

Ufficio di Yangon

Prot. n. AICSY-OUT-

PROJECT : “ SUPPORT TO THE ODA COORDINATION IN MYANMAR :
CAPACITY DEVELOPMENT OF DONOR COORDINATION
(CAD-MM) – AID 11087”
CIG (BID CONTRACT IDENTIFICATION No.) : **75125586FA**

SUPPLY CONTRACT

(Hereinafter referred to as “**the Contract**”)

between

The Italian Agency for Development Cooperation - Yangon Office

(Hereinafter referred to as “**Contracting Authority**”)

Represented by the Director Maurizio Di Calisto,

41-7B, Inya Myaing, Shwe Taung Gone, Bahan Township, Yangon

and

XXXXXXX

(Hereinafter referred to as “**the Provider**”)

Represented **by XXXX,**

Address : **XXXXXXXX**

(Hereinafter referred to as individually, the “**Party**” and collectively, the “**Parties**”)

WHEREAS

That with Decree n. 20 dated March 10, 2017, the Director of the Italian Agency for Development Cooperation authorized the allocation of funds for the Project “Support to the ODA coordination in Myanmar: Capacity Development of Donor Coordination (CAD-MM) - AID 11087”;

That as per the last version of the General Operational Plan approved by the Italian Agency for Development Cooperation, the Project foresees, among other, the provision of the “Technical Support activities to the Foreign Economic Relations Department” such as: technical equipment and logistic support for the organisation of conferences related to the development sector;

That the Technical Support activities will be executed through the awarding of Technical Support contracts to interested Economic Operators after a Tender Process;

That with the Decree n. XXXXX the Director of AICS Yangon authorized the commencement of the bidding process for the present supply;

That the Contracting Authority on XXXX, published on the websites www.ambiyangon.esteri.it and www.aicsyangon.org the Invitation to Bid for IT equipment supply and installation to FERD for the project activities of the Italian Agency for Development Cooperation” – CIG 75125586FA;

That the Organization XXXXX obtained the best score following the evaluation procedures of the technical and financial offers for the execution of the Supply indicated under the previous point;

That the offer submitted on XXXXX, by the organization XXXXXXXX was considered adequate and in line with the needs of the Project CAD- MM, AID 11087;

That the Contracting Authority hence intends to engage the services of the above-mentioned Organization on the terms and conditions hereinafter set forth;

That the Organization XXXXX is ready and willing to accept this Supply Contract with the Contracting Authority on the below terms and conditions

THE PARTIES AGREE AS FOLLOWS

ART. 1 – SCOPE OF THE CONTRACT

In the framework of the project “Support to the ODA coordination in Myanmar: Capacity Development of Donor Coordination (CAD-MM) - AID 11087”, the Contracting Authority awards to the Provider, who hereby accepts, the execution and the completion of the Supply Contract within the “Technical Support activities to the Foreign Economic relations Department” for the project activities of the Italian Agency for Development Cooperation – AID 11087.

The scope of this Contract is thus to provide the supply and installation of IT equipment (hereinafter referred to as the “**Supply**”) aimed at strengthening the performance of the Foreign Economic Relations Department (FERD) staff of the Ministry of Planning and Finance (MoPF) for the ODA database and its coordination role, through the provision of IT equipment.

The following Annexes are an integral part of the present Contract:

- Annex I- Terms of Reference (TOR);
- Annex II - Technical and Economic offer;
- Annex III - Timeline chart proposed by the Provider;
- Annex IV –AICS logo;

The Terms of Reference (Annex I) cannot be amended without prior written approval of the Contracting Authority.

In connection with the performance of its Supply under this Contract, the Provider shall neither seek nor accept instructions from any authority external to the Contracting Authority.

ART. 2 – ACTIVITIES CARRIED OUT BY THE PROVIDER

The activities carried out by the Provider are described in Annex I and Annex II, where related quantities and costs are also specified.

The days and hours of work of the Provider's personnel shall respect the Myanmar laws, regulations and customs and the requirements of the Supply.

While executing the Contract, the Provider will interact with the Contracting Authority providing regular updates, when needed, to the Director of the Italian Agency for Development Cooperation - Yangon Office and to the experts delegated by the Director for supervising the execution of the Contract.

Based on the tasks listed in the above-mentioned Annex I, the Provider is expected to provide through its personnel the following deliverables:

1. Provision of specific IT equipment, as detailed in Annex I, including:
 - a) Purchase the IT equipment with the technical and brand specifications indicated by FERD (or higher specifications);
 - b) Duly check that all products are originals and that they come with the related warranty;
 - c) Install and set up the purchased equipment within 2 months from the date of contract signature within the FERD of MoPF in Naypyidaw;
 - d) Check, in presence of an officer from AICS Yangon, that all purchased equipment is functioning;
 - e) Run diagnostic tests on IT equipment after 3 months from installation.
2. Provision of support infrastructure for internet distribution within FERD building;
3. Installation and configuration of the purchased equipment;
4. Running of diagnostic tests on purchased equipment 3 months after delivery and installation.

ART. 3 – CONTRACT AMOUNT

The Provider undertakes to execute and to complete the actions indicated in the Annex I, according to the timing and modalities agreed upon and in full compliance with the provisions of the present Contract at the price of **XXXXXX(XXXXXXXXXX)**, as indicated in the Annex II – Economic Offer.

The Contract amount is fixed and includes all the activities, consultancies, personnel, vehicles, flights, equipment and supplies, travelling and/or any other charge, even if not specifically

mentioned in this Contract, which is necessary to complete all the actions foreseen for the Contract, both in terms of quality and quantity.

The Provider, by submitting his/her Offer, declares that all the general, particular and local circumstances and that any factor that could affect or influence both the material cost for the Supply provision, for the required results and deliverables as well as the cost for the human resources, consultancies, expertise and transport charges, or any duties connected to the Service execution have been duly considered.

Furthermore, he/she declares to have considered, in defining his/her offer, the possible increases due to the rise of prices during the execution of the Supply, and to renounce any claim in this regard.

The Provider is solely responsible for the payment of service, tax, insurance and all other taxes and government dues as may be applicable. In no case the Contracting Authority will be responsible to pay taxes for this Contract.

ART. 4 – PERFORMANCE SECURITY

The signature of this Contract is dependent on the delivery by the Provider to the Contracting Authority of a Performance Security, according to the Art. 103 of the Italian Legislative Decree n. 50/2016 and following amendments, or of a certified Bank check in Euro headed to the Italian Agency for Development Cooperation AICS – Yangon Office, for an amount equal at least to 15% (fifteen per cent) of the Contract value (XXXXXX, XXXXXXXXX 15/100)

ART. 5 - TERMS OF PAYMENT

Payments will be made by the Contracting Authority through bank transfer to the account number specified by the Provider and will be executed by tranches as detailed in Annex I- Terms of Reference.

The payments will be therefore carried out with instalments according to the following rationale:

- 1) 15 % upon signature of the contract;
- 2) 40 % upon delivery of all IT items;
- 3) 35 % upon installation and first testing the equipment (provisional handing over);
- 4) 10% upon final testing of the equipment (running diagnostic tests) after 3 months after the issue of the provisional handing over (final handing over certificate).

These amounts will be reduced in the case that the Contracting Authority decides, incontestably, to suspend the Supply.

In that case, the Contracting Authority shall promptly notify the Provider (with at least 15 days 'notice), the latter being entitled to receive only the amount related to the expenses incurred up to the time of suspension.

All the payments concerning the execution of the present Contract will be made upon presentation of an invoice for each instalment.

Each invoice shall be duly dated, stamped and signed by the Provider.

The above-mentioned instalments will be disbursed, upon reception and approval of the deliverables by the Contracting Authority as per Annex I.

All the invoices shall be expressed in EURO currency only.

The Provider shall commit itself to open a EURO account, in case he/she does not have such an account at the moment of the Bid.

All the above-mentioned documents shall be addressed to the Italian Agency for Development Cooperation (AICS) - Yangon Office – Project AID 11087- CIG 75125586FA.

ART. 6 - CONTRACT ENTRY INTO FORCE

The present contract will entry into force following its signature by both Parties. Following the countersignature of the contract a Notice to Commence will be sent by the Contracting Authority to the Provider.

ART. 7 - DURATION OF THE CONTRACT AND PENALTIES

The duration of the Contract is 6 (six) months, starting from the official Notice to Commence that will be sent by the Contracting Authority to the Provider following the countersignature of the Contract.

The duration of the Contract may be extended following a written and duly justified request presented by the Provider to the Contracting Authority.

The Contracting Authority will evaluate the request and will inform the Provider whether an extension period could be granted or not.

Without prejudice to the application of other remedies laid down in the Contract, the Contracting Authority will retain the right to apply the following penalties in the observance of the fulfillment of the activities foreseen in the present Contract and whenever they will be only and exclusively ascribed to the responsibility of the Provider.

If the Provider fails to carry out the activities indicated in the present Contract and its Annexes within the lead time stipulated, the Contracting Authority shall, without prejudice to its other remedies under the Contract, deduct from the Contract price, as liquidated damages, a sum equivalent to 0.2% of Contract value for each day of delay until actual delivery, up to a maximum deduction of 10% of the Contract value.

ART. 8 – LIABILITY

The Contracting Authority accepts no liability for damage to persons or property related to the performance by the Provider of the activities specified in this Contract.

The Provider shall execute the Contract with due care, efficiency and diligence in accordance with the best professional practice and shall comply with any administrative orders given by the Contracting Authority

The Provider shall supply, without delay, any information and documents to the Contracting Authority upon request, regarding the conditions in which the Contract is being executed.

The Provider shall respect and abide by all laws and regulations in force in the Beneficiary Country and shall ensure that its personnel, their dependents, and its local employees also respect and abide by all such laws and regulations.

The Provider shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Provider, its employees and their dependents of such laws and regulations.

To perform these tasks, the Provider shall comply with all the legislation in force in the Country in the field of medical, insurance and safety measures.

The employment relationship between the Provider and its staff employed by it to carry out the activities and any offspring from this litigation does not involve in any way the Contracting Authority.

The Provider shall at all time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the Project or the Supply without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way whatsoever without its prior consent and shall make this obligation clear to the third parties.

The Provider and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the Country.

The Provider shall refrain from any action that may adversely affect the FERD of the MoPF and shall fulfill its commitments with the fullest regard to the interests of the Contracting Authority.

The payments to the Provider under the Contract shall constitute the only income or benefit it may derive in connection with the Contract. The Provider and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the Contract.

The Provider commits itself to provide suitable qualified personnel and adequate means necessary for the implementation and supervision of the activities agreed upon in this Contract. The Provider's personnel shall not be considered in any respect as being the employees or agents of the Contracting Authority.

The Provider is fully responsible for acts and contractual terms of its personnel according to the Myanmar law in force, including the relative fiscal dispositions. In no circumstances the Contracting Authority will be responsible for the local personnel involved in the implementation of activities.

ART. 9 – SUBCONTRACTING AND TRANSFERABILITY

The Provider is not allowed to subcontract the provision of the Supply and/or to transfer the Contract to a third Party.

ART. 10 – INTELLECTUAL AND INDUSTRIAL PROPERTIES RIGHTS

All reports, data and supporting records or materials acquired, compiled or prepared by the Provider in the performance of the Contract shall be confidential and shall be the absolute property of the Contracting Authority.

The Provider shall, upon completion of the Contract, deliver all such documents and data to the Contracting Authority.

The Provider may retain copies of such documents and data but shall not use them for purposes unrelated to this Contract without the prior written consent of the Contracting Authority.

The Provider shall not publish articles relating to the Supply or refer to them when carrying out any service for others, or divulge information obtained from the Contracting Authority, without its prior written consent.

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.

ART. 11 – VISIBILITY

The Provider is committed to ensuring that all materials produced and distributed, will bear the AICS logo, as per Annex IV, in a visible position and of an appropriate size.

The Provider is committed to working with the Contracting Authority, through regular contacts, to ensure full visibility of AICS and the Government of Italy with the Central and Local Institutions, as well as with International Agencies and the Donors community.

ART. 12 – SUPERVISION

The Contracting Authority may carry out at any time and if deemed necessary, technical and/or administrative verifications of the activities entrusted to the Provider.

Any employee of the Provider involved in the Project under this Contract, who is, in the Contracting Authority's reasonable opinion, incompetent or in any other way unacceptable, will be promptly replaced, by acceptable employee at no cost for the Contracting Authority.

The Contract may be suspended in order to verify whether presumed substantial errors or irregularities or fraud occurred during the award procedure or the performance of the Contract.

If these are not confirmed, performance of the Contract shall resume as soon as possible.

During the period of suspension, the Provider shall take such protective measures as may be necessary.

ART. 13 - TERMINATION BY THE CONTRACTING AUTHORITY

The Contracting Authority may, at any time, terminate this Contract should the mandate or the funding of the Project be curtailed or terminated, in case of interruption for reason of Force Majeure (following Art. 16), upon the payment to the Provider of the executed activities satisfactorily performed before the notification of such termination, plus the 10% of the value of the non-executed activities shall be reimbursed by the Contracting Authority, as per Art. 109 of D.Lgs. 50/2016.

The Contracting Authority may, after giving seven days' notice to the Provider, terminate the Contract in any of the following cases where:

- . a) The Provider is in serious breach of Contract for failure to perform its contractual obligations;
- . b) If the Contracting Authority determines that the Provider or any of its employee or dependent has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Contracting Authority may terminate the Contract, after giving fourteen (14) days' notice to the Provider;
- . c) The Provider fails to comply within a reasonable time with the notice given by the Contracting Authority's representative requiring it to make good the neglect or failure to perform its obligations under the Contract which seriously affects the proper and timely performance of the Supply;
- . d) The Provider refuses or neglects to carry out any administrative orders given by the Contracting Authority within the Contract obligations as described in Annex I and II;
- . e) The Provider assigns the Contract or sub-contracts without written authorization from the Contracting Authority;
- . f) Any organizational modification occurs involving a change in the legal personality, nature or control of the Provider, unless such modification is recorded in an Addendum to the Contract;
- . g) Any legal disability hindering performance of the Contract occurs;
- . h) The Provider fails to perform its obligation in accordance with Article 2;

Termination shall be without prejudice to any other rights or powers under the Contract of the Contracting Authority and the Provider. Upon termination of the Contract or when it has received notice thereof, the Provider shall take immediate steps to bring the Supply to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

The AICSY shall, as soon as possible after termination, certify the value of the executed Supply and the sums due to the Service as at the date of termination.

ART. 14 – TERMINATION BY THE PROVIDER

The Provider may, after giving 14 days of notice to the Contracting Authority, terminate the Contract if the Contracting Authority: a) Consistently fails to meet its obligations after repeated reminders; or

b) Suspends the progress of the Supply or any part thereof for more than 90 days for reasons not specified in the Contract, or not attributable to the Provider breach or default.

ART. 15 - FORCE MAJEURE

Neither party shall be considered to be in default or in breach of its obligations under the Contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date when the Contract becomes effective.

The term Force Majeure, as used herein, covers any unforeseeable events, not within the control of either Party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions.

A decision of the Italian Government/ the Italian Agency for Development Cooperation to suspend the Cooperation activities with the Beneficiary Country is considered to be a case of force majeure when it implies suspension of funding the Contract.

If either Party considers that any circumstances of force majeure have occurred which may affect the performance of its obligations, it shall promptly notify the other Party giving details of the nature, the probable duration and the likely effect of the circumstances.

ART. 16 – CONFLICT OF INTEREST

The Provider shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract.

Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.

Any conflict of interests which may arise during performance of the Contract shall be notified to the Contracting Authority without delay.

In the event of such conflict, the Provider shall immediately take all necessary steps to resolve it.

The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Provider shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligations under the Contract, the Provider shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.

ART. 17 – DATA PROTECTION

The Provider undertakes to adopt technical and organizational security measures to address the risks inherent in processing and in the nature of the personal data concerned in order to:

- a) prevent any unauthorized person from having access to computer systems processing personal data, and especially:**
- b) unauthorized reading, copying, alteration or removal of storage media;**
- c) unauthorized data input, unauthorized disclosure, alteration or erasure of stored personal data;**
- d) unauthorized persons from using data- processing systems by means of data transmission facilities;**

e) ensure that authorized users of a data- processing system can access only the personal data to which their access right refers.

ART. 18 - SETTLEMENT OF DISPUTES

The Parties shall make every effort to settle amicably any dispute, even technical, that may arise regarding the interpretation or execution of this Contract, during the progress of the activities or after its termination.

Once a dispute has arisen, a Party shall notify the other Party of the dispute, stating its position on the dispute and any solution which it envisages, and requesting an amicable settlement. The other Party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute.

In the absence of an amicable settlement, a Party may notify the other Party requesting a settlement through conciliation by a third person.

If the amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of the Italian jurisdiction or arbitration.

This doesn't mean, however, that the Contracting Authority surrenders jurisdictional immunities and entitlements enjoyed by Diplomatic and Consular missions.

ART. 19 – OFFICIAL COMMUNICATIONS

Any official communication from the Provider concerning this Contract shall be written in English and shall be addressed to:

Italian Agency for Development Cooperation – Yangon Office,
41-7B, Inya Myaing, Shwe Taung Gone, Bahan Township, Yangon, Myanmar.

ART. 20 - FINAL PROVISIONS

The Parties of this Contract declare to have read this Contract, including its Annexes, and that they agree with the same in all its parts and accept it fully.

The provisions of this Contract may be amended only by a formal Act signed by both Parties.

In witness whereof, the Parties hereto have signed the Contract.

Yangon,xxxxxxx

FOR

FOR

The Director

The Italian Agency for Development
Cooperation - Yangon Office

The Director
Eng. Maurizio Di Calisto