where necessary

3. (1) Preparation of specifications of the Products and/or the Services for the Recipient, including, where necessary, detailed discussions with the end-users

(2) Preparation of bid documents appropriate to the type and value of the Products and/or the Services to be procured

(3) Advertisement of bids, where the competitive bidding is to be held, the wording of which is to be agreed upon between the two Governments

(4) Evaluation of bids, including both technical and financial considerations

(5) Submission of recommendations to the Recipient for approval to place order with suppliers

4. Receipt and utilization of the Advances in accordance with the employment contract with the Recipient referred to in sub-paragraph (2) of paragraph 2 of the Agreed Minutes on Procedural Details

5. Negotiations and conclusion of contracts with suppliers, including satisfactory payment, shipment and inspection arrangements

6. Checking the progress of supplies to ensure that delivery dates are met

7. Providing the Recipient and end-users with documents containing detailed information of progress of orders, notification of orders placed, amendments to contracts, delivery information, shipping documents, etc.

8. Payment to suppliers from the Advances

9. Providing the following documents to the two Governments:

(1) Certificate of Eligible Procurement as per Appendix III

(2) Pro forma invoice

10. Preparation of quarterly status reports for the two Governments, covering enquiries, orders, order status, values and delivery information

11. Submission of quarterly statements to the two Governments detailing balance against the Grant and its accrued interest and all disbursements for the quarter

12. Submission to the Government of Japan of an overall evaluation report including details of all the Products and/or the Services shipped, source country, delivery date, value of the Products and/or the Services (including relevant charges) and total amounts disbursed and remaining

Appendix III

Certificate of Eligible Procurement

Date:
Ref. No.:

To whom it may concern:

With reference to the pro forma invoice attached hereto, we hereby certify that the procurement complies with all the relevant terms and conditions of the Exchange of Notes between the Government of Japan and the Government of the Socialist Republic of Viet Nam dated January,16,2017 and the Agreed Minutes on Procedural Details between the two Governments dated January,16,2017.

The following are the principal relevant facts concerning the procurement.

1. Method of Procurement

(Insert X in appropriate place)

a. : Competitive Bidding

b. : Limited Bidding

c. : Shopping

d. : Direct Contracting

2. Products and/or Services

a. Name of Products and/or Services:

b. Origin:

3. Cost of Products and/or Services

a. Products and/or Services:

b. Freight:

c. Marine Insurance:

d. Agent's Fees:

e. Total (a+b+c+d):

4. Supplier

Name:

Address:

Nationality:

(Country where the supplier is incorporated and registered)

5. Consignee

Name:

Address:

(Signature)
The Agent
Name Title

Appendix IV

Certificate of Eligible Procurement for the Remaining Amount
(Reimbursement Procedure)

Date:
Ref. No.:

With reference to the payment order, the undersigned hereby certify that the procurement related to the said payment order as listed below complies with all the relevant terms and conditions of the Exchange of Notes between the Government of Japan and the Government of the Socialist Republic of Viet Nam dated January,16,2017 and the Agreed Minutes on Procedural Details between the two Governments dated January,16,2017.

The undersigned representative of the Recipient further certifies that the Recipient has neither heretofore applied for reimbursement under the said Exchange of Notes nor for any other financing arrangements with other sources of official assistance in respect of any of the amount requested for reimbursement as covered by the payment order.

The following are the principal relevant facts concerning the procurement.

1. Trans-action	2. Purchaser	3. Supplier (Name)	4. Nationality of Supplier	5. Products and/or Services	6. Origin	7. Date of Payment	8. Amount of Payment	9. Method of Procurement
1.								
2.								
3.								
4.								
.								
.								

The following documents (in one copy) are enclosed herewith for each of the above transactions.

a. Covering letter made by a negotiating/paying bank
b. Bill of lading, post parcel receipt or air consignment note
c. Invoice

Authorized Signature
(the Recipient)
Name, Title

Authorized Signature
(the Agent)
Name, Title

Appendix V

Terms of Reference of the Committee

1. To formulate a time scale plan for the speedy and effective utilization of the Grant and its accrued interest

2. To exchange views on allocations of the Grant and its accrued interest as well as on potential end-users

3. To identify problems which may delay the utilization of the Grant and its accrued interest, and to explore solutions to such problems

4. To exchange views on publicity related to the utilization of the Grant and its accrued interest

5. To discuss any other matter that may arise from or in connection with the Exchange of Notes

Record of Discussions

With reference to the Exchange of Notes between the Government of the Socialist Republic of Viet Nam (hereinafter referred to as "the Recipient") and the Government of Japan dated January 16, 2017 concerning Japanese economic cooperation to be extended with a view to promoting the economic and social development of the Socialist Republic of Viet Nam (hereinafter referred to as "the Exchange of Notes"), the representatives of the Vietnamese Delegation and of the Japanese Delegation wish to record the following:]

1. With regard to paragraph 2 of the Exchange of Notes, the representative of the Japanese Delegation stated that the Government of Japan understands that:

(a) the Recipient will take necessary measures to prevent any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the country of the Recipient from being made as an inducement or reward related to the award of the contracts that the agent referred to in sub-paragraph (2) of paragraph 2 of the Agreed Minutes on Procedural Details of the Exchange of Notes will enter into with a view to purchasing the products and/or the services referred to in paragraph 2 of the Exchange of Notes.

(b) the Recipient will refund to the Government of Japan, when the corrupt practice referred to in sub-paragraph (a) above occurs, the amount of the grant referred to in paragraph 1 of the Exchange of Notes (hereinafter referred to as "the Grant") equivalent to the amount spent in such corrupt practice, which is determined by the Government of Japan.

2. The representative of the Vietnamese Delegation stated that the Vietnamese Delegation has no objection to the statement by the representative of the Japanese Delegation referred to above.

Hanoi, January 16, 2017

Mr. LE QUY VUONG
Vice Minister of Public Security of the Socialist Republic of Viet Nam

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