

**AGREEMENT BETWEEN THE
GOVERNMENT OF THE ITALIAN REPUBLIC
AND THE
GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM**
**For the implementation of the Water Sector Program Aid in support to the Balance of
Payments in favour of the Ministry of Finance of the Socialist Republic of Vietnam to be
financed with a grant in the amount of Euro 2,400,000**

The Government of the Italian Republic and the Government of the Socialist Republic of Vietnam, hereinafter referred to as the "Parties";

CONSIDERING that the Memorandum of Understanding on the Terms and Conditions for the Implementation of the Italian Co-operation Program, signed between the Parties in Rome, on 26th May 1997, indicates Infrastructure and the Water Resources Management as priority sectors;

RECOGNISING that within the objectives of the above mentioned Memorandum, the Italian Ministry of Foreign Affairs – Directorate General For Development Co-operation (hereinafter referred to as the MAE-DGCS) is implementing six projects in water and environmental sanitation sector;

CONSIDERING that the Agreement on Development Cooperation, signed by the Parties in Rome, on 12th December 2009, indicates priority projects, among which Water Sector Commodity Program Aid is included, to be funded with grants amounting to Euro 4.5 million;

RECOGNISING the effective and efficient implementation of the first Water Sector Commodity Program Aid held from 2003 to 2008;

ACKNOWLEDGING that the Ministry of Planning and Investment of the Socialist Republic of Vietnam has requested a Water Sector Commodity Aid, on 23rd December 2009, for the implementation of the Water Sector Program Aid, in support to the Balance of Payments in favour of the Ministry of Finance of the Socialist Republic of Vietnam, hereinafter referenced to as "the Program";

Have agreed as follows:

ARTICLE 1
Definitions & acronyms

The following words and acronyms in the text shall be read accordingly:

Program: The Water Sector Program Aid in support to the Balance of Payments.

MAE-DGCS: The Ministry of Foreign Affairs of Italy – Directorate General for Development Co-operation.

MoF: The Vietnamese Ministry of Finance.

PCo: a Vietnamese Procurement Company.

- ACo:* an international Auditing Company.
- MCU:* Monitoring and Control Unit.
- ODA:* Official Development Assistance.

ARTICLE 2

Objective

This Agreement's objective is to set up criteria and modalities for the disbursement and the effective use of the funds allocated by MAE-DGCS within the scope of this Agreement.

ARTICLE 3

Program Financing

1. The Program consists in the procurement of capital goods and commodities, to be mainly acquired on the Vietnamese market or imported, to be used in the Water Resources Sector by Vietnamese Government or local authorities.
2. MAE-DGCS engages itself in committing an untied grant aid in the total amount of Euro 2,400,000.00 in favour of the Ministry of Finance of the Socialist Republic of Vietnam to finance the Program. The above total amount is composed by the following cost elements:
 - 2.a) Euro 2,348,000.00 to cover procurement of goods and commodities, including up Euro 100,000.00 for fees due to the ACo and the PCo and up to Euro 44,000.00 to support the operation of the Monitoring and Control Unit of the Vietnamese Ministry of Finance. These funds shall be directly managed by MoF;
 - 2.b) Euro 52,000.00 to cover monitoring and control costs and technical assistance of MAE-DGCS. These funds shall be directly managed by MAE-DGCS.
3. MAE-DGCS shall deposit the funds referred to in paragraph 2.a) through three subsequent instalments on the Special Current Account, opened by the MoF in the Bank as per Article 4. The sequence of instalments shall be as follows:
 - a) The first deposit (down payment) shall correspond to an amount equivalent to 20% of the above mentioned cost element 2.a) and shall be disbursed:
 - (i) after the entry into force of the present Agreement;
 - (ii) after receiving a communication by MoF indicating the Program Special Current Account's bank details;
 - (iii) after submission by the MoF of the approved project feasibility reports by the Vietnamese competent authorities showing that access to water is guaranteed to the poorest part of the population, that all project costs are covered and that the initiatives are sustainable from a financial, economic and environmental standpoint; the above mentioned reports shall also indicate projects' directors and projects' implementing schedules;
 - (iv) after submission by the MoF of the proposed grant allocation for each project;
 - (v) after submission by the MoF and approval by the MAE-DGCS of the selection of the PCo and ACo;
 - (vi) after submission by the MoF and approval by the MAE-DGCS of a procurement plan (including a detailed identification of final beneficiaries and destination of

goods and commodities procured in line with the objectives of the Program);

(vii) upon completion of MAE-DGCS internal administrative and control procedures.

- b) The second deposit shall be in the amount equal to 60% of the value of cost element 2.a). MAE-DGCS shall deposit the second instalment upon approval of the First Request to Proceed, issued by the MoF, pertaining the disbursement of an amount equal to at least 15% of the value of cost elements 2.a). accompanied by the justification documents as per Article 4 and the bidding documents for the next supply in the value of at least 40% of cost element 2.a). Notification of First Request to Proceed approval shall be made upon completion of MAE-DGCS internal administrative and control procedures. In case of First Request to Proceed approval, the second deposit shall be made within five (5) months from the date of the approval.
- c) The third and last deposit shall be made for an amount equal to 20% of the same cost element 2.a). MAE-DGCS shall deposit the third and last instalment upon the approval of the Second Request to Proceed accompanied by the justification documentation as per Article 4, issued by the MoF, pertaining the disbursement of an amount equal to at least an additional 55 % of the value of cost element 2.a) and the bidding documents for the next supply in the value of the residual amount of cost element 2.a). Notification of Second Request to Proceed approval shall be made upon completion of MAE-DGCS internal administrative and control procedures. In case of Second Request to Proceed approval, the third and last deposit shall be made within five (5) months from the date of approval.

- 4. Irrespective of the provisions under Article 10, MAE-DGCS reserves itself the right to curtail the second and / or third instalments for an amount equal to the amount of funds whose use has not been validated by the ACo or by MAE-DGCS own monitoring systems. MoF engages to refund the amount which has not been validated by ACo or MAE-DGCS after the administrative and financial assessment of the Final report as mentioned in Article 4.

ARTICLE 4

Eligibility and Fund Disbursement Procedures

Goods and commodities and related services eligible for financing within the objective of the Program as per costs element 2.a) of Article 3 shall be related to the exploitation of surface and deep water, treatment and distribution of drinkable water, storage and accumulation systems, drainage in normal and emergency conditions, as specified in Annex 1.

Within a month of each procurement procedure execution, MoF shall notify to the Italian party the List of goods and commodities procured, indicating beneficiary co-ordinates and use of the procured items, objectives and financial arrangements. In case a single procurement procedure exceeds the amount of Euro 500,000.00 the Lists of goods and commodities to be procured shall be notified to the Italian party before the procurement procedure is launched. No artificial division of a unified proposed purchase is admitted.

The funds shall be used for the procurement of the following categories of goods:

- a) main equipment, per types defined in Annex 1;
- b) spare parts for main equipment, including spare parts for main equipment not included in the procurement plan of the Program as long as it fits the types included in Annex 1;
- c) transportation and insurance costs;
- d) fees for related services.

The funds are untied and shall be used to acquire, in accordance to the Vietnamese Law and regulations, goods and services in Vietnam or in other countries through Domestic Competitive

Bidding (DCB) procedures or through International Competitive Bidding (ICB) procedures for procurement in other Countries, preferably in Developing Countries of the South – East Asia Region. Procurement shall be consistent with the “Eligibility criteria, ethical clauses, contract general principles” as listed in Annex 2.

MoF ensures that customs duties, internal taxes and other fiscal levies, which may be imposed in the Socialist Republic of Vietnam with respect to the purchase of the goods and commodities and related services referred to point 1 of this Article, shall not be borne by the Italian aid.

Upon the entry into force of the present Agreement, MoF shall open a Special Current Account in Euro in a first class commercial Bank of Vietnam (hereinafter referred to as the Bank) and shall communicate its bank account details to the Italian party.

MoF shall select a Vietnamese PCo through a national competitive bid. The PCo shall not be engaged to buy / sell procured goods and / or services and shall be charged with the following tasks: a) to prepare and manage the bids for the procurement of the goods; b) to be responsible for the selection of the suppliers, procurement contracts definition and management on the basis of a competitive bid procedure; PCo shall be assigned the duties and responsibilities detailed in the PCo Terms of Reference included in Annex 1.

The contract format between MoF and PCo shall be submitted to MAE-DGCS before the signature. In case of objection, MAE-DGCS shall inform MoF within 30 working days from the date of receipt of the Contract Format by the Italian Embassy.

MoF shall competitively select an international ACo. The ACo shall be charged with the following tasks: a) to check *ex-post* the quantity and quality of the acquired goods priced over Euro 50.000 and to spot check at least 10% of the total value of the goods under this price, as well as for procured goods' compliance with the purpose of the program and their market fair value. b) to audit the financial report; c) to check the procurement process; d) on the basis of the above controls, to issue a report on the correct management of the program, to be annexed to the First and Second Requests to Proceed.

ACo shall be assigned the duties and responsibilities detailed in the ACo Terms of Reference included in Annex 1. The contract format between the MoF and the ACo shall be submitted to MAE-DGCS before the signature. In case of objection, the MAE-DGCS shall inform MoF within 30 working days from the date of receipt of the Contract Format by the Italian Embassy.

The reports, as per paragraph 8, issued by ACo shall include at least the following documents:

A) Procurement Report, including:

- a) bidding documents,
- b) copies of the procurement contracts,
- c) bills of delivery of the goods,
- d) invoices,
- e) quality and quantity control reports,
- f) acceptance certificate by the end user.

B) Financial Report, including:

- a) bank statement of Program Special Current Account,
- b) currency exchanges transactions, if any is needed by single contracts.

Within one calendar month from the complete use of funds, MoF shall issue the "Final Report" in relation to the use of the remaining amount of funds, including the accrued interest. The Final Report shall be accompanied by a report issued by the ACo including the documentation as per paragraph 10.

ARTICLE 5

Monitoring and Control of the Program

1. The use of the funds under Article 4 shall be monitored and controlled by the Monitoring and

Control Unit (MCU) established within the premises of MoF and staffed with MoF personnel in charge of the proper application of the procedures and the monitoring of the Program progress. A representative of MAE-DGCS may participate as an observer in all the activities of MCU and provide technical assistance. MAE-DGCS may implement its own monitoring activities in co-operation with MCU, including inspections on sites where the procured goods are to be used.

2. The attached Annex 1 forms integral part of this Agreement and contains all technical elements needed for the implementation of the Program.
3. All documentation produced by the MCU and the ACo in addition to the copies of all procurement documents shall be kept at disposal in the MCU premises.
4. MCU shall transmit all communications to MAE-DGCS through the Italian Embassy/Cooperation Development Office in Hanoi.

ARTICLE 6

Interests

The interest earned by the Special Current Account shall be used for the same purposes and with the same modalities provided for herein.

ARTICLE 7

Expatriate Experts Status

Expatriate experts employed in the Program under this Agreement shall be covered by immunities and privileges as foreseen by Vietnamese regulation on the Status of Foreign Experts participating in ODA Programs and Projects in Vietnam and provisions of the Agreement on Development Cooperation, signed between the Parties in Rome, on 12th December 2009. In case of discrepancy, the provision which grants the most extensive immunity or privilege shall prevail.

ARTICLE 8

Disputes

The Parties shall settle the disputes which may arise in the course of Program implementation through diplomatic channel.

ARTICLE 9

Impediments and Force Majeure

1. In case of impediments to implement this Agreement 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 cases 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, based on MCU recommendations approved by MAE-DGCS, shall apply:
 - a) In case that the duration of the impediment to the implementation of the Program is less than six months, the use of the funds shall be suspended until the MAE-DGCS authorises resumption of activities.
 - b) In case the duration of the impediment to the implementation of the Program is greater than six months and less than twenty-four, the Program shall be suspended and the residual

- funds, reduced by the amount needed to finance the activities specified at the following paragraph 2, shall be maintained until the impediment ends and the MAE-DGCS authorises resumption of the Program's activities.
- c) In case the impediment to the implementation of the Program is greater than twenty-four months, the Parties shall discuss about the continuation of the Program and define an agreed course of actions. In case that the continuation of the Program 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 paragraph 2.
2. The activities of the Program not affected by the impediments and causes of force majeure shall be continued until completion and the funds shall be allocated.

ARTICLE 10

Termination of the Agreement by the MAE-DGCS

1. The MAE-DGCS reserves the right to terminate this Agreement in the following cases:
 - A) Failure of the program to reach its objectives or failure by MoF to produce the justification documents requested for the instalments subsequent to the down payment.
 - B) Severe fault in the use of funds. Severe faults are:
 - a) Unmotivated and prolonged delays in the use of the funds such to threat the achievement of Program objective.
 - b) The use of the funds for reasons which may be different from those included in this Agreement and its Annex or its amendments.
 - c) Severe mismanagement of funds.
 - C) In case of impediment or force majeure pursuant to Article 9.
2. In case of severe fault, MAE-DGCS shall notify the event in writing to MoF, inviting it to take suitable measures to fix the consequences of the fault within maximum sixty days from the date of the notification. Expired this time limit, MAE-DGCS reserves itself the right to terminate immediately this Agreement. In this case Article 8 shall apply.
3. MAE-DGCS may decide unilaterally the termination of this Agreement notifying MoF, through a Note Verbale, with at least three months in advance. In all cases, after such notification, MoF shall stop all activities of the program, unless otherwise agreed between the two Parties.

ARTICLE 11

Amendments

The Parties, by mutual consent, may at any time change the content of this Agreement through amendments. The amendments shall enter into force with the same procedures as defined in Article 12.

ARTICLE 12

Entry into force and duration

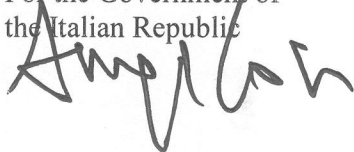
1. The present Agreement shall come into force on the date of receipt of the last of the two notifications by which the Parties shall inform each other about the completion of their respective domestic procedures necessary for the entry into force of this Agreement;
2. This Agreement shall have duration of thirty-six months from the date of its entry into force or until the date of completion of the Project, whichever comes first. If at the end of the duration

of this Agreement funds remain unused into the Special Current Account, the Parties will jointly decide the use of the Special Current Account balance funds.

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

Done on the ^{15 November} ... of ²⁰¹² in two originals in the English language, both originals being equally authentic.

For the Government of
the Italian Republic



For the Government of
the Socialist Republic of Vietnam

ANNEX 1
Commodity Aid Program for the Water Sector

Main Objective of the program is to improve the living conditions of the beneficiary population:

Specific Objective of the Program is to increase and extend water availability for civil purposes in favor of projects' beneficiaries;

Expected result of the Program is to increase the availability of water for civil use through the implementation of the following categories of work:

- water purification plants;
- water supply networks.

Activities shall consist in the procurement of goods and commodities to be used for the construction or rehabilitation of water treatment and distribution systems in selected areas of five Vietnamese Provinces, namely:

1. Quang Ninh (rehabilitation of four rural water treatment systems in Ha Nam island, Yen Hung district),
2. Quang Binh (construction of water treatment and distribution systems in the five municipalities of Hien Ninh, Xuan Ninh, Tan Ninh, An Ninh, Van Ninh and in the industrial area of Ang Son),
3. Quang Tri (construction of water treatment and distribution systems in the two municipalities of Vinh Long and Vinh Ha – Vinh Linh district – and in the municipality of Hai Chanh – Hai Lang district),
4. Dong Thap (construction of water treatment and distribution systems in the municipality of Thong Moi Tien – Hong Ngu district),
5. Tra Vinh (construction of water treatment and distribution systems in part of the municipalities of Ngai Xuyen, Tap Son, Thanh Son and Tra Cu – Tra Cu district).

The selection of internationally procured goods and commodities shall be based on the following priority criteria, listed in decreasing order of importance:

1. Best Price and Delivery Conditions;
2. Best overall standing per the requirements of this Annex 1;
3. Origin (Country of manufacture)
 - a) in Developing Countries, preferably located in the South – East Asia;
 - b) in the European Union;
 - c) in any other Country;

Merchandise Categories of Goods and Commodities shall include, but not limited to the following:

- Pipes and standard / customized joints, valves;
- Filters and grids;
- Submersible and surface pumps;
- Spare parts and materials for pumping systems;
- Spare parts and materials for waste water treatment systems;
- Spare parts and materials for drinkable water treatment systems;
- Equipment, spare parts and materials for above listed systems;
- Special tools and equipment for the detection of leakage and maintenance of distribution network and treatment plants;
- Management and control systems for distribution network and treatment plants.

Categories of Services covered by financing:

Transport and insurance fees
Bank transaction fees;
Quality and quantity control fees;
Consulting services related to procurement and auditing activities, including those to be used by the MoF to select PCo and ACo;
Fees and / or commissions applicable to the PCo and ACo contracts;
Management fees as per the EU guidelines for financing of local costs in development cooperation with Vietnam on compensation to Vietnamese Government personnel seconded to ODA financed projects;

The program's phases: The phases through which the program will develop are the following:

Program Preparation Phase

Formation of MCU;
Identification and appointment by the MCU of the Consultants charged with the preparation of the documentation needed to execute the bids to select PCo and ACo;
Preparation of the Goods and Commodities Procurement List, by merchandise categories, indicating quantities, final beneficiary name and coordinates, intended use of goods and commodities, acceptance requirements, delivery date and location details;
Preparation of the technical specifications for procurement purposes;
Bid documentation preparation including pro-forma contract;
Bid evaluation criteria, requirements and procedure preparation;
Local and foreign suppliers, qualification requirements preparation;
Request for proposal preparation;
Management and financial auditing by the ACo.

Bid execution phase

Bids execution;
Bids evaluation;
 Price and Delivery Terms and Conditions;
 Technical, including quality of proposed goods and commodities;
 Supplier qualifications;
 Country of manufacture
Supplier selection;
Procurement Contract signature;
Management and financial auditing by the ACo.

Procurement Phase

Supply contracts are executed;
Goods and commodities are quality and quantity controlled;
Goods and commodities are delivered;
Goods and commodities are tested for final acceptance by the final beneficiaries;
Acceptance certificates are issued by the Final Beneficiaries;
Management and financial auditing by the ACo.

Terms of reference (TOR) for the monitoring and control unit (MCU)

The use of the funds under Article 4 shall be monitored and controlled by the Monitoring and Control Unit (MCU) created within the premises of MoF and staffed with MoF personnel in charge of the proper application of the procedures and the monitoring of the Program progress.

MCU shall be composed by three Vietnamese representatives appointed by MoF among which one shall be appointed by MoF as the Commodity Aid Program Manager.

In the first meeting of MCU, convened by the Commodity Aid Program Manager shortly after his/her appointment, MCU shall set up and adopt its procedural charter (i.e. frequency of meetings, call for meeting procedure, reporting, ... etc.).

A representative of MAE-DGCS may participate as an observer in the activities of MCU and provide technical assistance. The MAE-DGCS representative is part of the DGCS own monitoring system.

MCU shall be responsible to verify that all pertinent documents (including the audited Procurement Report and Financial Report, issued by the ACo) to accompany the requests by MoF for deposit of financing instalments shall be prepared per the agreed Documentation Format and supplied to MoF for further processing.

MCU shall transmit all communications to MAE-DGCS through the Italian Embassy in Hanoi.



Terms of reference (ToR) for the procurement company (PCo)

1. General

The selection of the Procurement Company (PCo) shall be done in accordance with the latest edition of the Manual of Instructions Contracts for works, supplies and services for the purposes of Community Co-operation with Third Countries, adopted by the European Commission.

2. Content and Format of the Contract with the Procurement Company

The content of the Contract to be subscribed by MoF with the Procurement Company shall be in consistent with the content of the Agreement.

The format of the Contract to be subscribed by MoF with the Procurement Company shall be conforming to the following scheme:

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Objectives of the Activities

Scope of the work – see also the Procurement Company Terms of Reference in the following paragraph 3;

Expected Outputs

The Submission of Reports

Satisfactory Implementation of the Program

Required Inputs

Time schedule, Period of Performance

Job Description – see also the Procurement Company Terms of Reference in the following paragraph 3;

3. Procurement Company, Terms of Reference

The selected Procurement Company, as set out in the Article 4 of the Agreement:

- shall define the technical specifications of the commodities, equipment and services to be procured in coordination with and upon approval by the final beneficiary that shall receive and accept the procured items;
- shall define the weighting criteria for the evaluation of the offers;
- shall prepare the notice of the tender(s). The notice of the tender shall be sent to MAE - DGCS for the publishing in national daily newspapers;
- shall prepare the tender dossier(s). Each tender dossier shall include:
 - Instructions for tender participation:
 - the conditions for participating to the selection;
 - the instructions for bidders, the procedures and the criteria for awarding the contract;
 - all other provisions relating to the tender.
 - The applicable special contract terms and conditions:
 - general conditions and administrative, financial, legal and technical contract clauses relating to the performance of contract;
 - technical specifications.
- shall provide to the drawing up and stipulation of the contracts.



- shall adopt the open procedure within the basic principles of competitive tendering that shall govern the award of contracts;
- shall proceed with the management of tendering procedures based on following criteria: verification of the eligibility of the tender candidates: legal persons, companies or firm shall not be eligible in the event: that a. they are undergoing bankruptcy proceedings, liquidation, winding up or composition with creditors or in any other similar situation under domestic and/or foreign law, or against which there are pending proceedings for the declaration of such states; b). they are in a proven state of insolvency by judicial decision other than a judgement declaring bankruptcy and resulting, in compliance with their domestic law, the total or partial loss of control over the management and disposition of their assets; c). legal proceedings have been instituted against them to ascertain the state of insolvency that may result, in compliance with their domestic law, in a declaration of bankruptcy or of any other state entailing the total or partial loss of control over the management and disposition of their assets; d). a final conviction has been handed down against them for any crime involving professional ethics or financial criminal offences; e). they have been found guilty of false statements in a tender bid; f). that have not performed on another contract with the principal party; g). they are not up to date with social security or health care contributions for their employees, pursuant to the laws of Italy or the laws of their country of residence; h. they are not up to date with tax payments pursuant to Italian law or the laws of their country of residence;

In addition, the Italian tender participants shall present the certificate or equivalent declaration not to be in the conditions as referred in the Legislative Decree 08.08.1994, n.490. (" antimafia ").

Verification of the financial and economic standing of tender participants through:

- a). a declaration as to the capital of the firm, the turnover in the three business years prior to the tender;
- b). a declaration of the total turnover of the bidder and, in the case of temporarily grouped firms, of the turnover of individual participants;
- c). a declaration indicating the turnover of the specific sectors to which the bid refers or the sectors which, in the case of a temporary association of firms, the individual firm intends to contribute, to an overall extent that is at least three times greater than the value of the lot bid on;
- e). adequate declarations of legal representatives or bank certification, containing information on relations with banking institutions of international renown, apt to demonstrate both the commercial and the financial viability of the bidders and of the firms forming a temporary association of firms;
- f). copy of the membership certificate with the Chamber of Commerce in the country of residence;
- g). in the case of temporary associations of firms, a special joint-agency contract with proxies to one of them appointed group leader, who will be jointly responsible with the other participants in the group to the contracting authority;

When the tender is addressed to public entities, institutions, University, NGOs, the declaration required for the verification of the financial and economic standing shall include only the letter a), letter e) (if present), and letter f).

Verification of the technical and professional capacity of tender candidates through:



copies of original documents proving the legal constitution and/or juridical status and establishing the place of registration and/or the corporate headquarters or registered office and, if they are not the same, the location of the headquarters of the company, firm or ordinary partnership, or of the various parts that form the bidder, in the case of a temporary association;

a report containing supported information on the experience and past work of the bidder or of a temporary association of firms in tenders of a similar nature in the last three years, and concerning other tenders in course with specific information as to the effective and concrete participation in each tender;

the qualifications and experience of the key staff members assigned by the contractor to implement the contract;

a brief report on the activities of the individual or associate bidder with specific reference to the activities related to the Program.

shall proceed with the management of contract award procedures based on following criteria:

Comparison of tenders on the basis of the award criteria stipulated in the Procurement notice and in the tender dossier, using pre-established criteria and price for identifying the most economically advantageous tender. These criteria must be precise, must not be discriminating and must not be prejudicial to fair competition.

Terms of reference (ToR) for the auditing company (ACo)

1. General

The selection of the Auditing Company (ACo) shall be done in accordance with the latest edition of the Manual of Instructions Contracts for works, supplies and services for the purposes of Community Co-operation with Third Countries, adopted by the European Commission.

2. Content and Format of the Contract with the Auditing Company

The content of the Contract, to be subscribed by the MoF with the Auditing Company, shall be consistent with the content of this Agreement.

The format of the Contract, to be subscribed by the MoF with the Auditing Company, shall be conforming to the following scheme:

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Required Inputs

Time schedule, Period of Performance

Job Description – see also the Auditing Company Terms of Reference in the following paragraph 3;

3. Auditing Company, Terms of Reference

The selected Auditing Company, as set out in the Article 4 of the Agreement:

Shall define in coordination with the Program Monitoring and Control Unit (MCU) the Quality and Quantity Controls Plan (QQCP) of the Program based on the List and the Specifications of Goods and Commodities to be procured by the Procurement Company. The QQCP shall be approved by the MCU. The QQCP shall be designed to verify compliance with the purpose of the program and goods and commodities fair market value and shall be tailored upon following requirements :

- Purchase order items priced over Euro 50.000 shall be controlled for quality and quantity individually;
- Purchase order items priced equal or below Euro 50.000 shall be submitted to quality and quantity controls on a sample control basis.
- Each purchase order, at least for one item, shall undergo quality and quantity controls.
- At least 10% of the total value of goods procured by the Procurement Company, priced equal or below Euro 50.000 shall be controlled for quality and quantity on a sampling basis.

Shall define in coordination with the MCU the Financial and Administrative Documentation and Procedures Auditing Plan (FADPAP). The FADPAP shall include among documents to be audited

at least all those to be submitted to DGCS for disbursement approval as per Article 4 of the Agreement;

Shall perform the audit of the procurement process;

Shall perform quality and quantity controls of the procured goods and commodities in accordance with the QQCP defined above;

Shall perform the audit of the financial and administrative documents and procedures in accordance with the FADPAP defined above;

Shall issue, on the basis of the above controls, a certificate on the correct management of the program;

Whenever possible shall perform quality and quantity controls simultaneously with acceptance tests performed by the final beneficiaries.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a series of loops and a final upward stroke.

ANNEX 2

ELIGIBILITY CRITERIA, ETHICAL CLAUSES, CONTRACT GENERAL PRINCIPLES

This Annex harmonizes the rules applicable to procurement pursuant to this Agreement 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/offerees must provide the evidence thereof by the "certificato antimafia", issued by the competent Italian authorities. Non-Italian tenderers/offerees 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 MAE-DGCS 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 MAE-DGCS 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.

2.4 Contracts may not be modified, unless the modification is approved by MAE-DGCS pursuant to following clauses. Contractors are not entitled to any payment or reimbursement whatsoever for activities carried out without prior authorization. If MAE-DGCS 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 MAE-DGCS 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 cost¹** exceed **the approved total estimated investment cost²**, 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 MAE-DGCS 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;

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).

2.7.6) 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.

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 MAE-DGCS 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, tenderers 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 MAE-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 undertakes to supply MAE-DGCS on request with supporting evidence regarding the conditions in which the contract is being executed. MAE-DGCS 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 MAE-DGCS are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving MAE-DGCS 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 MAE-DGCS 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.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a long horizontal stroke and a small upward tick at the end.