BỘ NGOẠI GIAO

Số: 54/2018/TB-LPQT

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

Hà Nội, ngày 10 tháng 12 năm 2018

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:

Bản ghi nhớ giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ nước Cộng hòa I-ta-li-a về việc chuyển nhượng các khoản vay ưu đãi cho Dự án thu gom và xử lý nước thải Tây Ninh - giai đoạn 1, ký tại Hà Nội ngày 14 tháng 10 năm 2016, có hiệu lực từ ngày 24 tháng 02 năm 2018.

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

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

Lê Thị Tuyết Mai

MEMORANDUM OF UNDERSTANDING

between

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

and

THE GOVERNMENT OF THE ITALIAN REPUBLIC

ON THE CONCESSION OF A SOFT LOAN FOR THE

TAY NINH WASTEWATER COLLECTION AND TREATMENT SYSTEM PROJECT, PHASE I

Hanoi, October 2016

MEMORANDUM OF UNDERSTANDING

between

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

and

THE GOVERNMENT OF THE ITALIAN REPUBLIC

On the concession of a soft loan for the

TAY NINH WASTEWATER COLLECTION AND TREATMENT SYSTEM PROJECT, PHASE I

The Government of the Socialist Republic of Viet Nam, represented by the Ministry of Planning and Investment (MPI), and the Government of the Italian Republic, represented by the Ministry of Foreign Affairs and International Cooperation – Directorate General for Development Cooperation (MAECI-DGCS), hereinafter referred to as the "Parties", have decided to enter into this Memorandum of Understanding, hereinafter referred to as the "MoU", for the implementation of the "Tay Ninh Wastewater Collection and Treatment System Project, Phase I", hereinafter referred to as the "Project".

REMINDING the Agreement on Development Cooperation signed in Milan on December 12th, 2009 where a provision, from the Government of the Italian Republic (hereinafter referred to as "GoI") to the Government of Socialist Republic of Viet Nam (hereinafter referred to as "GoV"), of soft loans up to the amount of 30 million Euro has been programmed for the period 2009 – 2012;

FOLLOWING the request in the Verbal Note from MPI, dated December 23rd, 2009, to the Embassy of Italy to finance the Project, through a soft loan, for an amount of US$ 12.648.000 (equivalent to about Euro 9.700.000 at the time of the Italian field appraisal in October – November 2012), out of the above-mentioned allocation for the period 2009 - 2012;

CONSIDERING that MPI requested MAECI-DGCS to send an appraisal mission to Viet Nam to allow for the completion of the Project preparation procedures;

WHEREAS in October – November 2012, based on the feasibility study report (FSR) prepared by the Provincial People's Committee (PPC) of Tay Ninh, MAECI-DGCS carried out, in coordination with MPI and with Tay Ninh PPC, an appraisal mission in Viet Nam;

CONSIDERING the request of the MPI, dated March 29th, 2012, and the last request of Tay Ninh Provincial People's Committee (PPC), dated March 25th, 2013, to finance the Project based on the agreed (technical and financial) outcomes of the appraisal mission;

WHEREAS the Steering Committee of MAECI-DGCS has approved to finance the Project, on September 19th 2013, with a soft loan of Euro 9.700.000,00;

CONSIDERING that, in accordance with regulations on using ODA, the GoV decentralised responsibilities for the implementation of the Project to the PPC of Tay Ninh and its Project Management Unit (PMU);

The Parties hereby agree to implement the Project according to the following.

ARTICLE 1
Parts and Definitions of the MoU

1.1. This MoU consists of 15 articles and of an annex (Annex 1 – "Eligibility Criteria, Ethical Clauses, Contract General Principles"), which forms an integral, essential and substantial part of the MoU.

1.2. The meanings of acronyms used in this MoU are the following:

Cassa Depositi e Prestiti	The Italian bank appointed by the GoI as the Italian Financing Institution to manage the soft loans
MoF	Vietnamese Ministry of Finance
FA	Financial Agreement (loan agreement) signed by Cassa Depositi e Prestiti and MoF in order to define the soft loan terms and conditions and modalities of disbursement and repayment
FSR	Feasibility Study Report
GoI	Government of the Italian Republic
GoV	Government of the Socialist Republic of Viet Nam
IFI	Italian Financing Institution
JSC	Joint Steering Committee
MAECI-DGCS	Directorate-General for Development Cooperation of the Italian Ministry of Foreign Affairs and International Cooperation
MoU	Memorandum of Understanding
MPI	Vietnamese Ministry of Planning and Investment
ODA	Official Development Assistance
OEDC	Organisation for Economic Development and Co-operation
PD	Project Director
PID	Project Implementation Document
PMU	Project Management Unit
PPC	Provincial People's Committee of Tay Ninh
Project	Tay Ninh Wastewater Collection and Treatment System Project (phase I)
AICS	Italian Agency for Development Cooperation
AICS Hanoi	Office in Hanoi of the Italian Agency for Development Cooperation
VAT	Value Added Tax
WSS	Tay Ninh Water Supply and Sewerage Company

ARTICLE 2
Purpose of the MoU

2.1. This MoU is aimed at establishing the mutual obligations of the Parties concerning the financing and implementation of the Project, defining modalities and procedures for crediting and disbursement of funds as well as for Project monitoring, control and reporting.

2.2. No party other than the Parties in this MoU will be allowed to derive any rights from this MoU or have claim to the funds involved.

2.3. After the signature of this MoU, the PPC of Tay Ninh and MAECI-DGCS shall enter into a Technical Agreement, based on the adopted PID, in order to regulate in detail the technical aspects of the Project.

ARTICLE 3
Project Objectives and Expected Results

3.1. The Overall objectives of the Project are: (i) to improve the health status of the Vietnamese population; and (ii) to protect the environment from the increasing anthropic pressure in urban areas.

3.2. The Specific Objective of the Project, that will contribute to achieve the Overall Objectives, is: to improve the urban sanitation conditions in Tay Ninh town.

3.3. The main expected results of the Project, the detailed project cost estimate and financing have been adopted by Tay Ninh PPC and are described in the PID.

ARTICLE 4
Project Costs and Financing

The total Project cost is estimated at € 13.170.000.00 equivalent, out of which, about 74% will be financed through the Soft Loan (€ 9.700.000,00) and about 26% (€3.470.000,00) will be financed through Vietnamese counterpart funds.

ARTICLE 5
Institutions and Bodies involved in the Implementation of the MoU

5.1. The main Institutions and Bodies involved in the implementation of the MoU are:

5.1.1. For the Vietnamese side:

- MPI (State Management Agency of ODA) acting as the institutional Vietnamese Counterpart for this MoU, representing the GoV.
- MoF, acting as the Borrower for the Financial Agreement to be signed with the Italian Financing Institution.
- PPC of Tay Ninh: Executing Agency of the Project, implemented by the Tay Ninh Water Supply and Sewerage Company (WSS) (acting as Project Owner and delegated Executing Agency), through the Project Management Unit (PMU).

5.1.2. For the Italian side:

- MAECI-DGCS, acting as the Italian Counterpart for this MoU, representing the GoI.
- Cassa Depositi e Prestiti, the Italian Financing Institution (IFI) signatory of the Financial Agreement (FA) with MoF, which will provide and manage the Soft Loan (including disbursements and repayments).
- The Italian Agency for Development Cooperation (AICS), the Italian institution responsible for project implementation, management, technical assistance and monitoring under the provisions of this MOU by the Italian side.
- Office in Hanoi of the Italian Agency for Development Cooperation (AICS Hanoi), acting as part of the AICS project assistance and monitoring system.

5.2. The Parties will take all necessary measures to ensure that such institutions and bodies will fulfill the obligations of this MoU.

ARTICLE 6
Governance and Management of the Project

6.1. A Joint Steering Committee (JSC) shall be constituted as a high-level consultative and decision making body for the Project and be composed by:

- representatives of the PPC of Tay Ninh, MPI and MoF for the Vietnamese side;
- representatives of the Embassy of Italy and of AICS for the Italian side.

The JSC shall supervise the smooth progress of Project activities and provide orientation on their implementation. Concrete task and responsibilities taken by the JSC are detailed into the PID. The JSC is chaired by the Representative of Tay Ninh PPC. All JSC decisions shall be taken unanimously.

6.2. A Project Management Unit (PMU) will be established pursuant to Vietnamese laws on ODA utilization and management to assist the PPC of Tay Ninh in implementing and monitoring the Project activities.

In addition to the tasks and powers assigned to the PMU according to the Vietnamese laws, the PMU shall coordinate with the AICS Hanoi in order to complete the necessary procedures for implementation of the Italian ODA project regulated by this MoU.

6.3. The AICS might designate, on request of the JSC, Italian Experts to provide specific technical support to the PMU and to the Tay Ninh Water Supply and Sewerage Company (WSS) for the Project activities. In this case, the Italian side shall finance the costs relevant to the assignment of the Italian Experts.

ARTICLE 7
Terms, Utilization and Conditions of the Italian Financing

7.1. The Italian contribution to the financing of the Project will consist of the Soft Loan mentioned at Article 4 of this MoU and this amount of the Soft Loan is considered the maximum amount of contribution by the GoI to the Project. The Soft Loan will be used only to cover the costs of the items indicated in details in PID. Should the total costs of the items proposed to be covered totally or partly by the Soft Loan exceed the Soft Loan amount, the additional costs will be covered by the Vietnamese side. Should the total costs of these items be less than the Soft Loan amount, the same amount will be reduced accordingly.

7.2. The Soft Loan will be denominated in Euro. The Soft Loan will be provided at a concessionality level of 60 (sixty) per cent. The financial conditions corresponding to the above mentioned level of concessionality are the following: interest rate: 0%; Soft Loan duration: 32 years of which 21 years of grace period. These financial conditions will be re-determined at the time of signing of the Financial Agreement (FA) between Cassa Depositi e Prestiti and the Vietnamese Ministry of Finance (MoF).

7.3. After the entry into force of this MoU, MOF and Cassa Depositi e Prestiti (IFI) will enter into a Financial Agreement (FA) relating to the whole amount to be financed under the Italian Soft Loan for the goods, services and works of the Project. The FA will provide the legal framework between the Lender and the Borrower and will include the provisions of the present MoU specifying the procedures for the actual disbursement and repayment. The IFI will credit the funds to the contractors, as by the Borrower request, after the control of the administrative documentation (contracts, invoices, shipping documents, certificates of acceptance, etc.).

7.4. The Soft Loan shall be used only for purchasing goods, services and works related to the Project. A quota of, at least, five per cent of the total Soft Loan amount must be used to purchase goods and/or services and/or works of Italian origin. The remaining quota – no more than ninety-five per cent of the total Soft Loan amount – can be used to purchase goods and/or services and/or works of Vietnamese and/or of third Country origin, provided that such third Country of origin is a member of the Organisation for Economic Development and Co-operation (OEDC).

7.5. No portion of the Soft Loan shall be used to finance any Vietnamese tax and custom duty. Taxes levied on income and capital shall be in conformity with regulations provided by the relevant agreement between the Government of the Socialist Republic of Viet Nam and the Government of the Italian Republic for the avoidance of double taxation and prevention of tax evasion.

Goods and services for the Project shall be taxed in accordance with the Vietnamese law.

ARTICLE 8
Procurement Procedures to be used

8.1. All procurement procedures under this MoU will be conducted under the responsibility of the PPC authorities.

8.2. The procurements using totally or partly the Soft Loan shall be carried out through the competitive bidding procedures. The procedures to be adopted are those of the Vietnamese Law on Tendering complemented by the fundamental principles of the Italian law on procurement and development aid, as described in the Annex 1 to this MoU. The prescriptions of this MoU and Annex 1 will prevail upon the prescriptions of the Vietnamese law.

8.3. The bidding documents shall be submitted by the PMU/PPC to AICS for "no-objection" before the publication of the bid notice. The PPC, for each tender relevant to items using totally or partly the Soft Loan, will submit to AICS a bid evaluation report, along with the draft contract to be signed with the selected contractor, in order to obtain the "no-objection" by AICS before the final signature.

ARTICLE 9
Project Monitoring and Evaluation

9.1. AICS reserves the right to supervise and monitor, in general, the smooth implementation of the Project and the transparent, effective and efficient use of the funds provided by Italy. The supervising and monitoring activities of AICS can be carried out through its own staff, hired consultant's missions, or through personnel of the AICS Hanoi. Monitoring activities may also be initiated by MPI.

9.2. Financial control is assigned to Cassa Depositi e Prestiti.

9.3. In order to allow the AICS to monitor Project activities, the PPC will ensure, upon receipt of AICS' prior written notice, that AICS personnel has access to the Project areas and to the Project technical documentation. The PPC will also report to AICS, at least quarterly, on the progress of the Project implementation and will retain records of all documentation, including the related correspondence and reports, for 10 (ten) years after the completion of the Project.

ARTICLE 10
Obligations of GoI

GoI commits to:

10.1. Provide, at the conditions stipulated in this MoU, the financial resources indicated at the previous Article 4, also by giving the necessary instructions to the IFI to finalize, together with the MoF, the FA.

10.2. Make all efforts for the success of the Project and for the achievement of its objectives.

10.3. Cause that all its bodies, involved in Project implementation, will make all efforts for the success of the Project and for the achievement of its objectives.

10.4. Fulfill, and cause all Italian bodies involved in the Project to fulfill, all the obligations generating from this MoU.

10.5. Designate the JSC Italian members, as soon as this MoU becomes effective.

ARTICLE 11
Obligations of GoV

GoV commits to:

11.1. Provide fully and timely the financial resources indicated at the previous Articles 4;

11.2. Make all efforts for the success of the Project and for the achievement of its objectives;

11.3. Cause that all the Vietnamese institutions involved in the Project implementation will make all efforts for the success of the Project and for the achievement of its objectives;

11.4. Fulfil, and cause all Vietnamese institutions involved in the Project to fulfil, all the obligations generating from this MoU;

11.5. Ensure the implementing agency and project owner to be responsible for the use of the Soft Loan proceeds. for the management of contracts and for the supervision of the activities;

11.6. Ensure the implementing agency and project owner to carry out all the procurement procedures for the implementation of the Project;

11.7. Ensure that all Vietnamese indirect taxes, including VAT and excluding income taxes resulting from the contracts to be financed out of the Soft Loan proceeds, will not be covered by the Italian Soft Loan;

11.8. Shall concede the immediate customs clearance of goods, materials and supplies needed for the implementation of the Project and shall concede the right of registration to the vehicles acquired within the Project in accordance with Vietnamese laws;

11.9. Shall ensure some privileges and exemption including visa and customs procedures for foreign experts and their family in accordance with Vietnamese laws on foreign experts implementing ODA programs and projects in Viet Nam;

11.10. Provide contributions (in terms of human resources, financial resources, etc.) for any additional activity that will be jointly recognized as necessary for the smooth implementation and for the sustainability of the Project;

11.11. Designate the JSC Vietnamese members, the PD and the Vietnamese staff of the PMU, as soon as this MoU becomes effective;

11.12. Retain records of all Project documentation, including the related correspondence and reports, for 10 (ten) years after the completion of the Project.

ARTICLE 12
Impediments and Force Majeure

12.1. In case of impediments to implement the present MoU due to case of force majeure such as war, flood, fire, typhoon, earthquake, labour conflicts and strikes, acts of any government, unexpected transportation difficulties and other causes which will be recognised by both Parties upon agreement as force majeure according to practice or in case of peril or unsafe conditions for the expatriate personnel, the following provisions shall apply:

a) in case that the duration of the impediment to the implementation of the Project is less than six months, the use of the funds shall be suspended until the AICS authorises resumption of activities;

b) in case the duration of the impediment to the implementation of the Project is greater than six months and less than twenty-four, the Project shall be suspended and the residual funds, reduced by the amount needed to finance the activities specified at the following Article12.2., shall be maintained until the impediment ends and the AICS authorises resumption of the Project activities.

c) in case the impediment to the implementation of the Project is greater than twenty-four months, the Parties shall discuss about the continuation of the Project and define an agreed course of actions. In case the continuation of the Project is not feasible, the Parties shall agree on the destination of the residual funds deducted the amount needed to finance the activities specified in the following Article12.2.

12.2. The activities of the Project not affected by the impediments and causes of force majeure shall be continued until completion and the necessary funds shall be allocated.

ARTICLE 13
Settlement of Disputes and Amendments to the MoU

13.1. The Parties shall settle amicably any dispute, which may arise in the course of Project implementation and/or arising out of the implementation of this MoU, by consultations and negotiations between the Parties through diplomatic channels.

13.2. The Parties may modify this MoU at any time, provided that any modification should be set out into writing and agreed by the Parties.

ARTICLE 14
Termination of the MoU

14.1. The Parties reserve the right to terminate the MoU in case of failure of the Project to reach its objectives, in case of severe faults in the use of funds, in case of impediment or force majeure pursuant to Article 12.

14.2. In case of severe fault, MAECI-DGCS shall notify the event in writing to MPI, inviting it to take suitable measures to fix the consequences of the fault within maximum sixty days from the date of the notification. This time limit expired, MAECI-DGCS reserves the right to terminate the MoU, notifying MPI through a Verbal Note at least three months in advance.

14.3. In case of termination of MoU, the contract(s) signed between PMU and the contractor(s) financed, using Soft Loan funds, shall be determined adopting the Force Majeure clause and shall be liquidated in accordance to terms and conditions of these contracts for such case.

14.4. MPI reserves the right on continuation of the Project by its own resources and MoF will refund in a single payment the entire contractual amount disbursed in advance (if any) and not spent yet. MAECI-DGCS retains an adequate credit amount to be paid to contractor for its work completed up to the date of termination.

ARTICLE 15
Entry into Force and Duration

15.1. This MoU shall come into force on the date of receipt of the last of the two notifications by which the Parties shall inform each other about the completion of their respective domestic procedures necessary for the entry into force of this MoU.

15.2. This MOU shall have the same duration of the Soft Loan.

15.3 The provisions of this MoU will be implemented in accordance with the national legislation of the Parties and in conformity with their international obligations and, with regard to Italy, the obligations arising from its membership to the European Union".

In witness thereof the undersigned, duly authorized by their respective Governments, have signed the present MoU.

Done in Ha Noi on the 14th of Oct-Dec, 2016... in two originals in the English language.

For the Government of
the Socialist Republic of Viet Nam

For the Government of
the Italian Republic

ANNEX 1
ELIGIBILITY CRITERIA, ETHICAL CLAUSES, CONTRACT GENERAL PRINCIPLES

This Annex harmonizes the rules applicable to procurement pursuant to this Memorandum of Understanding with the fundamental principles of Italian law on procurement and development aid.

The content that was not regulated in this Annex shall be implemented in accordance with the Vietnamese Law on Public Procurement.

1. CONTRACTOR ELIGIBILITY

1.1 THE RULE ON OBJECTIVITY AND IMPARTIALITY

To avoid any conflict of interest, any natural or legal person, including entities within the same legal group, members of consortia, temporary associations, and sub-contractors, involved in the preparation of the Project shall be excluded from participating in tenders or from submitting offers aimed at the implementation of the Project.

1.2 THE RULE ON ECONOMIC, FINANCIAL, PROFESSIONAL, AND TECHNICAL CAPACITY

The candidates/bidders must prove that their economic, financial, professional and technical capacity is suitable for the implementation of the contract. Unless otherwise established in the Agreement, the candidates/bidders must prove:

1.2.1 Economic and financial standing: the total turnover of the candidates/bidders in the last three years in the same field of the bid must be at least equivalent to the maximum budget of the contract; enterprises that have been established for less than three years may prove their economic and financial standing with any document which the contracting authority may deem appropriate.

1.2.2 Professional and technical capacity: candidates/bidders shall provide a full record of the activities performed during the last three years; enterprises that have been established for less than three years may prove their professional and technical capacity with any document which the contracting authority may deem appropriate.

1.2.3 Italian enterprises shall qualify for works contracts pursuant to decree of the President of the Republic n. 34/2000 (and further modifications/amendments thereof). Non-Italian enterprises shall qualify according to their respective national law.

1.3 GROUND FOR EXCLUSION FOR PARTICIPATION IN CONTRACTS

Natural or legal persons are not entitled to participate in competitive tendering or be awarded contracts if:

1.3.1 They are in the conditions as referred to in the Italian Legislative Decree 8.8.1994, n. 490 ("Antimafia). Italian tenderers/offereres must provide the evidence thereof by the "certificato antimafia", issued by the competent Italian authorities. Non-Italian tenderers/offerers must provide equivalent certificates, if issuable under their respective national law.

1.3.2 They are bankrupt, or being wound up, or are having their affairs administered by the courts, or have entered into an arrangement with creditors, or have suspended their business activities, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations.

1.3.3 They are the subject of proceedings for a declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations.

1.3.4 They or their directors or partners have been convicted of an offence concerning professional conduct by a judgement which has the force of res judicata.

1.3.5 They are guilty of grave professional misconduct proven by any means which the contracting authority can justify.

1.3.6 They have not fulfilled obligations related to the payment of social security contributions in accordance with the legal provisions of the country where they are established.

1.3.7 They have not fulfilled obligations related to the payment of taxes in accordance with the legal provisions of the country where they are established.

1.3.8 They are guilty of serious misrepresentation in supplying the information required by the AICS as a condition of participation in a tender procedure or contract.

1.3.9 They have been declared to be in serious breach of contract for failure to comply with obligations in connection with another contract with AICS or another contract financed with Italian funds.

2. CONTRACT GENERAL PRINCIPLES

2.1 Contract award and execution shall assure proper quality of performance, and respect the principles of economical convenience, efficiency, timeliness, and fairness. Contract award must also abide by the principles of free competition, equal treatment, non-discrimination, transparency, proportionality, and, whenever possible, publicity.

2.2 Upon prior agreement of the parties, economical convenience may be counterbalanced by social fairness, protection of public health, conservation of environment, and promotion of sustainable development.

2.3 Award procedures shall be cancelled if there are fewer than three eligible candidates/bidders. In presence of adequately motivated technical reasons, even less than three eligible offers may be accepted, shall the fundamental principles mentioned in the introduction be respected.

2.4 Contracts may not be modified, unless the modification is approved by AICS pursuant to following clauses. Contractors are not entitled to any payment or reimbursement whatsoever for activities carried out without prior authorization. If AICS or the contracting authority so requires, contractors may be forced to restore, at their own expenses, the original state before the unauthorized modification.

2.5 Bidding documents shall specify the financial resources available for the contract to be awarded.

2.6 Modifications of supply and service contracts may be allowed and shall be effective only upon AICS prior authorization, which may only be granted in the following cases:

2.6.1) modifications of applicable laws and regulations;

2.6.2) unforeseen and unforeseeable circumstances, including the implementation of new materials, components or technology not existing when the award procedure was commenced,

provided that the modifications ameliorate the quality of the performance, without increasing the contract total amount;

2.6.3) events related to the nature or the quality of the goods or places where the contract activities take place, which occur during the contract execution and were unforeseeable when the contract was made;

2.6.4) unless otherwise provided, the above-mentioned modifications may not increase or reduce the total contract amount beyond 20%, provided that the funding is available. In case the above-mentioned modifications will make the project total cost[1] exceed the approved total estimated investment cost[2], they also have to be approved by the relevant Vietnamese Authorities;

2.6.5) modifications, which, in the interest of the contracting authority, increase or reduce the total contract amount, necessary to improve the quality and performance of the project are allowed up to 5%, provided that the funding is available and no substantial modification is made; the modifications shall be only due to objective reasons, unforeseeable when the contract was made;

2.6.6) contractors may not refuse the above-mentioned modifications; such modifications shall be executed at the same contractual conditions;

2.6.7) contractors shall execute any non-substantial modification that the contracting authority may see fit, provided that the nature of the activity is not fundamentally altered and no additional costs are imposed.

2.7 Modifications of works contracts shall be effective only upon AICS prior authorization, which may only be granted in the following cases:

2.7.1) modifications of applicable laws and regulations;

2.7.2) unforeseen and unforeseeable circumstances, including the implementation of new materials, components or technology not existing when the project was made, provided that the modifications ameliorate the quality of the performance, without altering the initial project and without increasing the contract total amount;

2.7.3) events related to the specific nature of the contract activities which occur during the contract execution;

2.7.4) geological problems not predictable in the executive project;

2.7.5) errors or omissions of the final project design which prevent the contract implementation; in this case, the engineering consultants are responsible for the damages; the contractor may not refuse to perform such modifications if their value do not exceed 20% of the total contract amount, provided that the funding is available. In case the above-mentioned modifications will make the project total cost exceed the approved total estimated investment cost, they also have to be approved by the relevant Vietnamese authorities;

2.7.6) modifications, which increase or reduce the total contract amount, necessary to improve the quality and performance of the project are allowed up to 5%, provided that the funding is available.

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[1] **The project total cost** is the total real cost of the project when it is executed. It includes all contracted amounts for works, services, supplies and the cost of project management, land acquisitions, project audits, etc.,

[2] **The approved total estimated investment cost** is the amount, approved by the project owner, of project total cost estimate. This amount is defined in the project document (project's feasibility study report).

2.8 Contracts may not be assigned to a third party. In case of assignment, the contract shall be automatically terminated.

2.9 Subcontract is allowed up to an amount of 30% of the total contract amount. The bidding documents must specify if subcontract is allowed and the conditions thereof. Upon submitting their bids, bidders must declare which supplies/services/works they intend to subcontract. Contractors must deposit subcontracts with the contracting authority at least 20 days before commencing the execution of the subcontracts. Subcontractors must be eligible for the supplies/services/works they are assigned.

2.10 Contractual unit-prices shall be firm, fixed, and non-revisable.

2.11 Exchange rate risk or variations may not be subject to compensation whatsoever.

2.12 The contract shall be automatically terminated if the contractors are subject to proceedings for declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations.

2.13 In case of malice or grave negligence, contractors' liability may not be limited.

2.14 Contract execution shall be governed by the law of the beneficiary state.

2.15 Disputes arising between the contractors and the contracting authority shall not be submitted to the jurisdiction of the Italian courts.

2.16 Bidding documents shall include the above-mentioned principles.

2.17 The Italian party reserves the right to apply the fundamental principles of Italian law, should any legal gap arise.

3 ELIGIBLE AND INELIGIBLE COSTS

3.1 The costs included in the contract(s) shall be eligible if they are actual, economic, and necessary for carrying out the Project pursuant to Project document.

3.2 In any case, the following items shall not be considered eligible:

a) voluptuary or luxury goods (e.g. perfumes, cosmetics, art objects, spirits, sports goods, etc.);

b) goods, services and civil works directly or indirectly connected to police or military activities;

c) non-income / non-profit taxes (including VAT) and import duties;

d) provisions for outstanding debts and future losses of the beneficiary or the final users;

e) interests owed by the beneficiary or the final users to any third party.

4. ETHICAL CLAUSES

4.1 Any attempt by candidates or bidders to obtain confidential information, enter into unlawful agreements with competitors or influence the contracting authority during the process of examining, clarifying, evaluating, and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties:

4.2 Without the contracting authority's prior written authorisation, contractors and their staff or any other company with which the contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for

the Project. This prohibition also applies to any other Projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the contractors.

4.3 When putting forward their candidacy or participating in a tender, candidates or bidders must declare that they are affected by no potential conflict of interest, and that they have no particular link with other bidders or parties involved in the Project. Should such a situation arise during the performance of the contract, the contractors must immediately inform the contracting authority.

4.4 Civil servants or other officials of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by the tenderers unless the prior approval of the AICS has been obtained.

4.5 Contractors must at all times act impartially and as a faithful adviser in accordance with the code of conduct of their profession. They must refrain from making public statements about the Project or services without the contracting authority's prior approval. They may not commit the contracting authority in any way without its prior written consent.

4.6 For the duration of the contract, contractors and their staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular, tenderes who have been awarded contracts shall respect core labour standards as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in respect of employment and occupation; abolition of child labour).

4.7 The contractors may accept no payment connected with the contract other than that provided for therein. The contractors and their staff must not exercise any activity or receive any advantage inconsistent with their obligations to the contracting authority.

4.8 The contractor and their staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor are confidential.

4.9 The contract shall govern the contracting parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

4.10 The contractors shall refrain from any relationship likely to compromise their independence or that of their staff. If contractors cease to be independent, the contracting authority may, regardless of injury, terminate the contract without further notice and without the supplier having any claim to compensation.

4.11 MAECI-DGCS reserves the right to suspend or cancel Project financing if corrupt practices of any kind are discovered at any stage of the award process and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority.

4.12 More specifically, all tender dossiers and contracts for works, supplies and services must include a clause stipulating that tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

4.13 Contractors undertake to supply AICS on request with supporting evidence regarding the conditions in which the contract is being executed. AICS may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

4.14 Contractors found to have paid unusual commercial expenses on Projects funded by AICS are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving AICS funds.

4.15 Failure to comply with one or more of the ethics clauses may result in the exclusion of the candidate, bidder or contractor from other AICS contracts and in penalties. The individual or company in question must be informed of the fact in writing.

4.16 It is the obligation of the contracting authority to ensure that the procurement procedure is concluded in a transparent manner, based on objective criteria and disregarding any possible external influences.

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