



Ufficio di Yangon

Prot. n. AICSY-OUT- 483-2018-7-2
(CA)

PROJECT : "SUPPORT TO THE ODA COORDINATION IN MYANMAR :
CAPACITY DEVELOPMENT OF DONOR COORDINATION (CAD-MM) - AID
11087"

CONSULTANCY CONTRACT

(Hereinafter referred to as "**the Contract**")

between

The Italian Agency for Development Cooperation - Yangon Office

(Hereinafter referred to as "**the Client**")

Represented by the Director Eng. Maurizio Di Calisto,

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

and

NetSmart Company Limited

(Hereinafter referred to as "**the Consultant**")

Represented by Khin Thandar,

5-B, 18 Kyauk Kone Street, Yankin Township, Yangon

(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;

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That the Client already engaged a Consultancy Company, to be supported in the need assessment process and in drafting the Tender relevant document (reference to Contract Prot. N. AICSY-OUT- 192-2018-03-26);

That now the Client intends to engage the selected Consultancy Contract to be supported, within the post-tender phase, in supervising and monitoring the implementation of the above-mentioned component of the Project-AID 11087;

That the Consultant is ready and willing to accept this Consultancy Contract with the Client on the below Terms and Conditions.

THE PARTIES AGREE AS FOLLOWS

ART. 1 – SCOPE OF THE CONTRACT

1. In the framework of the project “Support to the ODA coordination in Myanmar: Capacity Development of Donor Coordination (CAD-MM) - AID 11087”, the Client awards to the Consultant, who hereby accepts, the execution and the completion of the Consultancy within the “Technical Support activities to the Foreign Economic relations Department” for the project activities of the Italian Agency for Development Cooperation – AID 11087.
2. The scope of this Contract is to provide consultancy services of high qualified Technical Assistance regarding the post-tender phase, with a specific focus on supervising and monitoring the project activities **(the Service)**.
3. About the performance of the consultancy under this Contract, the Consultant shall neither seek nor accept instructions from any authority external to the Client.

ART. 2 – ACTIVITIES CARRIED OUT BY THE CONSULTANT

1. The activities carried out by the Consultant are described in Annex I- Quotation.
2. The days and hours of work of the Consultant’s personnel shall respect the Myanmar laws, regulations and customs and the requirements of the services.
3. While executing the Contract, the Consultant will interact with the Client 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, as well as perform the relevant interview and surveys to assess and verify the needs as set out below.
4. Based on the tasks listed and in accordance with the timeline indicated in the above-mentioned Annex I, the Consultant is expected to provide through its personnel the following services and deliverables for Internet line and Internet distribution:
 - a) Technical assistance for FERD-MPT contract negotiation and issuance of a Certification of Completion;
 - b) Technical assistance and supervision of the internet line ‘s Fiber Cable installation and issuance of a Work Completion Certificate.

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ART. 3 – CONTRACT AMOUNT

1. The Consultant undertakes to execute and to complete the services indicated in the Annex I and the related Contract amount is of Myanmar Kyats 5,969,250 (five million nine hundred sixty-nine thousand and two hundred and fifty), as indicated in the above-mentioned Annex I.
2. Both Parties reserve the right to amend the Contract, prior written consent of both parties.
3. The Contract amount 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 Consultancy, both in terms of quality and quantity.
4. The Consultant 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 Client will be responsible to pay taxes for this Consultancy Contract.

ART. 4 - TERMS OF PAYMENT

1. Payments will be made by the Client through bank transfer to the Myanmar Kyats bank account specified by the Consultant in Annex I, after the submission of the following documents:
 - a) The Certification of Completion (COF-13718) confirming the established agreement between MPT and FERD pertaining the monthly internet fees and the subsequent acknowledgement on the reimbursement of the monthly internet fees by AICS to FERD for the duration of 2 years, as indicated in Annex I point 1 (a);
 - b) The Work Completion Certificate (WCC-14718) confirming the internet line's fiber cable installation and functioning, including all performance tests (e.g. latency test, bandwidth test) executed at the FERD site ensuring the full functionality of the internet line, as indicated in Annex I point 1 (b).
2. The payments will be issued upon submission of the relevant invoices by two installments:
 - a) The first instalment of the amount of Myanmar Kyats 1,653,750 (one million six hundred and fifty-three thousand and seven hundred and fifty), related to the submission of the deliverable as per ART. 4, clause 1 a);
 - b) The second instalment of the amount of Myanmar Kyats 4,315,500 (four million three hundred fifteen thousand and five hundred), related to the submission of the deliverable as per ART. 4, clause 1 b).
3. Each invoice shall be duly dated, stamped and signed by the Consultant.
4. All the above-mentioned documents shall be addressed to the Italian Agency for Development Cooperation (AICS) - Yangon Office – Project AID 11087.

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ART. 5 - DURATION OF THE CONTRACT

1. The duration of the Contract is 2 (two) months, starting from the signature of this Contract.
2. The duration of the Contract may be extended for a short period, following a written request presented by the Consultant.

ART. 6 – LIABILITY

1. The Client accepts no liability for damage to persons or property related to the performance by the Consultant of the activities specified in this Consultancy Contract.
2. The Consultant 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 Client.
3. The Consultant shall supply, without delay, any information and documents to the Client upon request, regarding the conditions in which the Contract is being executed.
4. The Consultant 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.
5. The Consultant shall indemnify the Client against any claims and proceedings arising from any infringement by the Consultant, its employees and their dependents of such laws and regulations.
6. To perform these tasks, the Consultant shall comply with all the legislation in force in the Country in the field of medical, insurance and safety measures.
7. The employment relationship between the Consultant and its staff employed to carry out the activities and any offspring from this litigation does not involve in any way the Client.
8. The Consultant 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 Services without the prior approval of the Client. It shall not commit the Client in any way whatsoever without its prior consent and shall make this obligation clear to the third parties.
9. The Consultant and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the Country.
10. The Consultant 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 Client.
11. The payments to the Consultant under the Contract shall constitute the only income or benefit it may derive in connection with the Contract. The Consultant and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the Contract.
12. The Consultant 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 Consultant's personnel shall not be considered in any respect as being the employees or agents of the Client.

13. The Consultant 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 Client will be responsible for the local personnel involved in the implementation of activities.

ART. 7 – SUBCONTRACTING AND TRANSFERABILITY

1. The Consultant is not allowed to subcontract the provision of these Services and/or to transfer the Contract to a third Party.

ART. 8 – INTELLECTUAL AND INDUSTRIAL PROPERTIES RIGHTS

1. All reports, data and supporting records or materials acquired, compiled or prepared by the Consultant in the performance of the Contract shall be confidential and shall be the absolute property of the Client.
2. The Consultant shall, upon completion of the Contract, deliver all such documents and data to the Client.
3. The Consultant 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 Client.
4. The Consultant shall not publish articles relating to the activities or refer to them when carrying out any service for others, or divulge information obtained from the Client, without its prior written consent.
5. 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 Client, 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. 9 - TERMINATION OF THE CONTRACT

1. This contract may be concluded by the Client at any time for serious technical and/or contractual non-compliance of the Consultant. In this case the Client shall notify such non-compliance to the Consultant, requesting to solve it within a specified period of 7 (seven) days. After this period, if the Consultant has not provided it, the resolution of the Contract shall become effective on the seventh day after the deadline fixed in the notice.
2. This assignment may also be terminated by mutual consent between the parties, and / or in the event of Force Majeure.
3. Moreover, the Client may also, at its unquestionable discretion, suspend or permanently solve the contract for security reasons.
4. In all cases mentioned above, the amount corresponding to the services satisfactorily provided will be paid to the Consultant.



ART. 10 - FORCE MAJEURE

1. 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.
2. 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.
3. 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.
4. 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. 11 – CONFLICT OF INTEREST

1. The Consultant shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract.
2. 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.
3. Any conflict of interests which may arise during performance of the Contract shall be notified to the Client without delay.
4. In the event of such conflict, the Consultant shall immediately take all necessary steps to resolve it.
5. The Client reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Consultant 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 Consultant shall replace, immediately and without compensation from the Client, any member of its staff exposed to such a situation.

ART. 12 - SETTLEMENT OF DISPUTES

1. 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.



2. 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.
3. 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.
4. This doesn't mean, however, that the Client surrenders jurisdictional immunities and entitlements enjoyed by Diplomatic and Consular missions.

ART. 13 – OFFICIAL COMMUNICATIONS

1. Any official communication from the Consultant 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. 14 - FINAL PROVISIONS

1. The Parties of this Contract declare to have read this Contract, including its Annex, and that they agree with the same in all its parts and accept it fully.
2. 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, 2/07/2018


FOR

NetSmart Company Limited

The Director
Khin Thandar



The Italian Agency for Development
Cooperation - Yangon Office


The Director
Eng. Maurizio Di Calisto

ANNEX I



NetSmart Co., Ltd.
5-B, 18 Kyauk Kone Street
Yankin Township
Yangon, Myanmar
Tel: +95-1-8566034, 706584
Fax: +95-1-8566034
info@netsmart.com.mm
www.netsmart.com.mm

The Cloud ERP Provider

To: ROBERTA BLANDINO , Italian Agency
For Development Cooperation **From:** Netsmart Co., Ltd.

Fax: **Pages:** 2

Phone: **Date:** August 14, 2018

Re: FERD-MPT Internet Contract & Installation **CC:**

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● **Comments:**

Dear Roberta Blandino,

Thank you for the opportunity to provide this proposal. We would like to propose our quotation as per following details:

1. (a) NetSmart Technical Assistance for FERD- MPT Contract Negotiation

Deliverables:

- Technical assistance for FERD-MPT contract negotiation | **Certification of Completion (COF-13718)**

MMK 1,653,750

Time frame:

- 2 days in Naypyidaw including travel time

Resources:

- 1 x project coordinator x 0.4 day
- 1 x assistant to project coordinator x 0.4 day
- 1 x technical engineer x 0.4 day

(b) NetSmart Supervision of MPT internet Line's Fiber Cable Installation and Functioning

Deliverables:

- Technical assistance and Supervision of the internet line 's Fiber Cable installation | **Work Completion Certificate (WCC-14718)**

MMK 4,315,500

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Time frame:

- 3 days in Naypyidaw including travel time

Resources:

- 1 x project coordinator x 1.3 day
- 1 x assistant to project coordinator x 2.3 days
- 1 x technical engineer x 2.3 days

Grand Total Price: MMK 5,969,250

Payment Term: 100% payment upon completion of the deliverables.

Validity Period: 5 days

Bank Information:



Should you have any questions, please feel free to contact us. Looking forward to hearing from you soon.

Yours sincerely,

Khin Thandar
Office Manager