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**Ministry of Commerce, People's Republic of China**

**No. 5 Circular, 2015**

**The Measures on the Management of Foreign Technical Assistance Projects (Draft)**

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The Foreign Technical Assistance Projects Management Measures (draft) was  
approved in the 61<sup>st</sup> general affairs meeting of the Ministry of Commerce (hereinafter  
"MOFCOM") on 9 December 2015 and it is hereby publicized and will go into effect  
since 8 January 2016.

Minister Gao Hucheng  
9 December 2015

**Chapter 1 General Provisions**

**Article 1.**

The Measures is enacted in order to strengthen the management of foreign technical  
assistance projects, ensure project quality and improve aid effectiveness, in  
accordance with relevant laws and administrative regulations.

**Article 2.**

The foreign technical assistance projects in the Measures refer to the assistance  
projects, financed by China's foreign assistance funds, with comprehensive  
components including selecting and dispatching expert(s) and technical workers or  
providing equipment, to help the recipient to achieve specific technical goals.

**Article 3.**

The technical assistance projects are in general terms implemented by the Chinese  
side. If the recipient is willing to implement, the Chinese side can take into account the  
actual situation and decide through consultation with the recipient, and hand over the  
technical assistance project to the recipient side for implementation.

**Article 4.**

MOFCOM is responsible for the formulation, management and supervision of the technical assistance projects.

The management agency of foreign assistance projects is in charge of the implementation, supervision and management of technical assistance projects in accordance with the Measures; and receives supervision and inspection from MOFCOM.

**Article 5.**

The Economic and Commercial agency of the Chinese Embassy or Consulate (General) in the recipient country shall assist MOFCOM in handling inter-governmental affairs related to the technical assistance projects and is responsible overseas supervision of the implementation of the technical assistance projects.

**Article 6.**

Provincial departments in charge of commerce shall assist MOFCOM in the management of foreign technical assistance related affairs.

**Chapter 2 Management of Project Procurement**

**Article 7.**

The project management agency will select the implementing unit of the technical assistance project within the scope of companies eligible for implementing foreign assistance projects accredited by MOFCOM, and in accordance with the procurement regulations of foreign assistance projects.

MOFCOM may select the implementation unit according to China's regional development policies.

The selected implementation unit shall undertake enterprise contract management responsibilities for the assigned technical assistance project.

**Article 8.**

Main selection criteria of the procurement of the technical assistance project include the reliability of the technology, the maturity of the plan and economic feasibility.

The technical assistance plan refers to, in accordance with the technical assistance project feasibility study and the formulation proposal, the proposed approaches to

integrate key components, the means to materialize the technology and the standard, and the plan, path and procedures to achieve the goals of technical assistance. Among those, the key components of technical assistance include human resource development, intellectual support, technical services and technology transfer, management of cooperation, provision of materials and equipment and provision of project services, etc.

For the technical assistance project with a clear and simple path to realize the technology, the project management agency may determine a unified technical assistance plan in the procurement process, and select the implementation unit according to the responsiveness of the plan and economic feasibility. For the project with multiple paths to achieve the same technical goal, the project management agency shall select the technical assistance plan and the implementation unit according to relevant laws and regulations in the procurement process.

**Article 9.**

For the complex technical assistance project with special security requirements and requires at least two primary technical qualifications, the units which meet all qualifications for the primary technology can bid independently; they can also form a consortium to bid collectively. Each party of the consortium shall no longer bid alone or form a consortium with other bidders to join the bid.

The leading unit of the consortium shall meet the qualifications of the technical assistance project implementation unit. All parties of the consortium shall jointly sign the project implementation contract with the project management agency after winning the bid and will assume joint liabilities.

**Article 10.**

According to the project formulation requirement or the actual implementation and management, if the technical assistance project involves materials provided by a single provider or patents or proprietary technical services provided by a single service unit, the project management agency shall, in line with foreign assistance projects procurement regulations, negotiate and agree on the procurement prices and conditions with the corresponding material or service provider in advance, include these in the invitation for bid and supervise the corresponding materials or services provider to verify the fulfillment of agreed prices and conditions with all bidding units.

The winning implementation unit of the technical assistance project shall sign the internal subcontract with the single supplier and the patent or the proprietary technical services provider, in accordance with the agreed prices and conditions specified in the invitation for bid, and include the progress, quality, safety and control of investment of the subcontracted materials or services in the overall responsibilities

of the technical assistance.

**Article 11.**

On behalf of MOFCOM, the project management agency shall issue the notification letter on assignments to be implemented to the winning technical assistance project implementation unit.

With the notification letter, the technical assistance implementation unit handles the entry and exit of the technical assistance staff and the inspection and customs clearance of equipment and materials.

**Article 12.**

The winning unit shall not transfer-contract the assignments within the scope of responsibilities, nor separate-contract the key or primary assignments or split them into several parts and subcontract.

If the successful bidder subcontracts the non-critical or non-primary tasks beyond its technical qualifications to other professional technical units, the substance of the subcontract, selection of the subcontractor and the amount of the subcontract shall be stated clearly in the technical assistance project bidding document, as a part of winning conditions and shall be included in the contract.

Once the subcontracting approach is decided, it shall not be changed. The winning unit shall sign the subcontract in line with the subcontracting approach specified in the bidding document and file on record with the project management agency. If there is a need to change or add subcontracting, it shall be processed in accordance with contract changing procedures.

**Article 13.**

The compliant subcontracting does not exempt the implementing unit of the technical assistance project from any obligations within the scope of the contract responsibilities.

### **Chapter 3 Project Management Procedures**

**Article 14.**

MOFCOM is responsible for the review and approval of the feasibility study and the project proposal of technical assistance projects, and project formulation.

When a project is formulated, the project management agency will organize the

implementation within the scope of the inter-governmental project agreement, the feasibility study approved by MOFOCM and the project proposal.

**Article 15.**

When the inter-governmental agreement of the technical assistance project requires the signing of external implementation agreement, the project management agency shall base on the technical assistance plan formally agreed between the implementation unit and the recipient, be in charge of signing the external implementation agreement with the implementing agency designated by the recipient.

The external implementation agreement shall specify the cooperation approaches of both the Chinese and foreign sides, the management procedures and rights and obligations throughout the process of implementation.

**Article 16.**

The implementation unit of the technical assistance project shall strictly abide by the provisions of the inter-governmental agreement, the external implementation agreement and the implementation contract signed with MOFCOM, implement technical assistance plans, ensure the quality and efficiency of integrated components including human resources, technology, management, materials and project services, achieve the goal of technical assistance within the time limit, and undertake overall economic, technical and legal responsibilities within the contract scope.

**Article 17.**

Technical assistance project implementation unit shall set up the technical assistance expert group and designate the head of the expert group, and is responsible for organizing the implementation and management of technical assistance assignments in the recipient country.

The technical assistance expert group shall accept the supervision and management of the Economic and Commercial agency of the Chinese Embassy and Consulate (General) in the recipient country.

**Article 18.**

The implementation unit of the technical assistance project shall submit work briefs to the project management agency regularly, which shall cover the project implementation progress, problems and solutions, the work-plan for the next phase and the implementation plan. When a major quality and safety issue occurs, or an emergency that may affect the project implementation, it shall be reported timely and specifically.

After the completion of the technical assistance project, the implementation unit shall submit a report to the project management agency in the written form, and the report shall describe the overall implementation, aid effectiveness, social and economic benefits, general evaluation from the recipient on the project implementation, problems and solutions in the implementation process, responses to emergencies, and recommendations on whether or not to extend the project.

**Article 19.**

After the technical assistance project implementation unit has basically fulfilled the obligations of the inter-governmental agreement, the external implementation agreement and the project implementation contract, the project management agency can select the consulting and advisory organization qualified by MOFCOM to form an expert group to review and accept the technical assistance project.

The specific composition and personnel qualification of the expert group is determined by the project management agency in accordance with the nature and characteristics of the project. The group members shall not have a conflict of interest with the implementation unit which may therefore affect the fairness of the review and acceptance.

The review and acceptance of the technical assistance project shall be judged in accordance with the inter-governmental agreement, the external implementation agreement, the project implementation contract and the technical assistance plan. It will conduct a comprehensive assessment of human resources, intellectual support, technical services and technology transfer, physical workload of cooperation management, intellectual product and aid effectiveness. The review and acceptance shall also verify the contract compliance of the implementation unit and services from the expert(s), and verify and accept the supplementary supplies and equipment and project services, and draw final conclusions on the achievement of the goals of technical assistance. Conclusions of the review and acceptance are respectively categorized as qualified and unqualified.

The review and acceptance expert group shall submit a report to the project management agency based on the results. The report shall go into effect when signed by all members of the expert group.

**Article 20.**

The implementation unit of the technical assistance project shall rectify the problems identified during the review and acceptance and in the report in a timely manner.

The expert group shall draw conclusion on the rectifications made during the review

and acceptance period and include in the report; rectifications unable to be made during the review and acceptable period, shall be made available by the implementation unit within the prescribed period, and shall be reported to the expert group to draw conclusions.

**Article 21.**

After the acceptance of the technical assistance project, the project management agency shall, on behalf of MOFCOM, promptly initiate hand-over procedures with the recipient through the diplomatic channel.

The project management agency shall timely submit the technical assistance project completion report to MOFCOM after the inter-governmental hand-over procedure is completed.

**Article 22.**

Within the scope of contracting responsibilities, the implementation unit shall be responsible for collecting and collating technical materials, and handing over to the project management agency within 60 days after the project is reviewed and accepted and the external hand-over procedure is completed.

Technical materials to be handed over and managed refer to the technical documents formed during the implementation process and are worth preserving, and other relevant carriers which reflect the project preparation and implementation.

Technical materials shall be uniformly integrated into and managed by the foreign assistance projects technical materials database established by MOFCOM. Supplementary project technical materials shall be managed in accordance with the Measures on the Management of Turn-key Foreign Assistance Projects (draft).

**Chapter 4 Management of the Technical Expert(s)**

**Article 23.**

Under the framework of the technical assistance project, when there is a need to dispatch the Chinese expert(s) (hereinafter referred to as “technical assistance expert(s)”) to the recipient country to undertake professional technical assignments like human resources development, intellectual support, technical services and technology transfer and management cooperation, the project management agency shall specify the professional qualifications or equivalent technical requirements of the technical assistance expert(s) in the procurement, based on the actual needs of the technical assistance project.

**Article 24.**

The technical assistance project implementation unit shall ensure the dispatched technical assistance expert(s) acquire the professional qualifications or equivalent technical requirements for the project, and the specific candidate(s) shall be determined by the project management unit in accordance with project procurement procedures.

The identified technical assistance expert(s) shall not be changed except due to special circumstances. When there is a need to change, the technical assistance project implementation unit shall re-submit the qualifications and conditions of the altered qualified person to the project management agency for approval.

**Article 25.**

The implementation unit of the technical assistance project shall primarily dispatch internal personnel as technical assistance expert(s). When it has to hire external personnel as for technical assistance expert(s) due to the special expertise required or the restrictions of technical qualifications, it shall conduct necessary review of external personnel and sign labor contracts with them to clearly specify the rights and obligations of both parties during the execution of the project.

**Article 26.**

The project management agency shall, before the completion of the implementation of the technical assistance project, invite the Economic and Commercial agency of the Chinese Embassy and the Consulate (General) in the recipient country to issue the assessment of the service quality and effectiveness of the technical assistance expert(s).

The assessment on the performance of the technical assistance expert(s) by the Economic and Commercial agency of the Chinese Embassy and the Consulate (General) in the recipient country shall faithfully reflect the work performance of the Chinese expert(s) during his/their stay in the recipient country, and fully listen to the views of the recipient.

The assessment of the performance of the technical assistance expert(s) shall be an important basis for the review and acceptance expert group to validate the expert services.

**Article 27.**

The implementation unit of the technical assistance project shall effectively protect the benefits of the technical assistance expert(s), including keeping the domestic



position, post, title and entitlement, job security and social benefits unchanged during his/their stay in the recipient country, and ensuring his/their full entitlement to the overseas allowance for the technical assistance expert(s), hardship allowance, medical expenses, vacation, overseas personal accident insurance and necessary working and living conditions to fulfill his/their duties including food and accommodation, office and transportation, etc.

The Economic and Commercial agency of the Chinese Embassy and the Consulate (General) in the recipient country shall assist the implementation unit of the technical assistance project, in urging the recipient to facilitate the technical assistance experts in entry and exit, local residence and fulfillment of duties, in accordance with the provisions of the intergovernmental agreement or foreign implementation agreement, and secure the personal and property safety of the technical assistance expert(s).

## **Chapter 5 Management of Intellectual Product**

### **Article 28.**

The intellectual product of the technical assistance project refers to all valuable spiritual wealth or intellectual product formed by the implementation unit under the project through human resource development, intellectual support, technical services and technology transfer and management of cooperation, including:

- a. Technical proposal(s), planning report(s), advisory report(s), analysis and research report(s), papers and lecture notes, etc.;
- b. Intellectual property product like patents, proprietary technology, practical technology and copyrights;
- c. Technical solution(s) with economic and technical value like operational procedures, process flow, working practices, implementation models and management experiences.

### **Article 29.**

The technical assistance project implementation unit shall develop a separate work plan for the intellectual product based on the technical assistance plan and specify the goals, timeframe, conditions and procedures for concrete technical tasks and matching intellectual products at different stages, and ensure the quality of the intellectual product.

The project implementation unit shall systematically arrange the intellectual product acquired in the project implementation period and submit to the project management agency and MOFCOM in the written form.

### **Article 30.**

In the review and acceptance process, the expert group will conduct professional appraisal of the intellectual product developed from the technical assistance project, and verify its innovation, applicability and aid effectiveness.

Professional assessment results of the intellectual product will serve as an important basis when the review and acceptance group verifies the project meets the technical assistance goal.

**Article 31.**

The intellectual product formed or created by the project implementation unit in the course of the project implementation, belongs to the Chinese side and the recipient jointly. Specific ownership arrangements and the subsequent use of the product shall be stipulated in the inter-governmental agreement between the Chinese side and the recipient or in the foreign implementation agreement.

Without MOFCOM's approval, the technical assistance project implementation unit has no right to disclose or transfer intellectual product of the technical assistance project, or authorize other units or individuals to use the intellectual products.

**Chapter 6 Management of Ancillary Materials**

**Article 32.**

Aid materials provided under the framework of the technical assistance project are mainly divided into three categories, respectively, expert materials, spare parts and fittings and technical materials.

**Article 33.**

Ancillary materials provided under the framework of the technical assistance project, in compliance of one of the following conditions, shall be separately formulated and organized and implemented in accordance with the Measures on the Management of Foreign Assistance Materials Projects (draft):

- a. The total value of the supply (including transportation and insurance costs) is above five million RMB;
- b. The share in the estimated investment of the technical assistance project is more than 50%;
- c. The total value of technical materials supplies (including transportation and insurance costs) is above three million RMB;
- d. The total value of technical materials supplies is more than one million RMB and less than three million RMB, and its share in the estimated investment of

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the technical assistance project is 35% or above.

**Article 34.**

The expert materials serve mainly to supply the Chinese technical assistance expert(s) with materials like transportation vehicles, office equipment, consumer durables and general consumer goods to meet the work and life related needs in carrying out assistance assignments in the recipient country and is managed separately as fixed assets and consumables.

Consumables under the framework of the expert materials are procured, used, distributed and managed by the technical assistance project implementation unit. On the accomplishment of the task, the remaining consumables with practical value will be handed over to the recipient by the implementation unit.

The ownership of the vehicles, office equipment and consumer durables separately purchased by the assistance fund and managed as fixed assets, belong to the recipient, are procured by the technical assistance project implementation unit and used and managed by the Chinese expert(s) in the project implementation period.

The project management agency, together with the project implementation unit, shall explicitly agree on the inventory of the fixed assets (as an annex to the contract) within its management scope, and timely report the inventory to the Economic or Commercial agency of the Chinese Embassy and Consulate (General) in the recipient country. Upon the completion of the implementation of the technical assistance project, the Economic or Commercial agency of the Chinese Embassy and Consulate (General) in the recipient country shall supervise the implementation unit in checking the fixed assets, timely handing over to the responsible department of the recipient government, completing hand-over verification procedures and filing the hand-over documents for record with the project management agency.

**Article 35.**

Spare parts and fittings mainly refer to a reasonable number of easy-wearing parts, spare parts, fittings or repairing equipment to ensure relevant technical equipment and instrument to restore its function or its long-term use under the framework of the technical assistance project.

The technical assistance project implementation unit is responsible for the procurement, use and management of the spare parts and fittings. Upon the completion of the implementation of the technical assistance project, the Economic and Commercial agency of the Chinese Embassy and Consulate (General) in the recipient country shall supervise the implementation unit to make an inventory of the remaining spare parts and fittings, timely hand over to the responsible department of

the recipient government, complete hand-over verification procedures and file the hand-over documents for record with the project management agency.

**Article 36.**

Technical materials refer to all kinds of technical equipment, instrument, facilities and production materials separately purchased with the assistance fund under the framework of the technical assistance project.

The ownership of technical materials belongs to the recipient. Except otherwise provided, the technical materials are procured by the technical assistance project implementation unit and used and managed by the Chinese expert(s) in the implementation of the technical assistance project. The project management agency shall agree on the inventory of the technical materials with the implementation unit and report the inventory of the Economic and Commercial agency of the Chinese Embassy and Consulate (General) in the recipient country. Upon the completion of the implementation of the technical assistance project, the Economic and Commercial agency of the Chinese Embassy and Consulate (General) in the recipient country shall supervise the implementation unit to make an inventory of the technical materials, timely hand over to the responsible department of the recipient government, complete hand-over verification procedures and file the hand-over documents for record with the project management agency.

**Article 37.**

The supplying enterprise for expert materials, technical materials and spare components and fittings under the framework of the technical assistance project shall undertake quality warranty responsibilities of the supplied materials in abidance by law. It shall be responsible for repairing or replacing and covering costs incurred due to product quality problems not caused by the recipient, but occurred during the quality warranty period.

**Chapter 7 Management of Ancillary Projects**

**Article 38.**

The ancillary project under the framework of the technical assistance project, in compliance with one of the following conditions, shall be separately formulated and organized and implemented in accordance with the Measures on the Management of Turn-key Foreign Assistance Projects (draft):

- a. The total investment volume is above ten million RMB;
- b. The share in the estimated investment of the technical assistance project is more than 50%;

**Article 39.**

Except the situation prescribed in Article 38, the ancillary project of the technical assistance project is organized by the technical assistance project implementation unit in accordance with law or entrusted by to the technically qualified Chinese institution or local project contractor to organize the implementation.

For ancillary projects with a certain scale under the framework of the technical assistance project, namely a new ancillary project with an investment scale of above five million RMB and below 10 million RMB, the project management agency shall, in accordance with the foreign assistance projects procurement regulations, select the qualified project management company from the authorized companies for foreign assistance projects and entrust it to manage the ancillary project.

**Article 40.**

The ancillary project under the framework of the technical assistance project shall stick to basic construction procedures, be organized and implemented following the principles of “exploration first, followed by design and then construction”. Concrete contracting models, implementation procedures and management shall refer to the relevant provisions in the Measures on the Management of Turn-key Foreign Assistance Projects (draft).

The implementation unit of the technical assistance project shall assume overall contracting responsibility for the progress, quality, safety and investment control of the project. If the whole or part of the ancillary project is subcontracted, the company that undertakes the project exploration and design assignments assumes the joint liabilities of the quality, progress, production safety and project investment control of the exploration and design. The company that undertakes the construction of the ancillary project assumes the joint liabilities of the quality, progress, production safety and project investment control of the construction of the ancillary project, the quality warranty upon the construction completion and the matching technical services.

The company undertaking the management of the ancillary project shall conduct coordination, control and management of the exploration, design and construction of the ancillary project, and undertake joint responsibilities of the quality, progress, production safety and investment control.

**Article 41.**

Under the framework of the technical assistance project, quality check of the ancillary project of a certain scale is jointly organized by the project management company and the technical assistance project implementation unit. The quality check of relatively small scale and sporadic civil works and small scale repair works is organized by the

implementation unit.

Under the framework of the technical assistance project, review and acceptance of the ancillary project is organized by the project management agency.

The procedures and criteria of the review and acceptance of the ancillary project is conducted in accordance with the Measures on the Management of Turn-key Foreign Assistance Projects (draft).

**Article 42.**

Except for quality problems caused by the improper use of the recipient, for ancillary projects under the framework of the technical assistance project, the implementation unit of the project shall bear the no-defect quality warranty responsibilities within a reasonable period of use.

The technical assistance project implementation unit shall issue the no-defect quality warrant to the project management agency when reviewing and accepting the ancillary project. The warrant shall specify the scope and duration of the no-defect warrant of the ancillary project and the equipment and materials, and relevant maintenance liabilities. The implementation unit shall formulate and enforce its own quality warranty and maintenance plan and shall keep the on-site quality maintenance team for at least two years after the project is reviewed and accepted, ensure the supply and timely arrival of the matching materials such as human resources needed for rework or repair during the quality warranty period, and bear the full costs incurred from the quality maintenance.

## **Chapter 8 Risk Management**

**Article 43.**

MOFCOM shall establish a risk-taking mechanism for technical assistance projects based on market principles, clearly define the risk factors in technical assistance projects and regulate the responsibilities of the major risk-taker.

**Article 44.**

Risk factors involved in technical assistance projects mainly include political and diplomatic risks, the owner's liability risks, force majeure risks, technical plan change risks and operational risks.

Political and diplomatic risks refer to the impact on the implementation of the technical assistance project caused by political and diplomatic changes or policy changes and include: war between countries and nuclear war; change of diplomatic

relations between China and the recipient government; legitimate confiscation and expropriation by the recipient; and change of laws, regulations and regulations related to the project implementation and are borne by MOFCOM.

The owner's liability risks refer to the impact on the implementation of the technical assistance project due to MOFCOM's responsibilities or MOFCOM's agreement to undertake the recipient's responsibilities and are borne by MOFCOM.

The force majeure risks refer to the impact on the implementation of the technical assistance project caused by unpredictable, insurmountable and inevitable actual situation and include: natural disasters; accidents; emergencies like civil war, strike, riot and civil commotion and are borne jointly by the implementation unit and MOFCOM.

Risk of technical plan changes refer to the failure to accomplish the expected technical assistance goals due to the errors, defects and omissions of the original technical assistance plan, and the need to adjust the technical assistance plan and are borne by the technical assistance project implementation unit.

Operational risks refer to the impact on the technical assistance project caused by changes in the market or the operational management responsibilities of the implementation unit and include operational accidents like the price and exchange rate fluctuations beyond the bidding quotations and the differences in the actual workload, and are borne by the technical assistance project implementation unit.

**Article 45.**

MOFCOM takes responsibility for the political and diplomatic risks and the owner's liability risks occurred during the implementation of the technical assistance project through contract replenishment.

**Article 46.**

MOFCOM has a reasonable share of the total force majeure risk of the general contracting company, through covering the transportation insurance of the auxiliary goods promulgated in the contract and other necessary insurance costs and integrate the ancillary projects into MOFCOM's uniform turn-key project insurance system and cover relevant insurance costs. Risk of force majeure exceeding the agreed insurance is borne by the general contracting company.

**Chapter 9 Management Procedures of the Projects organized and implemented by  
the Recipient**

**Article 47.**

For the technical assistance project organized and implemented by the recipient, MOFCOM shall verify with the recipient the following conditions at the feasibility study stage:

- a. The recipient has a sound legal system and management system of bid invitation and bidding;
- b. The recipient has the ability and experience of independent organization and implementation and is willing to accept external supervision from the Chinese side;
- c. Clear limits of the project investments are set; division of labor, responsibilities and cost-sharing between the Chinese side and the recipient side is clearly defined; risks are controllable.

In principle, the technical assistance project organized and implemented by the recipient shall not have ancillary projects.

**Article 48.**

For the technical assistance project organized and implemented by the recipient, the recipient will, follow the bid invitation procedures in accordance with relevant laws and regulations, select the company to implement the project within the range of the companies recommended by China. The tender process should be under the laws and regulations.

The project management agency shall be responsible for negotiating with the recipient and deciding on the range and conditions of companies to be recommended. After the project management agency consults with the Economic and Commercial agency of the Chinese Embassy and Consulate (General) and industrial institutions in the recipient country, it may decide on the list of the Chinese companies to be recommended to the recipient country according to the technical qualifications, the ability of project implementation and integrity performance, etc.

The Chinese company recommended may form a consortium with a local company in the recipient country or form a professional subcontracting relationship with it.

**Article 49.**

For the technical assistance project organized and implemented by the recipient, the project management agency shall be responsible for signing the project implementation memo with the recipient and regulating the rights and obligations of both parties.



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The project management agency shall select the Chinese project management unit in accordance with the foreign assistance project procurement regulations, to conduct limited supervision of the technical assistance project organized and implemented by the recipient.

Main responsibilities of the management unit of the technical assistance project include:

- a. Supervise the process of bid invitation and bidding by the recipient, assess the compliance of the bidding procedures and verify the results of the bidding;
- b. Monitor the implementation of the project contract and regularly submit special reports to the project management agency;
- c. Review the fund transfer request by the recipient;
- d. Make a preliminary review of the request for changing the project implementation submitted by the recipient and put forward recommendations to the project management agency.

In conducting the supervision and management, when the management unit of the technical assistance project detects a violation of contract or regulations is taking place or is about to take place and will lead to the deviation from the goals of technical assistance, it shall submit rectification recommendations to the recipient in the written form. If the recipient fails to take prompt and effective measures, the management unit of the technical assistance project shall promptly report to the project management agency and the project management agency may suspend or terminate the review of the request for project fund transfer.

**Article 50.**

For the technical assistance project organized and implemented by the recipient, the project funds shall be directly transferred to the bank account of the implementing company, in accordance with the contract signed between the recipient and the implementing company and the application for fund transfer reviewed and signed by the management unit of the technical assistance project.

**Article 51.**

After the technical assistance project implemented by the recipient is completed, the management unit of technical assistance project is responsible for pre-reviewing the completeness, the depth and the technological innovation of the technical results and will jointly review and accept the results of the technical assistance project with the recipient.

The management unit of the technical assistance project shall promptly urge the recipient to submit relevant technical materials and the outcome document, and

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report to the project management agency for the record.

The project management agency is responsible for completing the validation certificate of the technical assistance project with the recipient, and shall timely submit the report of completion of the technical assistance project to MOFCOM.

**Article 52.**

For the technical assistance project implemented by the recipient side, the project management agency shall conduct the investment target control based on pre-estimated investment decided in the project formulation. The total value of the implementation contract signed between the recipient and the implementing company shall be controlled within the range of the pre-estimated investment.

In the project implementation, excess of contract costs caused by contract changes and claims shall be borne by the recipient; if the contract price is adjusted and reduced, the disbursement of funds will be conducted in accordance with the reduced contract price.

## **Chapter 10 Supervision and Management**

**Article 53.**

The project management agency shall organize and implement the technical assistance project in line with the responsibilities promulgated in the Measures, and fulfill the procedures of filing on record and application and approval to MOFCOM; it shall establish and improve the information reporting system, and submit a progress report to MOFCOM on a monthly basis; in response to major problems which have occurred during the project implementation, it shall promptly provide a specific report to MOFCOM.

MOFCOM is responsible for supervising and inspecting the technical assistance project implemented by the project management agency.

**Article 54.**

The project management agency shall supervise and manage the domestic and foreign funds of the project implementation unit based on the contract and ensure that the foreign assistance funds are earmarked, separately settled and not misappropriated for other purposes.

**Article 55.**

The project management agency shall establish the inspection system for major

technical assistance projects, conduct on-site supervision and inspection of the implementing unit of the technical assistance project and the implementing company of the auxiliary project on fulfilling the management system of the foreign assistance project and the complying the contract.

## **Chapter 11 Liabilities**

### **Article 56.**

If technical assistance project implementation unit conducts one of the following acts, aside from undertaking compensation liabilities regulated in the contract, MOFCOM will issue a warning, and may impose a fine below thirty thousand RMB, and may publicize the decision on punishment according to relevant laws and regulations; if the act violates relevant laws or administrative regulations, administrative penalties shall be given; if it constitutes a crime, criminal responsibility shall be charged with:

- a. Transfer-contracting or illegal subcontracting the undertaken assignments in violation of provisions of the Measures;
- b. Misappropriation of foreign assistance project funds in violation of the provisions of the Measures;
- c. Changing the authorized technical expert(s), technical plan, process or the implementation process in an unauthorized manner and the project fails to achieve the targets;
- d. Failure to fulfill or delay in fulfilling the obligations under the contract affects the normal implementation and exerts external adverse effects.

The project implementation unit, in violation of the first provision of this article and is subject to administrative and criminal penalties, is excluded from participating in technical assistance projects for two to six years from the date of entry into force of the administrative penalty.

### **Article 57.**

If the technical assistance project implementation unit conducts one of the following acts in the procurement process of the technical assistance project, MOFCOM will issue a warning and may impose a fine below thirty thousand RMB; if the act violates relevant laws or administrative regulations, administrative punishment shall be given; if it constitutes a crime, criminal responsibility shall be charged with:

- a. Use fraudulent methods to obtain unfair competitive advantages;
- b. Collude with other procurement units involved to seek illegal profits;
- c. Maliciously collude with the procurement agency, or bribe or provide improper profits to the procurement agency or peer reviewers;
- d. Make substantive changes to the commitments within the validity period of

the procurement.

**Article 58.**

If the main person in charge of the technical assistance project implementation unit, the person in charge of the project and the directly responsible person, fail to abide by laws and regulations and foreign assistance management provisions and lead to serious consequences, MOFCOM will issue a warning, and may impose a fine below thirty thousand RMB; if the act violates relevant laws or administrative regulations, administrative penalties shall be given accordingly; if it constitutes a crime, criminal responsibility shall be charged with according to relevant laws and regulations.

**Article 59.**

In the project management and implementation process, if staff from MOFCOM and the foreign assistance project management agency has committed one of the following acts, he or she will receive administrative penalties depending on the seriousness of the misconduct; if the misconduct constitutes a crime, he or she will be charged with criminal responsibility:

- a. Abuse of one's position to seek money and properties, or illegally accepting the other's money and/or property to seek gains for others;
- b. Abuse of one's agency, dereliction of duty or favoritism, and leads to the loss of national interest;
- c. Disclosure of state secrets.

## **Chapter 12 Supplementary Provisions**

**Article 60.**

Regarding foreign assistance projects under the framework of concessional loans, emergency assistance projects in response to serious natural disasters or force majeure events and assistance projects concerning national security and secrets, if there are other provisions, such provisions shall prevail.

**Article 61.**

The terms "above" and "below" used in the Measures includes the current number article itself.

**Article 62.**

MOFCOM is responsible for the interpretation of the Measures.

**Article 63.**

These Measures shall go into effect from 8 January 2016.