
LOAN NUMBER 3352-PRC

PROGRAM AGREEMENT

(Guizhou Vocational Education Development Program – Results-Based Lending)

between

ASIAN DEVELOPMENT BANK

and

GUIZHOU PROVINCIAL GOVERNMENT

DATED 16 MARCH 2016

PRC 48101

PROGRAM AGREEMENT

PROGRAM AGREEMENT dated 16 March 2016 between ASIAN DEVELOPMENT BANK ("ADB") and GUIZHOU PROVINCIAL GOVERNMENT ("GPG").

WHEREAS

(A) by a Loan Agreement of even date herewith between the People's Republic of China ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of one hundred fifty million Dollars (\$150,000,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to GPG and that GPG agrees to undertake certain obligations towards ADB set forth herein; and

(B) GPG, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Program Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) GPG shall carry out the Program with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Program and operation of the Program facilities, GPG shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to GPG and all obligations set forth in this Program Agreement and all obligations set forth in the Schedule to this Program Agreement.

Section 2.02. GPG shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Program.

Section 2.03. GPG shall closely monitor the actions specified in the PAP and the PID to ensure that those actions are implemented in a timely and efficient manner.

Section 2.04. (a) ADB and GPG shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) GPG shall promptly inform ADB through the Borrower of any condition which interferes with, or threatens to interfere with, the progress of the Guizhou TVET Plan, the performance of its obligations under this Program Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and GPG shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Guizhou TVET Plan, Program, GPG and the Loan.

Section 2.05. (a) GPG shall (i) maintain separate accounts and records for the Program; (ii) prepare unaudited annual financial statements for the Program in accordance with accounting principles acceptable to ADB for FY2015 and for each FY until the Loan Closing Date, and furnish these to ADB no later than 6 months after the close of each FY; (iii) prepare annual financial statements for the Loan in accordance with accounting principles acceptable to ADB for FY2015 and for each FY until the Loan Closing Date, and furnish these to ADB no later than 6 months after the close of each FY; (iv) have the financial statements for the Loan audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (v) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement) and a management letter (which sets out the deficiencies in the internal control of the Program that were identified in the course of the audit, if any); and (vi) furnish to ADB, no later than 6 months after the close of the FY to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Loan and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) GPG shall enable ADB, upon ADB's request, to discuss the financial statements for the Loan and GPG and its financial affairs where they relate to the Loan with the auditors appointed by GPG pursuant to subsection (a)(iv) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of GPG, unless GPG shall otherwise agree.

Section 2.06. (a) GPG shall, promptly as required, take all action within its powers to maintain its existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Program or in the conduct of its operations.

(b) GPG shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

ARTICLE III

Effective Date; Termination

Section 3.01. This Program Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify GPG of such date.

Section 3.02. (a) This Program Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

(b) If the Loan Agreement terminates in accordance with its terms before the date specified in subsection (a) hereinabove, ADB shall promptly notify GPG of this event.

Section 3.03. All the provisions of this Program Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Program Agreement and any agreement between the parties contemplated by this Program Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

+63 2 636-2444

+63 2 636-2449

For the Guizhou Provincial Government

Guizhou Education Department
43 West Zhongshan Road
Guiyang, Guizhou

Facsimile Number:

+86 851 8528-4136.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Program Agreement by or on behalf of GPG may be taken or executed by its Governor or Vice Governor or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The GPG shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Program Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Program Agreement to be signed in their respective names as of the day and year first above written, and to be delivered at the principal office of ADB.

ASIAN DEVELOPMENT BANK


By



AYUMI KONISHI
Director General
East Asia Department

GUIZHOU PROVINCIAL GOVERNMENT

By



ZHAO JIANHUA
Authorized Representative

SCHEDULE

Financial Management

1. GPG shall ensure that the financial management actions specified in the PAP and PID are implemented in a timely and efficient manner to achieve the objectives of, among others, reducing financial risks and capacity building.

Reports and Monitoring

2. GPG shall furnish to ADB all such reports and information as ADB shall reasonably request concerning the implementation of the Program, including the accomplishment of the DLIs and carrying out of the actions set out in the PAP.
3. GPG shall furnish to ADB semiannual reports on the carrying out of the Program and on the accomplishment of the DLIs and carrying out of the actions set out in the PAP.

Safeguards

4. GPG shall ensure that the safeguards actions specified in the PAP and PID are implemented in a timely and efficient manner.

Environment

5. GPG shall ensure that the Works do not involve significant adverse environmental impacts which may be classified as category A under the SPS or its related rules/manuals.
6. GPG shall ensure that the preparation, design, construction, implementation, operation and decommissioning of all activities under the Program and all Program facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the EMPs, EIAs, PSSA, PAP and PID.
7. GPG shall ensure that the Program facilities shall be constructed on land for which EIAs have been prepared and approved by the Guizhou Environment Protection Bureau, the Qingzhen Environment Protection Bureau or other appropriate Environment Protection Bureau.
8. GPG shall ensure that the Demonstration TVET Institutions carrying out Works update their websites to disclose the (a) full EIAs; and (b) monthly supervision reports of the construction supervision consultants.

Land Acquisition and Involuntary Resettlement

9. GPG shall ensure that all pending resettlement and income and livelihood restoration activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the PSSA, PAP and PID.

10. GPG shall ensure that the Program does not involve any further resettlement impacts all within the meaning of SPS.

Ethnic Minorities

11. GPG shall ensure that the preparation, design, construction, implementation and operation of all activities under the Program comply with (a) all applicable laws and regulations of the Borrower relating to ethnic minorities; (b) the Indigenous Peoples Safeguards; and (c) all measures and requirements set forth in the PSSA, PAP and PID.

Gender and Development

12. GPG shall ensure that the gender targets specified in the PAP are implemented in a timely and efficient manner.

Labor Standards

13. GPG shall ensure that the preparation, design, construction, implementation and operation of all activities under the Program comply with core labor standards and all applicable labor laws and regulations of the Borrower.

Governance and Anticorruption

14. GPG shall (a) ensure that the Program complies with the provisions of the Anticorruption Guidelines and take all appropriate and timely measures to prevent, detect and respond to allegations of fraud, corruption, or any other prohibited activities in accordance with the Anticorruption Guidelines; and (b) promptly inform ADB of any allegations of fraud, corruption, or any other prohibited activities relating to the Program.

15. GPG shall cooperate fully with any investigation by ADB relating to allegations of fraud, corruption; or any other prohibited activities and extend all necessary assistance, including providing access to all relevant books and records, for satisfactory completion of such investigation.