BỘ NGOẠI GIAO

BỘ NGOẠI GIAO	**CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM** **Độc lập - Tự do - Hạnh phúc**
Số: 46/2013/TB-LPQT	*Hà Nội, ngày 26 tháng 9 năm 2013*

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định của Luật Ký kết, gia nhập và thực hiện điều ước quốc tế năm 2005, Bộ Ngoại giao trân trọng thông báo:

Hiệp định giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Đan Mạch về các thủ tục và điều khoản chung, các thể chế cấp vốn cho dự án sử dụng Công cụ tài chính Doanh nghiệp Danida dành cho nước Cộng hòa xã hội chủ nghĩa Việt Nam, ký tại Copenhagen ngày 19 tháng 9 năm 2013, có hiệu lực kể từ ngày 19 tháng 9 năm 2013.

Bộ Ngoại giao trân trọng gửi bản sao Hiệp định theo quy định tại Điều 68 của Luật nêu trên.

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

Nguyễn Thị Thanh Hà

FRAMEWORK AGREEMENT

BETWEEN

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

AND

THE GOVERNMENT OF THE KINGDOM OF DENMARK

CONCERNING

GENERAL TERMS AND PROCEDURES AND INSTITUTIONAL ARRANGEMENTS FOR FINANCING PROJECTS USING THE DANIDA BUSINESS FINANCE INSTRUMENT TO THE SOCIALIST REPUBLIC OF VIET NAM

The Government of the Socialist Republic of Viet Nam and The Government of the Kingdom of Denmark have agreed as follows:

1. Definitions

In the present Framework Agreement,

a) The expression "Viet Nam" means the Government of the Socialist Republic of Viet Nam

b) The expression "Denmark" means the Government of the Kingdom of Denmark

c) The expression "MPI" means the Ministry of Planning and Investment of Viet Nam

d) The expression "MOF" means the Ministry of Finance of Viet Nam

e) The expression "Danida" means the Ministry of Foreign Affairs of Denmark or the Embassy of Denmark in Hanoi

f) The expressions "the parties or both parties" mean MPI and Danida

g) Danida Business Finance refers to the financing of loans as part of Denmark's Official Development Assistance.

2. Brief Introduction to Danida Business Finance

Danida Business Finance offers interest free or low interest loans, normally with 10 years maturity aimed at financing supplies of equipment and related services for development projects. The instrument is available for Danida's priority countries and is part of the Strategy for Denmark's Development Assistance, where poverty reduction, human rights and green growth are key elements.

3. General Objectives

To continue the cooperation between Viet Nam and Denmark, Danida has agreed to make the Danida Business Finance instrument available for development projects in Viet Nam.

4. Financial Terms

Danida Business Finance will be provided in accordance with OECD's Arrangement on Officially Supported Export Credits. According to the Arrangement, the concessionality level of tied aid for individual transactions must include a Danish government grant element of minimum 35 per cent.

Loans will be granted with the following terms, provided the international interest level continues approximately at the present level:

- As a standard, loans will be interest free EUR or USD loans with 10 years maturity after commissioning. 100 per cent of the contract can be financed;

- For larger projects especially within the environmental sector, and where the life span of the project justifies it, loans with 15 years maturity may be considered. Depending on the prevailing level of interest rates the loan may carry some interest. 100 per cent of the contract can be financed;

Danida will pay the following:

- Interest in construction period;
- Interest in repayment period;

- The export premium to Eksport Kredit Fonden (the Danish Export Credit Fund);
- A bank margin of maximum 0.2 per cent p.a.

More detailed information concerning the financial and other terms for Danida Business Finance is available in Danida's "General Conditions for Loan Agreements and the Provision and Administration of Interest Subsidy under the Mixed Credit Programme for Developing Countries" (October 2010), and Danida Business Finance brochure which are attached as annex 1 and 2 to this Framework Agreement.

5. Projects Eligible for Financing

Under this Framework Agreement, it will be possible to finance projects involving a buyer from Viet Nam regardless its ownership.

For projects above SDR 2 million (approx. EUR 2.3 million, December 2006) it is in accordance with the OECD Arrangement required that only projects which, with appropriate pricing determined on market principles, lack capacity to cover the projects operation costs and to service normal commercial export credit with 10 years maturity are eligible for mixed credit finance. For projects below SDR 2 million the OECD rules are more flexible. Projects below EUR 1 million are not eligible for financing, unless otherwise agreed between the parties.

Projects involving the production of military or paramilitary equipment, alcoholic beverages and tobacco products are not eligible for financing under this Framework Agreement.

For further information with respect to which projects that potentially can be financed, reference is made to the above-mentioned Danida Business Finance brochure.

6. Project Selection

MPI will select the projects to be financed under this Framework Agreement and present the projects to Danida during annual meetings, or on ad hoc basis. The presentation of projects by MPI should include a brief project outline or a Feasibility Study. Based on this list and on-going communication between Danida and MPI, a mutual selection of projects will be made. When selected and upon a positive indication from Danida regarding the eligibility for

Danida Business Finance support, the projects will be included in Danida's pipeline. Danida reserves the right to propose projects for financing.

MPI will forward feasibility studies on the projects to Danida. Alternatively, Danida can finance part of the costs related to the preparation of feasibility studies. On the basis of the feasibility study and positive screening by the Danida Programme Committee, Danida will initiate appraisal of the project. The project will then be submitted to approval by the Danida Grant Committee. After a commercial contract has been entered into and the loan agreement has been finalized, Danida may finally approve the project for financing.

MPI will ensure that the Government of the Socialist Republic of Viet Nam endorses projects proposed for Danida Business Finance financing at the time the request with enclosed project proposal is submitted to Danida for screening and that the availability of local funds as well as loan amount for mixed credits is confirmed at the time project proposals are submitted to Danida for appraisal. MPI will inform Danida of Viet Nam's decision of fund revisions (if any) of the projects appraised by Danida before the projects are submitted to Danida Grant Committees for approval.

7. Borrower/Lender

Export credits to be subsidised after approval by the parties will be provided by the Danish commercial banks or by other Danish financial institutions acting as Lender. Borrower(s) may be MoF or a buyer with a guarantee from MoF.

8. Lending and On-lending

Loan agreements for each project will be negotiated directly between MoF and the Lender. The fees and costs of the Danish commercial banks will be negotiated case-by-case between the bank acting as Lender and MoF. Maximum rates accepted by Danida are management fee of 0.375 per cent flat and commitment fee of 0.25 per cent p.a., unless otherwise agreed between the parties to this Framework Agreement.

Loan Agreements must comply with Danida's "General Conditions for Loan Agreements and the Provision and Administration of Interest Subsidy under the Mixed Credit Programme for Developing Countries" (October 2010), attached as annex 1 under this Framework Agreement.

If on-lending is applied, MPI will inform the on-lending margin and possible other financial costs and repayment period to Danida at the time the proposed project is submitted to Danida for appraisal. The on-lending margin charged by the Borrower should be kept to a minimum to ensure that the soft element in the loan is used to support the end-user.

9. Procurement Rules and Commercial Contracts

Commercial contracts to be financed with export credits subsidised under this Framework Agreement should be based on international competitive bidding (ICB), or limited international bidding (LIB). In cases where a sufficient number of Danish suppliers exist, the bidding could be limited to Danish suppliers. The Danish delivery shall be competitive taking into consideration price, technology and quality. There are no requirements to Danish content of goods and services.

The procurement must be in accordance with Danida's "Rules and Guidelines for Procurement under Danish Mixed Credits, August 2007", attached as annex 3, unless otherwise specifically agreed between the parties. The tender evaluation report and the contract documents shall demonstrate that competitive procurement has taken place, that the process has been carried out observing internationally recognised good procurement practise as well as Vietnamese legislation, and that the selected bid is competitive with regard to technology, price and quality. Unless otherwise agreed pre-qualification must be applied and at least 2-3 Danish suppliers must be pre-qualified under the tied Danida Business Finance facility.

For small projects, negotiated contracts (sole source procurement) may on a case-by-case basis be accepted if agreed to by both parties in advance, and it should be documented that prices are competitive and price verification may be required.

Danida will on grant basis provide technical assistance (TA) to the tendering of projects financed under this Framework Agreement. Danida and the project owner will have to agree in writing on the terms and conditions of the TA before Danida appraises the project.

Commercial contracts must follow the FIDIC-format and comply with Danida's "General Conditions for Approval of Commercial Contracts Financed under the Mixed Credit Programme (August 2007)", attached as annex 4 to this Framework Agreement

10. Export Credit Guarantee

An export credit guarantee from Eksport Kredit Fonden, Danish Export Credit Fund, covering at least 95 per cent of the outstanding amounts of each loan granted under this Framework Agreement is required. The guarantee premium will, as mentioned above, be paid by Danida.

11. Reviews

The parties will on a quarterly basis or whenever deemed necessary by the parties review progress and discuss a pipeline for projects to be financed under this Framework Agreement

The parties will once a year undertake a more thorough consultation regarding the Danida Business Finance instrument including review of progress, agreement on pipeline of projects and any other matter arising.

The parties will agree to a set of Administrative Procedures for the administration and implementation of Danida Business Finance activities in Viet Nam, attached as annex 5. The purpose of the Administrative Procedures is to ensure a timely implementation of activities, and a clear division of responsibilities and obligations.

12. Liability

Denmark shall not be liable to indemnify any third party in respect of any claim, debt, damage or demand arising out of the implementation of this Framework Agreement and which may be made against Danida or its staff.

13. Taxes and Duties

Customs, duties and taxes for projects approved by Danida for financing in 2013 or after will not be exempted from VAT for locally procured services and goods procured.

14. Evaluation and Auditing

Danida will inform MPI in advance about any review. MPI will support and provide all necessary documentation for evaluation and auditing of the use of

the credits and for study of projects financed within five years after their completion. The evaluation will be undertaken by Danida or by the Danish State Auditors, and may involve site visits. Danida will exchange views with MPI of review conclusion before any official announcement.

15. Disputes

Any disputes concerning the interpretation or implementation of the Framework Agreement shall be settled by negotiation between the parties to this agreement.

16. Fraudulent Practices

Denmark or Viet Nam may cancel the implementation of the Framework Agreement, or projects under its execution, if it determines that, with respect to the Danish funds:

1) Corrupt or fraudulent practices were engaged in by the representatives of the Borrower or Lender or of the Buyer or Seller during procurement or during execution of a contract; and

2) Timely and appropriate action satisfactory to Denmark and Viet Nam to remedy the situation has not taken place.

Firms may be barred from contracts financed with Danish funds, either indefinitely or for a specific period of time if Denmark determines that the firm is engaged in corrupt or fraudulent practices in competing for or in executing a contract financed with Danish funds.

17. Entry into Force, Alterations and Termination

The Framework Agreement will enter into force when signed by both Parties and shall remain in force until 31 December 2018. The Agreement will be automatically extended on annual basis, unless one Party informs the other of its decision to terminate it, by means of a written notification by giving ninety days' notice before expiry.

Either Party may suggest alterations. Such suggestions shall be submitted to the other Party in writing, in the English language. Alterations shall enter into force when duly signed by both parties.

Each Party may terminate this Framework Agreement in whole or in part, by giving a ninety days' notice in writing, in the English language.

Signed in Copenhagen on 19 September 2013 in two copies in the English language.

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

Bui Quang Vinh
Minister for Planning and Investment

FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK

Christian Friis Bach
Minister for Development Cooperation

Annex 3

ADMINISTRATIVE PROCEDURES FOR DANISH BUSINESS FINANCE SUPPORT

1. Eligible Vietnamese organization submits an application for Danida Business Finance support to the Ministry of Planning and Investment (MPI).

   The application letter to MPI should include an official request and a project description, both prepared in Vietnamese and English languages. The project description should include detailed information about the project size, project background, deliveries (type and contract amount), buyer's organisation, budget, financial set up including guarantor, timetable etc. Project outline should cover the content required by the Vietnamese Government's Decree No. 38/2013/ND-CP dated 23 April 2013 on management and utilization of official development assistance (ODA) and concessional loans of donors.

2. MPI forwards the proposed project for financing by Danida Business Finance to the Embassy of Denmark in Hanoi, including information on the approval of local budgets and loan amount for the project and the terms of on-lending.

3. Projects proposed for financing are screened by the Ministry of Foreign Affairs of Denmark (Danida). The Embassy will convey the result of the screening process to MPI. Danida will either reject the project or give a preliminary indication to continue project preparations. If sufficient information is made available to Danida, screening of a project can normally be carried out within a period of two months.

   When a project is given a positive indication regarding eligibility for Danida Business Finance support, it will be included in the pipeline of projects to be appraised by Danida. Danida at this stage will officially give MPI an indication of support to the feasibility study preparation and provision of technical assistance (TA) on tendering process.

4. Danida will provide technical support to tendering financed by Danida Business Finance.. The objectives of the TA are:
   - To verify that the project tendered and contracted is in accordance with the Danida approved Appraisal Report

- To ensure that the tender process is in accordance with Danida's "Rules and Guidelines for Procurement under Danish Mixed Credits"
- To verify that the signed commercial contract is in accordance with Danida's "General Conditions for Approval of Commercial Contracts"
- To provide advice to the buyer during the tender process

5. MPI requests eligible projects to prepare Feasibility studies in English. (According to Guidelines for Feasibility Studies for Mixed Credit Projects, available on dbfinance.um.dk). The F/S should be presented to the competent agencies as stipulated by the Vietnamese laws for approval.

6. When a Feasibility Study has been screened by MPI with an indicative budget, it should be forwarded to the Embassy with a request for appraisal together with a confirmation that local funds and funds for the loan have been approved by the appropriate Vietnamese authorities.

7. Danida arranges for appraisal of the proposed project. The appraisal team will brief MPI, MOF and Project owner on its preliminary findings at the end of the mission. An appraisal can normally be launched within three months after the projects have been screened by Danida.

8. Based on the report prepared by the appraisal team, MPI will inform Danida of Vietnam's comments, including decision of fund revisions (if any) for the appraised project, normally within two months after receipt of the report.

9. Upon receipt of the final response from MPI, the project is normally presented to Danida's Grant Committees within two months.. The result of Danida's assessment and the revised appraisal report will be conveyed by the Embassy to MPI, MOF and the project owner, including specific conditions for support and information on next steps.

10. The project owner initiates the tendering process of the project in accordance with General Rules and Guidelines for Procurement under Danish Mixed Credits, cf. Article 9 of the Framework Agreement.

11. The project owner forwards the tender documents, evaluation reports to Danida for no-objection to move forward with the tender process. All documents must be in English. Danida will as soon as possible

scrutinise the evaluation report to verify that acceptable competitive procurement has taken place ensuring the best bid in terms of quality and prize is selected.

12. The Project owner initiates contract negotiations with the selected bidder. When the commercial contract is signed it is forwarded to the Embassy/Danida for approval and the payment terms for MoF's acceptance.

13. Upon contract approval the Ministry of Finance of Vietnam sends request for financing to the Danish lender. Upon receiving request for finance from Danish lender, Danida will normally issue final approval of financing within one week and inform the Vietnamese side. Danida must approve the loan agreement.

14. Project implementation.

15. Project owner together with the contractor conduct commissioning, which the independent verification institution/consultant appointed by Danida will verify.

16. Project owner together with the contractor conduct end of defects liability inspection, which the independent verification institute/consultant appointed by Danida will verify.

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