

**ASIAN DEVELOPMENT BANK**



**PROJECT PROCUREMENT- RELATED AUDIT  
FINAL REPORT  
LOAN 1979-VIE(SF):  
UPPER SECONDARY EDUCATION DEVELOPMENT PROJECT**

This report has been abbreviated in accordance with the Asian Development Bank's Public Communications Policy (PCP). In particular, it excludes confidential and other information in accordance with paragraph 126 of the PCP, items 9, 11, 12, 14 & 15.

**Office of the Auditor General  
Integrity Division**

**23 January 2009**

## **CURRENCY EQUIVALENTS**

(As of 23 January 2009)

Currency Unit - Vietnamese Dong (VND)  
\$1.00 = VND17,420

## **ABBREVIATIONS**

|      |   |   |
|------|---|---|
| ADB  | - | Asian Development Bank                                |
| CSP  | - | Country strategy and program                          |
| EA   | - | Executing agency                                      |
| MOET | - | Ministry of Education and Training                    |
| NCB  | - | National competitive bidding                          |
| OAGI | - | ADB Integrity Division, Office of the Auditor General |
| NPIU | - | National project implementation unit                  |
| PPIU | - | Provincial project implementation unit                |
| PIU  | - | Project implementation unit                           |
| PPRA | - | Project procurement-related audit                     |
| PPC  | - | Provincial People's Committee                         |
| SDR  | - | Special drawing rights                                |
| SOE  | - | Statement of expenditure                              |

## **NOTE**

In this report, \$ refers to US dollars.

# CONTENTS

|   | <b>Page</b> |
|---|-------------|
| Executive summary.....                                    | i           |
| I. Background.....  | 1           |
| II. Audit Objectives and Methodology.....                 | 3           |
| III. Audit Findings and Recommendations .....             | 5           |
| A. Project Procurement Processes and Purchase Prices..... | 5           |
| B. Conflict of interest analysis.....                     | 11          |
| C. Financial Management System .....                      | 12          |
| D. Asset Inspection .....                                 | 13          |
| IV. Overall recommendations and concluding comments ..... | 14          |



## EXECUTIVE SUMMARY

1. This report sets out findings and recommendations arising from the project procurement-related audit (PPRA) carried out by OAGI on the Upper Secondary Education Development Project in Vietnam (the Project), financed by Asian Development Bank (ADB) Loan No. 1979-VIE(SF) (the Loan). The Project's overall objective is to help reduce poverty in Vietnam through development and improvement of upper secondary education. The Project is intended to improve quality, efficiency, access and equity, and management capacity in upper secondary education by strengthening quality support systems nationwide and targeting some of Vietnam's most economically and educationally disadvantaged provinces.
2. The Executing Agency is the Ministry of Education and Training (MOET) under which several project implementation units (PIU) were set up. A National Implementation Unit (NPIU) is responsible for the overall management of the Project, whereas day-to-day implementation is decentralized into 22 provincial project management units (PPIU).
3. The Project directly addresses focal points of ADB's country strategy and program (CSP) for Vietnam, which includes continuing to help the Government achieve universal education and gender parity in secondary education via the sector development approach, in line with the spirit of the Paris Declaration on Aid Effectiveness subsequently endorsed in 2005 to maximize aid effectiveness and management for development results.<sup>1</sup>
4. The total Loan amount is \$65.4 million equivalent<sup>2</sup>. As of 31 December 2007, the Project had awarded 444 contracts totaling \$33.3 million equivalent, out of which \$23.6 million had already been disbursed by ADB.
5. The PPRA was conducted on selected contracts at the NPIU and 10 of the 22 PPIUs. It mainly consisted of
  - a. A review of procurement procedures, covering 76 major contracts representing a total amount of \$19.7 million (59% of the total contracted amount as of 31 December 2007);
  - b. A review of disbursement and financial management procedures, covering 176 contracts representing a total amount of \$17.7 million (75% of the total disbursed amount as of 31 December 2007);
  - c. A confirmation from third party vendors on contract and disbursement amounts, and an analysis of potential conflicts of interest, for 30 contracts representing a total amount of \$3.8 million equivalent (11% of the total contracted amount as of 31 December 2007); and
  - d. A physical inspection of the goods procured or the works conducted, and an assessment of the reasonableness of bidding prices, for 25 contracts representing a total of \$3.2 million (10% of the total contracted amount as of 31 December 2007).

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<sup>1</sup> Alignment with national structures and strategies, coordination with other donors, strategies, capacity building – are some of the principle commitments of the Declaration. Both ADB and Vietnam are signatories to the Declaration.

<sup>2</sup> Equivalent of 41,615,000 Special Drawing Rights (SDR) as of 31 December 2007.

6. As a broad result of the PPRA, it should be highlighted that
  - a. The NPIU and PPIUs showed excellent coordination and responsiveness to the PPRA, and the information and documentation requested was generally made available to the audit team without delay;
  - b. Project procurement processes, in most of their aspects, were conducted in accordance with ADB's Procurement Guidelines, and the related documentation was properly established and maintained in the majority of cases;
  - c. Financial internal controls generally appeared to be in place to ensure that disbursements were managed in accordance with ADB's Loan Disbursement Handbook and the Loan Agreement, and proper transparency and accountability is maintained in the Project accounts; and
  - d. Loan funds appeared to be used for their intended purposes.
7. However, the audit team found that the EA could further enhance the Project's overall development effectiveness and impact, by addressing the specific findings and recommendations set out below.

#### *Project Procurement Processes*

8. The most significant and recurring findings which arose from the review of procurement processes are the following:
  - a. Bids were accepted whereas required elements (such as documentary evidence of previous experience) were missing or incomplete. Such issues were noted in a majority of biddings conducted by the NPIU;
  - b. Bidders were selected although they were not meeting all bidding requirements (5 cases noted in 4 PIUs);
  - c. Bidders were rejected although they were apparently meeting the bidding requirements (5 cases noted in 3 PIUs);
  - d. Contracts were signed subsequently to the expiry date of the bid security (9 cases noted at the NPIU);
  - e. Performance security offered by contractors were missing or insufficient (5 cases noted in 3 PIUs); and
  - f. No penalty was imposed to contractors in cases of delayed work completion (26 cases noted in 6 PIUs).
9. To avoid the recurrence of such cases, it is recommended that selection and contracting procedures be strengthened and harmonized in PIUs<sup>3</sup>, and that Project staff be trained accordingly.

#### *Cases of Possible Collusion and Conflict of Interest*

10. The audit team noted cases of procurement processes where collusive practices may have taken place. Specifically, in 13 bidding processes (conducted at 6 different PIUs) the audit team noted strong similarities among the bids submitted.

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<sup>3</sup> Using the framework provided by ADB's Procurement Guidelines.

11. The audit team also found a case of potential conflict of interest where, in a bidding process conducted by Son La PPIU, it appeared that a bidding company and a firm involved in the preparation of the bidding had a common officer.

12. ADB will conduct further investigation of these matters<sup>4</sup> to establish whether ADB's Anticorruption Policy was violated, and will seek the cooperation of the Executing Agency and Project staff at all levels in this effort.

13. It is also recommended that PIU staff be trained adequately to build greater capacity to prevent situations of conflict of interest and to identify and report cases of possible collusion or other fraudulent or corrupt practice.

#### *Internal Controls and Financial Management System*

14. The audit team found that organizational structures of PIUs were inconsistent, that the terms of reference for PIU key staff positions were not clearly established, and that a majority of staff at PPIUs worked on the Project only on a part-time basis.

15. Further, it appeared that

- a. the use of accounting and project management software was limited among PIUs;
- b. The PPIUs of Gia Lai, Dak Lak and Lai Chau did not prepare quarterly progress reports as required by the Loan Agreement; and
- c. The PPIUs of Gia Lai, Dong That and Soc Trang did not establish separate bank accounts for the Project.

16. Disbursement processes appeared to be generally in line with ADB's guidelines; however, the audit team noted that disbursements had been made using the SOE method for amounts exceeding the authorized limit of \$100,000 in relation to 6 contracts managed by the NPIU.

17. Therefore, it is recommended that organizational structure and financial management practices be enhanced and harmonized among PIUs, in accordance with ADB's Loan Disbursement Handbook and the Loan Agreement.

#### *Questionable Quality of Construction Works*

18. The audit team found 6 cases (in 4 different PIUs) where construction works were of a questionable quality (cracks, water leakages...). It is therefore recommended that PIUs conduct more frequent site inspections, to address such quality issues at the earliest stage.

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<sup>4</sup> In accordance with ADB's Integrity Principles and Guidelines.

*Final Comments*

19. While this PPRA was conducted on a sample basis only, the audit team did not find it necessary to extend the scope of review. Indeed, although the above findings demonstrate the existence of areas for improvement in project and financial management, the impression resulting from this PPRA is that the Project's control environment is reliable, in that it provides a reasonable assurance that the Project's overall effectiveness, efficiency and sustainability are not compromised.

20. Strong procurement and financial management controls are essential to ensure procurement integrity and transparency throughout the project, mitigate the risk of improper use of Project funds and assets, enhance the EA's ability to deter fraud and corruption, and therefore maximize development effectiveness. ADB and the Government of Vietnam should therefore work together to implement the recommendations set out in this report, to further strengthen Vietnam's capacity to manage for development results.

21. The audit team thanks the Project's management and staff for their cooperation and responsiveness to audit requirements. ADB values the courtesy and support that Project officials extended to the audit team, including the valuable participation of the State Audit of Vietnam who also participated in this PPRA.

## I. BACKGROUND

22. Loan 1979 - VIE (SF) Upper Secondary Education Development Project (“the Project”) was approved by ADB on 17 December 2002. The Loan Agreement between the Socialist Republic of Vietnam and ADB was signed on 1 December 2003.

23. The Project was designed to help reduce poverty in Vietnam through development and improvement of upper secondary education. The Project is intended to improve quality, efficiency, access and equity, and management capacity in upper secondary education by strengthening quality support systems nationwide and targeting some of Vietnam’s most economically and educationally disadvantaged provinces.

24. The objectives of the Project are:

- a. To improve the quality and efficiency of upper secondary education;
- b. To promote access, equity and participation in upper secondary education; and
- c. To strengthen institutional capacity from the MOET to local administration.

25. The Project is comprised of the three following components:

- a. Component 1: Supporting Conditions for Quality Improvement in Upper Secondary Education – aims to support the policy of improving upper secondary education through development, testing, and dissemination of new curriculums, learning materials, teaching methods, and support systems;
- b. Component 2: Improving Access, Equity, and Participation in Upper Secondary Education in Disadvantaged Areas – aims to help disadvantaged provinces improve access, equity and participation.
- c. Component 3: Strengthening Management of Upper Secondary Education – aims to support government efforts to identify means to decentralize education management.

26. The Executing Agency is the Ministry of Education and Training (MOET) under which a National Implementation Unit (NPIU) was set up. The Project is decentralized into 22 provincial PPIUs throughout the country which undertake project management on a day-to-day basis.

27. The total Loan amount is \$65.4 million equivalent<sup>5</sup>. As of 31 December 2007, the Project had awarded contracts and issued purchase orders totaling \$33.3 million equivalent (51% of the Loan amount), out of which \$23.6 million had already been disbursed by ADB. Those contracts and purchases included civil works contracts in all 22 provinces (\$15.1 million), equipment and furniture (\$11.3 million), textbook and materials (\$2.4 million), consulting services (\$3.8 million), and other small value purchases (\$0.7 million).

28. The Project directly addresses focal points of ADB’s country strategy and program (CSP) for Vietnam, which includes continuing to help the Government achieve universal education and gender parity in secondary education via the sector development approach.

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<sup>5</sup> Equivalent of 41,615,000 Special Drawing Rights (SDR) as of 31 December 2007

29. Both ADB and Vietnam endorsed the Paris Declaration on Aid Effectiveness, 2005. Through this declaration, ADB and Vietnam undertook to work together in a participatory approach to strengthen institutional capacity and manage for development results. This Project was designed in the spirit of the Declaration, towards maximizing effective delivery of intended Project benefits to the secondary education sector in Vietnam.

## II. AUDIT OBJECTIVES AND METHODOLOGY

30. The overall PPRA objective is to help prevent and detect fraud and corruption as defined under ADB's Anticorruption Policy<sup>6</sup> to maximize development results and benefits. Corrupt behavior is a serious impediment to the development process, severely reducing development effectiveness and jeopardizing successful delivery of development benefits. This policy, along with Procurement Guidelines and Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers, requires all parties to ADB-financed activities (including borrowers, beneficiaries, bidders, suppliers, and contractors) to maintain the highest ethical standards for ADB-financed activities<sup>7</sup>.

31. The Anticorruption Policy prohibits fraudulent and corrupt practices in ADB-financed operations and defines

- a. a *corrupt practice* as the offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party;
- b. a *fraudulent practice* as any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit to avoid an obligation;
- c. a *coercive practice* as impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; and
- d. a *collusive practice* as an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.<sup>8</sup>

32. In addition, *conflict of interest* may contribute to or constitute a prohibited practice under the Anticorruption Policy. It is defined as a situation in which a party has interests that could improperly influence that party's performance of official duties of responsibilities, contractual obligations, or compliance with applicable laws and regulations.<sup>9</sup>

33. The PPRA is intended to:

- a. identify whether the procurement of project goods, works and services complied with ADB's Procurement Guidelines and the Loan Agreement;
- b. determine whether project contracts were implemented according to the terms,
- c. ensure ADB's funds were used for their intended purposes; and
- d. recommend improvements to internal controls that mitigate opportunities for fraud, corruption or abuse in this project and future ADB-financed projects.

<sup>6</sup> Paragraph 67, *ADB's Anticorruption Policy (2 July 1998)*

<sup>7</sup> Paragraph 48, *Integrity Principles and Guidelines (November 2006)*, Paragraph 14(iii), *ADB's Anticorruption Policy (2 July 1998)*; Paragraph 1.06 *Guidelines for Procurement under Asian Development Bank Loans (November 2004)*; Paragraph 1.14, *Procurement Guidelines (February 2007)*; Paragraph 1.23, *Guidelines on the Use of Consultants (February 2007)*

<sup>8</sup> Paragraph 2, *Integrity Principles and Guidelines (November 2006)*

<sup>9</sup> Paragraph 50, *Ibid*

34. PPRAs are conducted in line with ADB's efforts to manage for development results. PPRAs identify internal controls that should be in place or strengthened to mitigate or eliminate instances of fraud and corruption, or abuse of resources. Effectively applied internal controls give assurance that project funds are directed towards intended uses for intended beneficiaries. PPRAs thus contribute to ensuring ADB-financed projects are managed to produce intended development results.

35. To achieve the audit objectives, the audit team conducted a general evaluation of the Project's management and internal controls, and subsequently

- reviewed the Project's procurement processes;
- reviewed the Project's procedures on disbursement;
- sought confirmations from vendors on contractual and disbursement amounts;
- checked for conflict of interest affecting parties involved in the procurement process;
- inspected the Project's goods procured and works completed at various project sites; and
- assessed the reasonableness of contract prices.

36. The audit was conducted on selected contracts, at the NPIU and the PPIUs of Bac Lieu, Dak Lak, Dak Nong, Dien Bien, Dong Thap, Gia Lai, Lai Chau, Lang Son, Soc Tran, and Son La. Specifically:

- Review procedures for procurement covered 76 contracts representing a total amount of \$19.7 million equivalent (59% of the total contracted amount as of 31 December 2007), for the supply of goods, consultancy, construction, training, and others;
- Disbursement review was conducted on withdrawal applications covering 176 contracts and purchase orders for a total of \$17.7 million (75% of disbursements as of 31 December 2007, including disbursements under the imprest account / SOE procedures);
- Confirmations from third party vendors were sought, and a conflict of interest analysis was conducted, for 30 contracts representing a total amount of \$3.8 million equivalent (11% of the total contracted amount as of 31 December 2007); and
- Physical asset inspections, and an assessment of the reasonableness of contract prices, were conducted for 25 contracts representing a total of \$3.2 million (10% of the total contracted amount as of 31 December 2007).

### III. AUDIT FINDINGS AND RECOMMENDATIONS

37. The audit team acknowledges the excellent responsiveness and coordination of the Executing Agency, both at the NPIU and the PPIUs visited, despite the Project's geographical dispersion and the remoteness of certain project sites.

38. In all PPIUs visited, project files were well maintained and readily available for inspection. Project staff was cooperative and helpful, and was able to provide most of the specific information and documentation which the audit team requested without any difficulty or delay.

39. It should also be pointed out that several of the findings detailed below relate to contracts concluded in the early stages of the Project, where the NPIU and the PPIUs were in a capacity building process, and therefore do not necessarily reflect current and usual project management practices.

40. The PPRA findings are categorized as follows:

- a. Project procurement processes and purchase prices;
- b. Potential conflicts of interest;
- c. Financial management system; and
- d. Asset inspection.

#### A. Project Procurement Processes and Purchase Prices

41. The following sections describe observations made during the PPRA which indicate that (i) ADB's Procurement Guidelines were not followed, and/or (ii) ADB's Anticorruption Policy may have been violated, throughout the Project's procurement processes.

42. ADB Procurement Guidelines promote the principles of transparency, economy, efficiency, equal opportunity, encouragement of the borrower's domestic industries, and support of member countries' exports and expertise. Deviations from these Guidelines may result in unfair procurement practices and non-competitive bidding, and therefore undermine development results. Non-compliance may also increase the incidence of undetected fraud, corruption, and other violations of ADB's Anticorruption Policy.

43. Violations of ADB's Anticorruption Policy invariably result in ineffective and/or improper use of loan funds, thereby reducing development effectiveness. Where there are sufficient indications that ADB's Anticorruption Policy may have been violated, OAGI shall conduct further investigations subsequent to the completion of the PPRA, in accordance with ADB's Integrity Guidelines and Procedures.

## 1. Bidding advertisement and bid invitation

### *Absence of public advertisement*

44. The procurement of computer equipment for the NPIU at the very beginning of the Project, was not publicly advertised. This is contrary to ADB's Procurement Guidelines (section 3.4), which require advertisement in a national press or official gazette, or a free and open access website, as part of any national competitive bidding (NCB) procedure.

45. Besides, copies of the newspapers showing bid advertisements were not kept by the PPIUs of Bac Lieu and Lai Chau and could therefore not be reviewed by the audit team.

46. Public advertisement is the initial step of any competitive bidding process under ADB financed projects, which is essential to promote transparency and fair and true competition. It is therefore recommended that the NPIU and PPIUs ensure that all biddings be properly advertised and copies of such advertisements be kept in PIU premises.

### *Insufficient response time allowed to bidders*

47. ADB procurement guidelines (section 3.4) require that adequate response time for preparation and submission of bids shall be provided to potential bidders. In this regard, the audit team noted that:

a. In bidding procedures handled by PPIUs of Dak Lak and Dak Nong, the closing date for the submission of bids was close to the date of public advertisement (by less than 30 days); and

b. In bidding procedures handled by the NPIU where potential bidders had requested clarifications, the NPIU responded to such requests only 6 to 8 days before the closing date for bid submission. There were also instances at the NPIU where bidders were informed of changes in the bidding document only a few days before the closing date for bid submission.

48. The period allowed for bidding companies to prepare their proposals is to be assessed and determined by the EA. However, as a general practice, it should be ensured that this period is sufficient to avoid qualified bidders from being *de facto* excluded from the selection process, and to prevent potential bidders from attempting to obtain bidding information before the official release of the bidding document, through favoritism and/or bribery.

### *Insufficient information of bidders*

49. According to ADB's Procurement Guidelines (section 3.4), clear instructions should be provided to potential bidders on how bids should be submitted, how prices should be offered, and the place and time for the submission of bids.

50. In this regard, the audit team found that a bid invitation relating to a construction package in Dak Nong mentioned neither the closing date for the submission of proposals, nor the bid opening date. PPIU management however asserted that such information, even if not included in the bidding documents reviewed, had been communicated to all bidding document purchasers.

51. In order to ensure fair competition, the same information should be provided to all potential bidders. The use of standardized bid invitations (including instructions to bidders, narrative selection criteria, etc.) is to ensure such equal access to information. It is therefore essential that those bid invitations contain all the necessary information and do not require further communications from the PIU to bidders.

#### *Discrepancies in technical specifications*

52. In a bidding process conducted by Dien Bien PPIU, technical design documents indicate that steel sheets for roof should be 0.42 mm thick. However, the bid invitation required the provision of 0.47 mm thick steel sheets, incurring an extra cost of VND 13.3 million according to the audit team's estimate.

53. In order to ensure that all qualified bidders will have the possibility to participate in a bidding, and to maximize project cost effectiveness, evaluation criteria set out in bid invitations should be commensurate to the needs of the Project, and follow the criteria established at the technical design stage. In particular, selection criteria shall not be unnecessarily high or restrictive.

## **2. Bid opening and evaluation**

#### *Similarities between bids: possible collusion among bidders*

54. The audit team found instances where proposals submitted by different bidders for the same contract package had strong similarities in layout, format, diagrams and wording. In some cases, spelling and grammatical mistakes were the same. The audit team even found one instance where two bidders had proposed key personnel in common.

55. The above similarities support the possibility of collusion between bidders. Such collusion may be intended for various purposes, such as falsely increasing the number of competing bidders, or arranging for contracts/packages to be awarded on a rotating basis. In any such case, it constitutes an impediment to free and fair competition.

56. It is therefore recommended that the awareness of EA staff be enhanced regarding such practices, and that the NPIU and PPIUs systematically check bids for similarities and other signs of possible collusion.

#### *Possible leakage of information*

57. In Son La province, the audit team found that a joint venture agreement for participating in two bidding processes was established at a date earlier than the date of advertisement for the same bidding processes<sup>10</sup>. This supports the possibility of unofficial/irregular access to bidding information by the joint venture.

58. Equal access to information for all potential bidders is a prerequisite to free and fair competition, and therefore to project cost effectiveness. EA staff should be reminded that any information pertaining to a bidding process should be divulged only as part of the bidding process itself.

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<sup>10</sup> Joint venture agreement signed between ABC Company and DEF Company on 22 August 2005, where as procurement notice was advertised on 24 August 2005.

59. The PIUs should also seek ways to ensure confidentiality of bidding information when submitting procurement plans to the Provincial People's Committee, and when communicating bidding information to newspapers prior to its advertisement.

*Incomplete bid documents*

60. The audit team found instances at Dak Lak PPIU where bidders for construction packages were considered for selection whereas their bid documents did not include documentary evidence of the bidder's claimed past experience in similar contracts.

61. Similar issues were noted in bidding processes for the supply of goods, where bidders were required to submit documentary evidence that:

- a. They had at least 10 years of existence as a manufacturer, and
- b. The goods proposed had been in production for at least 5 years.

In most of such bidding processes conducted at the NPIU, the winning bidder did not submit the above documentary evidence as part of its bid.

62. Additionally, in most of the proposals reviewed (at the NPIU and all PPIUs visited), financial statements submitted by bidders were neither certified nor audited, although this is a systematic bidding requirement.

63. Finally, the audit team found several instances where bidders' proposals did not include a contract execution schedule, and warranty and after-sales services commitments as required. This issue was noted at the NPIU, and in the PPIUs of Dak Lak, Dak Nong, and Dong Thap.

64. The submission by all bidders of documents such as a contract execution schedule, audited financial statements and proof of experience is required to ensure that proposals are sustainable, and to prevent fraudulent practices such as misrepresentation. Failure by the EA to impose the submission of such documents may result in the selection of ineligible bidders, at the cost of the Project's efficiency.

*Selection of ineligible bidders / Rejection of suitable bidders*

65. The audit team found instances of bidding processes — mainly NCB procedures for construction packages — where the winning bidder was considered for selection whereas it was not meeting all bidding requirements. Indeed:

- a. In bidding processes conducted by the PPIUs of Dien Bien and Dak Nong, the bid securities provided by the bidders did not meet the bidding requirements as they had a validity period of 90 days instead of 118 days as required;
- b. Similarly, a construction company was awarded a contract in Dak Lak whereas some of its proposed construction materials (electricity cables) was not in accordance with the specifications of the invitation for bids. The materials proposed were cheaper than the ones required and therefore contributed to lowering the bidding price.

66. Additionally, in a bidding for the construction of a school in Lai Chau province, the bid evaluation committee rejected a proposal on the basis that it did not include required “drawings”. However, the audit team found the proposal submitted by the winning bidder did also not include any such “drawings”. Similar instances, where the reasons for the rejection of bidders were unclear to the audit team, were noted in bidding processes in Dong Thap, Lai Chau and Dien Bien Provinces.

67. Evaluation criteria are established by the EA, which is responsible for determining the minimum requirements expected from any bidder to qualify for the contract considered. It is recommended that

- a. evaluation criteria be commensurate to the needs of the Project, to ensure optimal cost effectiveness under the Project, and
- b. such criteria be applied in a fair and consistent manner, to avoid any appearance of favoritism by the EA.

*Insufficiently documented bid opening and evaluation*

68. The documentation reviewed by the audit team generally shows that bids are publicly opened as required by ADB procurement guidelines, and that documentation relating to bid opening and evaluation is properly established.

69. However, in a bidding process conducted by Lang Son PPIU, the bid opening meeting minutes were corrected manually without any specific signing-off.

70. Additionally, frequent cases were noted (in all PPIUs visited) where
- a. bid evaluation members did not submit their individual evaluations on separate sheets to support the final (collective) bid evaluation results, and/or
  - b. the bid evaluation report did not show the initials of all evaluation committee members on all pages, or were not dated.

71. To prevent the possibility of any favoritism towards one specific bidder, the selection process should be transparent and properly documented. Specifically, it is recommended that the required documentation be complete, and all documents be properly initialed/signed and not modified thereafter.

### **3. Contract awarding and execution**

*Late signing of contract / Early repayment of bid security*

72. The audit team found several instances of procurement processes conducted by the NPIU, where the contract was signed subsequently to the expiration date of the bid.

73. Additionally, in one selection process relating to a construction works package in Bac Lieu province, it appeared that the PPIU had paid back the bid security to the winning bidder 15 days before the signature of the contract.

74. In the above cases, it would have been possible that the winning bidder would not execute the works for which it had been selected. In such event, either the bidding process would have to be reiterated, or the second best-ranked bidder would have been eventually been awarded the contract. Either way, project performance would have been negatively impacted. It is therefore recommended that the NPIU/PPIUs take note of the expiration dates of the bids received, and ensure timely selection and contracting.

*Missing or insufficient performance security*

75. ADB procurement guidelines<sup>11</sup> provide that bidding documents for works shall require security in an amount sufficient to protect the borrower in case of breach of contract by the contractor, and that a portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the borrower.

76. However, it was noted that Dong Thap PPIU failed to obtain a performance security from a civil works contractor. Further, with regard to contracted construction firms in Gia Lai and Bac Lieu provinces, it appeared that the performance security period was shorter than the actual contract implementation period.

77. The provision of bid/performance securities by all bidders is necessary to ensure the seriousness of the bid and the actual execution of the proposed contract. Such securities should be sufficient in its amount and in its validity period. It is recommended that the NPIU/PPIUs ensure that bid and performance securities are provided as required by the bid invitation.

*Absence of delay penalty*

78. The audit team found instances where civil works were delayed and handover was not made on schedule, but no penalty was imposed on the contractor. Yet, contracts allowed the imposition of a fine amounting to 0.1% of total the contract value per day of delay.

79. This issue was noted

- a. in most of civil works contracts handled by the PPIUs of Bac Lieu, Dien Bien, Lai Chau, Lang Son and Son La, and
- b. in several contracts handled by the NPIU and the PPIUs of Gia Lai, Dak Lak, Dak Nong, Dong Thap and Soc Trang.

80. Furthermore, in the majority of these cases, the performance security period was not extended accordingly.

81. The fact that penalties are not applied, where civil works are delayed and a penalty clause is included in the contract, represents a direct loss to the Project. It is therefore recommended that penalties be applied by the EA wherever relevant.

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<sup>11</sup> Section 2.39

#### 4. Price Comparisons

82. It was noted that two companies which were awarded contracts<sup>12</sup> for the supply of school equipment, proposed similar equipment at significantly different prices. Specifically, a computer and a server were proposed by the first company at the prices of US\$729.25 and US\$4,130.43 respectively (in May 2007) where as such equipment was proposed for US\$400 and US\$2,040 by the second company (in August 2007).

83. The audit team also calculated the average construction cost per square meter for the works procured by the PPIUs of Soc Trang, Dong Thap, Gia Lai and Dak Lak. It appeared that such costs were significantly higher than market prices in the same areas (inflated by 10% to 50%).

84. The above findings show that the prices proposed by some bidders might not have been in line with prices available on the market. In particular, the overpricing of equipment or construction costs would directly impede development results under the Project. It is recommended that the NPIU/PPIUs raise the awareness of their staff regarding market prices to be able to identify discrepancies or inconsistencies in the prices proposed by bidding companies.

#### B. Conflict of interest analysis

85. As stated in ADB Procurement Guidelines<sup>13</sup>, ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations. In pursuance of the ADB anticorruption policy's requirement that borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics, ADB will take appropriate actions to manage such conflicts of interest or may reject a proposal for award if it determines that a conflict of interest has flawed the integrity of any procurement process.

##### *Related companies*

86. It was found that a director of GHI Company – which was hired by Son La PPIU to assist in the preparation of bid invitations – was a key staff member of JKL Company, which was awarded a contract by Son La PPIU for the construction of XYZ high school.

87. Such a situation where a party has potential interests in separate entities involved under the same project should be avoided as they “could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations”. It is recommended that NPIU and PPIUs raise the awareness of their staff with regard to conflict of interest, and exclude all conflicted parties from participating to the Project.

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<sup>12</sup> Contract 1 (bid submitted in May 2007) and Contract 2 (bid submitted in August 2007).

<sup>13</sup> 1.15 (c)

### **C. Financial Management System**

88. The audit team also assessed the Project's internal controls and financial management and identified the following areas for improvement. Strong internal controls significantly reduce the risk of undetected fraud and corruption, and are vital in ensuring Project funds are directed towards stated objectives and for its intended beneficiaries.

#### **5. Internal control environment**

89. Organizational structure was inconsistent amongst the PPIUs. Besides, the audit team found that a majority of the personnel at PPIUs were also employed in other local government agencies, and therefore worked on the Project on a part-time basis only.

90. In addition, in the PPIUs of Gia Lai, Dak Lak, Dak Nong, Dien Bien, Lai Chau, Lang Son, Dong Thap, Soc Trang and Son La, there were no terms of reference to precisely set out the roles and responsibilities of each staff member. In those PPIUs, it was noted that staff members were working mainly as needed, rather than filling permanent positions.

91. In order to ensure that ADB and other procurement and financial management guidelines are consistently applied, it is recommended that the NPIU and PPIUs employ staff on a full-time basis, each of them assigned to a well-defined role within the PIU. It is further recommended that, in future, terms of reference are promulgated for the key staff positions.

#### **6. Financial Information and Records**

92. The Loan Agreement<sup>14</sup> specifies that "the Borrower shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services and other items of expenditure financed out of the proceeds of the Loan (...) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial conditions of the agencies of the Borrower responsible for the carrying out of the Project (...)". While the audit team did not find that these stipulations had been breached, it appeared that internal controls of certain PPIUs could be improved. In particular, at the time of the audit:

- a. The use of an accounting software to was limited to a few PPIUs; and
- b. The PPIUs visited did not use any project management software; project information was generally updated manually.

93. The Loan Agreement<sup>15</sup> provides that "the Borrower shall furnish or cause to be furnished, (...) quarterly progress reports on the carrying out of the Project (...)". However, it appeared that such reports were not prepared by Gia Lai, Dak Lak and Lai Chau PPIUs.

94. The Loan Agreement<sup>16</sup> also provides that "the Borrower shall maintain or cause to be maintained, separate accounts for the Project (...)". However, it was noted that there was no separate bank accounts set up specifically for the Project in Gia Lai, Dong Thap and Soc Trang PPIUs.

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<sup>14</sup> Section 4.06 (a).

<sup>15</sup> Section 4.07.

<sup>16</sup> Section 4.06 (b)

95. It is therefore recommended that all covenants of the Loan Agreement regarding financial control should be strictly observed. Moreover, all PPIUs should implement the use of a project management software and an accounting software, which should be the same for all PIUs. As a result, the EA will be able to ensure that the same accounting and project reporting standards are consistently applied in all PIUs.

## **7. Disbursement Processing**

96. The audit team reviewed Project disbursements and found that Project funds were generally used for their intended purposes. Adequate financial records of ADB accounts were maintained.

97. However, as ADB's Loan Disbursement Handbook provides that replenishment of imprest account through the statement of expenditure (SOE) procedure is meant for expenses below \$100,000, it was noted that the NPIU commonly used the SOE procedure for expenses exceeding this limit, in relation to 6 contracts.

98. SOE procedures help maximizing the project results by simplifying reimbursement processes for small expenses, while the existence of a maximum amount for such procedure is meant for both ADB and the Borrower to obtain a reasonable assurance that loan funds are used for their intended purposes. It is therefore recommended to strictly observe the \$100,000 limit for SOE procedures.

## **D. Asset Inspection**

99. The Loan Agreement requires that goods financed out of the loan proceeds are used exclusively for the Project.<sup>17</sup> It also requires that Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, maintenance and operational practices.<sup>18</sup>

### *Technical design and completeness of school equipment*

100. To ensure compliance with these loan requirements, the audit team inspected the assets purchased out of the Project funds at the NPIU and several PPIUs.

101. In general, it was determined that assets were overall in good condition and utilized as intended. However, in a school in Gia Lai province, it was found that the actual specifications of computer equipment received from the NPIU were not consistent with those showed in the handover minutes.

### *Quality of construction works*

102. The audit team also inspected civil works projects in several PPIUs and generally found these to be in acceptable condition, and used as intended. However, in the provinces of Dien Bien, Lang Son, Dong Thap and Son La, those inspections found a few instances where buildings and fixtures experienced early deterioration, raising concerns of low quality construction and/or substandard fixture equipment.

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<sup>17</sup> Section 3.04

<sup>18</sup> Section 4.09

103. Frequent sites inspections should be conducted by PIUs to ensure the quality of the works done. The above issues should be followed up to determine if the contractors concerned could have misrepresented the quality of their proposed supplies, equipment or works in their proposals.

#### **IV. OVERALL RECOMMENDATIONS AND CONCLUDING COMMENTS**

104. As previously stated, the audit team noted the excellent responsiveness and coordination the NPIU and PPIUs, despite the Project's geographical dispersion and the remoteness of certain project sites. OAGI would generally recommend to the EA that those demonstrated organization and coordination skills should be utilized towards further capacity building in the area of project procurement. In particular:

- a. NPIU and PPIUs should enhance their awareness of possible fraudulent or corrupt practices, and conflict of interest. Staff should be trained to identify similarities and other indications of possible collusion among bidders, and leakage of information;
- b. During bid evaluations, it should be strictly verified that all bidders considered have complied with the requirements of the bid invitation, and specifically that all the required documents are included in the bid and that bidders are meeting the selection criteria, including the provision of sufficient bid and performance securities;
- c. Time management and the monitoring of deadlines should be improved to ensure that all contracts are signed before the expiry date of bid securities, that no repayment of bid security be done before a contract is secured, and that delays in execution of contracts lead to the agreed financial penalties; and
- d. Quality control should be enhanced through the analysis of bidding prices in regard of market conditions, and more frequent Project site inspections by PIU staff and consultants.

105. ADB's Procurement Guidelines and Guidelines on the Use of Consultants provide a framework designed to ensure transparency and fair competition in procurement processes. These guidelines should be strictly complied with when implementing the above actions.

106. The Project would also benefit from structural improvements at the NPIU and PPIUs, consisting of:

- a. harmonizing the organizational structure of PIUs, and formally establish the terms of reference of each key staff position, and
- b. implementing accounting and project management software all PIUs, in accordance with the methods, procedures and guidelines set out in ADB's Loan Disbursement Handbook.

107. Applying the recommendations set forth above, should enhance the EA's ability to

- a. Ensure free and fair competition among bidders,
- b. Prevent and deter potential fraudulent and corrupt practices,
- c. More generally ensure sufficient transparency and good governance of the Project, and will therefore contribute to maximize the Project's development impact.