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**SOCIALIST REPUBLIC OF VIETNAM**  
**Results-Based National Urban Development Program**  
**in the Northern Mountains Region**

**Fiduciary System Assessment**  
**(FSA)**

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PREPARED BY  
THE WORLD BANK

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## List of Acronyms and Abbreviations Used

AC	Anti-Corruption
ACG	Anti-Corruption Guidelines
CPC	City People's Committee
DLI	Disbursement-Linked Indicator
DOF	Department of Finance (provincial)
FSA	Fiduciary Systems Assessment
GI	Government Inspectorate
GoV	Government of Vietnam
IDA	International Development Association
IDF	Institutional Development Fund
INT	Integrity Vice Presidency (World Bank)
INTOSAI	International Organization of Supreme Audit Institutions
IPSAS	International Public Sector Accounting Standards
ISSAI	International Standards of Supreme Audit Institutions
IVA	Independent Verification Agent
LIA	Low Income Area
MOC	Ministry of Construction
MOF	Ministry of Finance
MPI	Ministry of Planning and Investment
NA	National Assembly
NUDP	National Urban Development Program
OP	Operational Policy
OPRC	Operational Procurement Review Committee
PDO	Project Detailed Outline
PEM	Public Expenditure Management
PFM	Public Financial Management
PforR	Program for Results
PMU	Project Management Unit
POM	Program Operational Manual
PPC	Provincial People's Committee
PPTAF	Project Preparation and Technical Advisory Facility
RBNUDP-NM	Results-Based National Urban Development Program in the Northern Mountains Region
RWSS NTP	Rural Water Supply and Sanitation under the National Target Program
SAI	Supreme Audit Institution
SAV	State Audit of Vietnam
SOE	State Owned Enterprise
TABMIS	Treasury and Budget Management Information System
UDA	Urban Development Agency
US\$	United States Dollar
VND	Vietnamese Dong

## Executive Summary

1. The proposed Results-Based National Urban Development Program in the Northern Mountains Region (RBNUDP-NM or the “Program”) will assist the Government of Vietnam (GoV) in developing the implementation framework for its national urban program. It will do this by piloting a performance-based transfer system that will provide participating cities with a combination of much needed resources along with a clarification of implementation responsibilities, a results-based orientation, improved planning and a strengthening of oversight and accountability through audits and verification activities. The Program Development Objective is to strengthen the capacity of participating Northern Mountains cities to plan, implement and sustain urban infrastructure. The World Bank’s Program-for-Results (PforR) lending instrument is to be used for this operation. The Program targets seven cities (Dien Bien Phu, Bac Kan, Cao Bang, Thai Nguyen, Hoa Binh, Tuyen Quang and Yen Bai) with a total budget of US\$300 million (\$250 million IDA; \$50 million counterpart funding).

### Purpose of Fiduciary Systems Assessment (FSA)

2. This assessment follows the principles governing fiduciary assessment for Program-for-Results as set out in Operational Policy (OP) 9.00. This notes that the Program fiduciary systems should provide “reasonable assurances that the financing proceeds will be used for intended purposes, with due attention to the principles of economy, efficiency, effectiveness, transparency, and accountability.” The FSA of the Program integrates findings in three areas:
  - a) **procurement systems**, which were assessed to determine the degree to which the planning, bidding, evaluation, contract award and contract administration arrangements and practices provide a reasonable assurance that the Program will achieve the intended results through its procurement processes and procedures;
  - b) **financial management systems**, which were assessed to determine the degree to which the relevant planning, budgeting, accounting, internal controls, funds flow, financial reporting and auditing arrangements provide a reasonable assurance on the appropriate use of Program funds and safeguarding of its assets; and
  - c) **governance systems**, which were assessed to determine the extent to which they address risks of fraud and corruption, including the use of complaint mechanisms, and how such risks are managed and mitigated in light of the government’s commitments under the Guidelines on Preventing and Combating Fraud and Corruption in Program-for-Results Financing (Anti-Corruption Guidelines or ACGs).
3. The FSA has been prepared based on interviews and analysis of procurement, financial and governance reports and other relevant documents at the national level -- the Ministry of Construction (MOC), the Ministry of Finance (MOF) and the Ministry of Planning and Investment (MPI) -- and the provincial and city levels. All seven participating cities<sup>1</sup> were visited in the course of the assessment.

### Procurement

4. Procurement under the proposed Program mostly includes civil works of small and medium size (upgrading of low income areas or LIAs, bridges, roads) and consulting services (capacity building,

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<sup>1</sup>In the case of the financial management assessment, the analysis was primarily conducted at the city level, focused on the City People’s Committee (CPC) Division of Finance and Planning and Infrastructure Project Management Unit.

detailed designs, construction supervision, etc.) for such works. There are no large contracts valued at or above Operational Procurement Review Committee (OPRC) thresholds under the Program. Program procurement will be carried out in accordance with Vietnam's procurement laws and regulations.<sup>2</sup> Specific procurement methods that may be applicable to the Program include open competitive bidding, direct contracting and shopping. It is envisaged that more than 90 percent of the Program's expenditures will be subject to mandatory open competitive bidding. The procurement rules and procedures applicable to the Program are found to promote transparency, economy and efficiency for the Program.

5. Program procurement will be mainly implemented by the seven participating cities, using established government procedures and arrangements. All participating cities have existing project implementing agencies (Project Management Units (PMUs)) with a certain level of procurement experience and capacity, which are expected to be partly mobilized for the implementation of the Program. However, at the time of the assessment, not all Program cities had yet established or appointed a specific executing agency for their sub-projects. As the Program represents that first phase of implementation of the National Urban Development Program (NUDP), which is unimplemented to date, no specific prior Program procurement performance experiences exist. Reviews of similar procurement and contract management practices being followed in the Program cities were thus used as a proxy for the purposes of this assessment.
6. Overall, the Program's procurement capacity is assessed to be weak and requires measures in the Program Action Plan and Program Operational Manual (POM) to improve fiduciary performance. The Program cities' existing capacity and practices have resulted in timely contract awards and satisfactory management of small-sized contracts. However, some of the practices being followed may substantially affect the timeliness, cost-effectiveness, competitiveness and compliance with applicable rules of the Program procurement. These include: (a) prevalent rejection of bids due to bid prices exceeding pre-bid cost estimates and minor, non-substantive deviations; (b) excessive use of direct contracting and single source selection; (c) award of contracts to dependent State-Owned Enterprises (SOEs); and (d) non-application of Bank debarment/suspension lists which may result in unacceptable contract awards to Bank debarred/suspended firms or individuals. Corresponding actions to address those issues are proposed to be agreed with the Government prior to Credit negotiations. To strengthen the Program's procurement implementation capacity, several crucial measures should be adopted including additional staffing, intensive training and hiring of qualified procurement/contract management support consultants.
7. In addition to the above, there are a number of other issues that are assessed to possibly impact the timeliness, cost-effectiveness and competitiveness of Program procurement. These include: (a) a segregated and fragmented approach to procurement planning; (b) low cost estimates for consulting services; (c) subjective application of technical scoring criteria in bid evaluation; and (d) delayed construction due to shortage of funds or delayed allocation of budget or delayed payments. These issues are addressed through capacity support to participating cities in procurement activities; the development of a detailed, clear and practical POM by MOC; close support, monitoring and supervision by MOC and Program provinces; and strict inspection and audit by provincial

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<sup>2</sup> Except for a number of major consulting services for preparation of feasibility studies, detailed designs, bidding documents, Environmental Impact Assessment (EIA) or Environmental Protection Commitment (EPC) and small goods contracts financed by Project Preparation and Technical Advisory Facility (PPTAF; approximately US\$6 million). Those contracts are procured following the World Bank's *Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* dated January 2011 (the Consultant Guidelines) and *Guidelines: Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* dated January 2011 (the Procurement Guidelines).

inspectories and State Audit of Vietnam (SAV). The Bank will provide assistance and support to the Program procurement performance, and will also closely monitor defined indicators of Program procurement performance. The overall procurement risk is assessed as Substantial.

## **Financial Management**

8. Government systems for financial management in the Program require strengthening, particularly to:  
(a) enable cities to effectively absorb the significant additional funding for infrastructure injected by the Program; and (b) introduce the performance-based transfer system, which demands enhanced planning and management performance by participating cities.
9. These issues are addressed through measures to strengthen government systems to enable the implementing agencies to record, control, and manage all Program resources and produce timely, understandable, relevant and reliable financial information. These measures include: (a) specific guidance on the performance-based transfer system and fund flow arrangements for the Program, issued by the Ministry of Finance; (b) the establishment and operation of an effective internal audit function for the Program; and (c) the submission of an annual Program Report to the Bank, including an audit report, audited financial statements and verified results. The overall Financial Management risk after mitigation measures is assessed as Substantial.

## **Governance**

10. The 2005 Anti-Corruption Law and the 2011 Laws on Complaints and on Denunciation entitle citizens to submit complaints on fraud and corruption (among other concerns) to the government People's Committee at the appropriate level. A complaints handling system will receive, record, and provide necessary investigative actions where it is deemed legitimate. The assessment also identified a parallel complaints "system" in the Government Inspectorate (GI) offices under line ministries and departments at the central and provincial level. The GI's main functions are to investigate allegations of fraud and corruption in their respective sectors.
11. Under the Program, complaints of all kinds, which could include allegations of fraud or corruption, should be submitted in writing to the City People's Committee as the owner of investment sub-projects. Where crimes are alleged, allegations will be passed to the local police and prosecutors for handling. In addition to the written complaints channel, any citizen may also attend Meeting Sessions with CPC leaders, held at least monthly, to raise issues of fraud and corruption. Although government offices are not required to handle anonymous complaints, all participating CPCs maintain the practice of accepting, recording, and giving these complaints some consideration when they contain credible evidence of fraud and corruption.
12. In addition to this system for handling complaints, citizens can also submit fraud and corruption allegations to the Inspectorate Office of National Ministry or Provincial Department of Construction under the RBNUDP-NM. The inspectors reserve the right to stop construction for investigation if they find evidence of fraud and corruption. Similar to the CPC's system, the Inspectorate will pass allegations on to the police and prosecutor once crimes are alleged. Both of these parallel complaints handling systems contain a reporting mechanism that can capture information on the number, type and handling of fraud and corruption allegations. Information on sanctions and debarment is reported through the Provincial People's Committee (PPC), to the Provincial Department of Planning and Investment and up to the Ministry of Planning and Investment to prepare the National Debarment List.

13. While this multiple-entry complaints system provides a number of options for citizens, it can also be confusing and result in complaints being passed around agencies or lost in the transfer process making it difficult for citizens to follow up on their complaints. No recent significant fraud and corruption cases were reported during the assessment. In recent years, participating cities have mostly received and recorded complaints regarding the slow and inefficient process of land compensation and resettlement.
14. The Government will improve reporting systems and establish a database in order to strengthen the framework for complaints handling and combat fraud and corruption under the Program. The Government has confirmed its commitment to the implementation of the *Guidelines on Preventing and Combating Fraud and Corruption in Program-for-Results Financing* and will require the application of World Bank suspension and debarment lists that will be made readily available to participating cities. These actions will be reviewed during Program supervision. In addition, the Government will oblige all Program participants to cooperate with Bank investigations through issuing an executive order to participating cities on the Bank's investigative rights and the Anti-Corruption Guidelines.
15. The Bank's Integrity Vice Presidency (INT) has recently conducted two investigations into fraud and corruption in the same sector as the RBNUDP-NM based on disclosures to the World Bank by two international firms working on a number of Bank-funded projects in Vietnam. In both investigations, INT has evidence that the international firms used a local Vietnamese agent to make payments to project and government officials in order to influence the award of contracts and to be paid for their works in Vietnam. The firms failed to disclose the nature of their relationship with the Vietnamese agent as required under their contracts. They also fraudulently covered up payments to the agent through false claims for purported "ghost" services. In the one completed investigation the international consulting firm disclosed and admitted its misconduct in Bank-financed contracts in a number of Vietnam projects and reached a negotiated settlement with the Bank, agreeing to a sanction of conditional non-debarment for two and a half years. The firm dismissed employees/staff involved in the payments to project and government officials and has taken steps to implement a more robust integrity compliance program to prevent future misconduct. More generally, INT investigations in the sector have identified instances of misrepresentation of key staff and their qualifications by consulting firms and the use of payments to project officials in order to obtain tender and evaluation information and documents.
16. The use of local agents to funnel payments to project and government officials has been identified in a number of INT investigations. To address this risk, clients and Bank teams will need to focus greater attention on ensuring that bidders and contractors more fully disclose any relationships they have with local agents. Use of false claims for "ghost" services by local sub-consultants highlights the need for stronger and more consistent due diligence of subcontractors and greater scrutiny of subcontractors' invoices. This will be supported by the increased regularity and coverage of audit activities in participating cities.

### **Key Performance Indicators**

17. Key indicators of fiduciary performance have been identified and compiled to form a reference framework to be monitored over the life of the Program. These specific indicators, for both financial management and procurement, will be measured periodically and compared to an initial baseline to assess the extent of improvement in the Program's fiduciary performance.

## A. Program Description

### National urban program

18. Government has been responding to rapid urban growth with both institutional reforms and financing. Since 1986, a program of decentralization has gradually devolved authority for urban governance and service delivery to City People's Committees. This has been accompanied by fiscal transfers to cities, which have been routed via the provinces, typically via discrete project-based transfers and a growth in local level spending in response to demand.<sup>3</sup> This approach has resulted in significant progress in access to basic urban infrastructure services. An estimated 75 percent of urban households have access to water services (from 35 percent in 1997); 67 percent have access to toilets (from 17 percent); and eight larger cities now have wastewater treatment plants (from a baseline of zero). At the national level, 96 percent of households have access to electricity services, and over 90,000 kilometers (km) of roads have been paved in the last decade.<sup>4</sup>
19. However, massive challenges remain as urban populations continue to expand and their spending power increases. Residual shortfalls in access to services need to be addressed, while networks require expansion to accommodate growth in households and their demands. The number of vehicles on urban roads has more than doubled in the last decade, while still only 8 percent of wastewater is currently treated. It is estimated that an additional 50 million square meters (m<sup>2</sup>) of housing stock will be required each year to 2020. The above gaps will drive demand for associated bulk, connector and internal infrastructure services. Network congestion and service rationing will rise if this demand remains unmet, which will constrain economic growth and impact the poor most severely.
20. Government has established ambitious national targets for addressing these urban investment needs by 2020 (see Decision No. 1659/QĐ-TTg), including expanding access to:
- water supply to 90 percent of households, and 120 liters / person / day, and reducing non-revenue water to between 10 and 25 percent, depending on the class of town;
  - sewerage and drainage systems to over 80 percent of urban catchment areas, with at least secondary treatment of 60 percent of wastewater (rising to 100 percent and 70 percent, respectively, by 2025);
  - solid waste collection and disposal services to 90 percent of households and firms (with 100 percent coverage for hazardous waste);
  - street lighting to over 85 percent of urban roads outside of the largest urban centers (and 100 percent within them);
  - housing to 75 percent of the urban population, with an average floor area per person of 29 m<sup>2</sup>;
  - road space to between 20 and 30 percent of urban land (depending on the class of town), and expanding access to public transport services; and
  - urban green spaces per person to between 4 and 15 m<sup>2</sup>, depending on the class of town.
21. These targets will require large, but as yet poorly quantified, amounts of investment. Initial estimates suggest that US\$1.5 billion is required *annually* for water supply, wastewater and low-income

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<sup>3</sup> Disaggregated financial data on urban investment is not available by sector, national transfers are not fully disclosed by target area, and provincial and city level reporting is not aggregated nationally nor does it fully account for sources of revenues. Budgeting practices and functional overlaps also significantly complicate financial analysis.

<sup>4</sup> World Bank, 2013(a), Assessment of Financing Framework for Municipal Infrastructure.



housing investments. Other estimates suggest that at least US\$1 billion is required annually just for wastewater investments.<sup>5</sup> Disaggregated estimates for energy and transport investment needs are not available.

22. The Infrastructure Finance Review notes that despite these uncertainties, there is a significant shortfall between investment needs and available resources (estimated at between 50 and 60 percent for all infrastructure sectors nationally), and significant policy, regulatory and local capacity weaknesses that will need to be addressed. Capacity-building programs, for example, have typically provided only generic training on technical topics, rather than also focusing on improved results through strengthening the public expenditure management cycle.

## **The National Urban Development Program**

23. Government adopted the NUDP (Decision No. 1659/QĐ-TTg of the Prime Minister) in 2012 to address the lack of coherence in the management of urbanization, and to provide a programmatic focus to achieving the 2020 targets for urban service delivery. The objective of the NUDP is to promote an efficient, sustainable and equitable process of urban development by improving levels of access to basic urban services (water supply, sewerage and drainage, solid waste management, public lighting, roads and public transport, environmental services and public space), expanding the provision of serviced land for high-density housing and economic activities, and through integrated urban upgrading of low-income urban areas. The NUDP recognizes the importance of developing effective planning, financing, implementation and monitoring systems, particularly at the local level, to ensure the efficient execution and sustainability of required investments in urban infrastructure. It specifically notes the importance of strengthening urban management through improving mechanisms for investment planning and works management, increasing public awareness of local government roles and responsibilities, building the capacity of local officials, and encouraging new mechanisms to finance infrastructure.
24. The NUDP is an "umbrella" program through which the Government aims to coordinate and focus current efforts by all levels of government in addressing the urbanization challenge. The Prime Minister thus assigned responsibility for program coordination and implementation to the MOC, and established a multi-departmental Steering Committee (headed by the Minister of Construction) to supervise the execution of the program. It thus complements existing government programs (such as the Urban Upgrading Program).<sup>6</sup> Until now, the NUDP has not had designated resources, as its operating expenses have been covered by budgets of implementing agencies and resources for infrastructure investment have been channeled through existing transfer mechanisms or own-source revenue. It is not possible to estimate past or current annual urban development expenditures in Vietnam. The NUDP has sought to leverage these expenditures without specific program expenditures assigned to it, operating through existing government agencies and budgets. This fundamental weakness in the government program of expenditures will be addressed through the Program, which establishes a dedicated resource envelope and implementation modalities for the NUDP.
25. Progress with the implementation of the NUDP has been slow in the first year of its implementation. This has been due to the limited attention paid to the design of detailed implementation modalities. MOC has recognized this, and initiated a stocktaking exercise in May 2013 across all provinces on NUDP implementation. A concluding workshop in December 2013 found that, overall, provinces

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<sup>5</sup> Vietnam Urban Wastewater Review. World Bank, 2013.

<sup>6</sup> The absence of financial data in existing government programs makes it impossible to evaluate the size of actual expenditures that are within the framework of the NUDP (i.e., transfers supporting urban development)

across the country have started to align their implementation of urban development activities with the NUDP’s core principles and that a revision to implementation modalities and timelines is necessary, specifically to align financing mechanisms, capacity support and national oversight systems with NUDP objectives and to account for variations in progress between classes of cities. Government is now proposing to implement the NUDP incrementally through a series of regional sub-programs that will provide a comprehensive package of performance-based fiscal support, capacity support and enhanced oversight. The Results Based National Urban Development Program in the Northern Mountains Region (RBNUDP-NM, the proposed Bank-supported operation) would be the first regional implementation of the NUDP.

## The Results-Based National Urban Development Program in the Northern Mountains Region

26. Through the RBNUDP-NM, the Government will introduce a regionally focused, performance-based transfer program with capacity building support for participating cities and improved national oversight systems. The Program operates at two levels: (a) in selected cities within the target region, through performance transfers and capacity support activities; and (b) at national level by strengthening program management systems, urban policy development, and oversight. These activities will influence both the continuing implementation of the NUDP and the framework for all government expenditures on urban development (including, as a first step, assisting the Government to quantify existing financing arrangements and investment needs).
27. Program expenditures are estimated to total US\$300 million and the implementation period is anticipated to be six years, from 2015 to 2020. US\$280 million will constitute the performance-based transfer system, financing infrastructure investments and project management activities by CPCs as specified in the investment menu. This includes US\$50 million in counterpart contributions from the participating cities. US\$20 million will support MOC activities, including the provision of capacity support (training and technical assistance) to participating cities, the development of national urban policy and implementation frameworks, and the strengthening of oversight systems (see Table 1). Note that city-level expenditures include direct recurrent costs associated with the implementation of sub-projects under the Program. Program Expenditures will consist of:
- construction costs of priority infrastructure investments through budgets of participating Cities;
  - associated costs of services for social and environmental related studies pertaining to the infrastructure investments;
  - compensation costs associated with the infrastructure investments;
  - operating costs of the City administrations associated with management of the infrastructure investments;
  - costs of program administration and capacity development activities implemented by MOC; and
  - costs of verification audits undertaken by the SAV.

**Table 1: Program Expenditure Framework (US\$ millions)**

	2015	2016	2017	2018	2019	2020	Total
<i>Estimated expenditures by cities including IDA and counterpart funds*</i>							
Thai Nguyen City	13.50	31.00	19.50	8.00	6.00	1.00	79.00
Cao Bang City	8.50	43.50	12.00	5.00	3.00	- 0.50	32.50
Bac Kan City	6.00	8.50	5.50	5.00	3.00	- 0.50	28.50
Dien Bien City	4.00	10.00	10.00	5.50	2.50	0.50	32.50

	2015	2016	2017	2018	2019	2020	Total
Yen Bai City	5.50	2.50	14.50	9.00	2.50	0.50	34.50
Tuyen Quang City	4.00	3.00	12.00	15.00	6.00	- 0.50	40.50
Hoa Binh City	3.00	1.50	10.50	8.00	8.50	- 1.00	32.50
<b>Sub-Total for cities**</b>	<b>44.50</b>	<b>60.00</b>	<b>84.00</b>	<b>55.50</b>	<b>31.50</b>	<b>4.50</b>	<b>280.00</b>
<i>Estimated national level Ministry of Construction Expenditures by Type</i>							
National Policy Development	1.00	1.00	1.00	1.00	1.00	2.00	7.00
MOC Staffing and Capacity Development	2.00	2.00	2.00	2.00	1.00	1.00	10.00
Annual Audits (SAV)	0.50	0.50	0.50	0.50	0.50	0.50	3.00
<b>Subtotal for MOC</b>	<b>3.50</b>	<b>3.50</b>	<b>3.50</b>	<b>3.50</b>	<b>2.50</b>	<b>3.50</b>	<b>20.00</b>
<b>Total for Program</b>	<b>48.00</b>	<b>63.50</b>	<b>87.50</b>	<b>59.00</b>	<b>34.00</b>	<b>8.00</b>	<b>300.00</b>

\* Expenditures by cities include recurrent expenditures associated with sub-project management. Vietnamese public sector accounting practices require these costs to be included in sub-project cost estimates and budget provisions.

\*\* Including US\$50 million in counterpart contributions and US\$230 million from the World Bank credit.

### Program expenditures in the context of participating CPCs

28. City People's Committees will plan and implement sub-projects in the Program. As these cities are the project owners for individual sub-project investments, the funding under DLI 2, above, will be reflected in the revenues and expenditures of the CPC annual budgets. Sub-project implementation will be undertaken by Project Management Units (PMUs) reporting to the CPCs. Existing asset management arrangements will continue. Provinces will continue to play their role in the approval of city plans and budgets.
29. As a level of government, CPCs have a range of functions that are not directly related to urban development. The total expenditures of CPCs amounted to US\$ 154.8 million in 2012 (or US\$189 per capita), and have grown by an average of 25 percent per year since 2010. Expenditures on urban infrastructure investments (capital investments including direct project management costs) accounted for 24 percent of this expenditure (US\$38 million, or US\$46 per capita) and have grown at an average of only 15 percent since 2010. Personnel expenditures (in four cities for which data is available) accounted for an average of 52.1 percent of recurrent spending since 2010. City expenditures are financed through a mixture of local taxes and fees (34 percent) which are subject to revenue-sharing arrangements with provincial governments, transfers from provinces (30 percent), land sales and leases (21 percent) and accumulated savings (15 percent).
30. These existing CPC expenditures are expected to continue. On average, the Program will add an additional US\$5.5 million to the annual expenditures of each city, or US\$47 per capita. This constitutes about 24.8 percent of total CPC expenditures in 2012, and 101 percent of their capital spending baseline. However, this is anticipated to decline sharply due to ongoing growth in existing revenues and expenditures outside of the Program. If the current rate of growth and expenditure composition is sustained over the Program period (to 2020), CPC expenditures are projected to increase more than seven fold by FY2020, with capital expenditures more than doubling. They will then far outstrip annual Program expenditures. This provides a critical window for the Program to enhance the effectiveness of these future CPC expenditures, in line with NUDP objectives.

## **B. Institutional Framework and Fiduciary Arrangements under the Program**

31. The system of multi-level governance in Vietnam is described and evaluated in the Technical Assessment. Vietnam has three subordinated layers of sub-national governance: at provincial, city or district, and commune levels. Technical agencies at each level have dual reporting lines to the territorial administration and to their parent ministry. At each level there is an executive People's Committee, which is accountable to the legislative People's Council. The City People's Committees comprise the executive and administrative agencies of city government. CPCs are principally responsible for planning, implementation, operation and maintenance of public infrastructure including roads and bridges, water supply and drainage, urban lighting and environmental sanitation. The CPC oversees construction activities and manages land and the housing fund in its jurisdiction. Plans, budgets and investment decisions of the CPC are subject to approval of the PPC, which assigns Provincial technical departments to conduct appropriate reviews and recommend decisions.
32. City People's Committees are the main implementing agents for the Program, with jurisdiction over the participating urban areas and urban infrastructures funded in the Program. Provinces and the National Government have important complementary roles in supporting cities to perform their roles in the Program. The institutional arrangements for Program implementation are reviewed in the Technical Assessment Report. The assignment of roles has important implications for fiduciary arrangements under the Program, particularly in relation to cross-cutting issues of financial management, procurement and governance. Major interfaces between levels of government occur in procurement, where national government establishes rules and procedures, provinces set cost norms and approve CPC procurement plans, and the State Audit of Vietnam oversees compliance with regulations and procedures. A similar unit of powers is apparent in financial management, where provinces establish budget norms and guidelines, approve CPC budgets, allocate and disburse transfers to cities (based on disbursement requests), set parameters for revenue sharing, and approve fees and tax rates for local revenues. Oversight of financial management of the CPC is also largely the responsibility of the provincial branch of the State Treasury. National government makes transfers to cities via provincial budgets and accounts, while SAV conducts direct oversight of city compliance with financial management regulations. An additional, and often overlapping, system of government inspections works alongside a multi-tiered complaints handling system that also involves multiple levels of government, as described in more detail below.
33. The interface between levels of government occurs through and within the annual (and repeated) Public Expenditure Management (PEM) cycle. This cycle is summarized diagrammatically below in Figure 1.

**Figure 1: Public Expenditure Management Cycle**

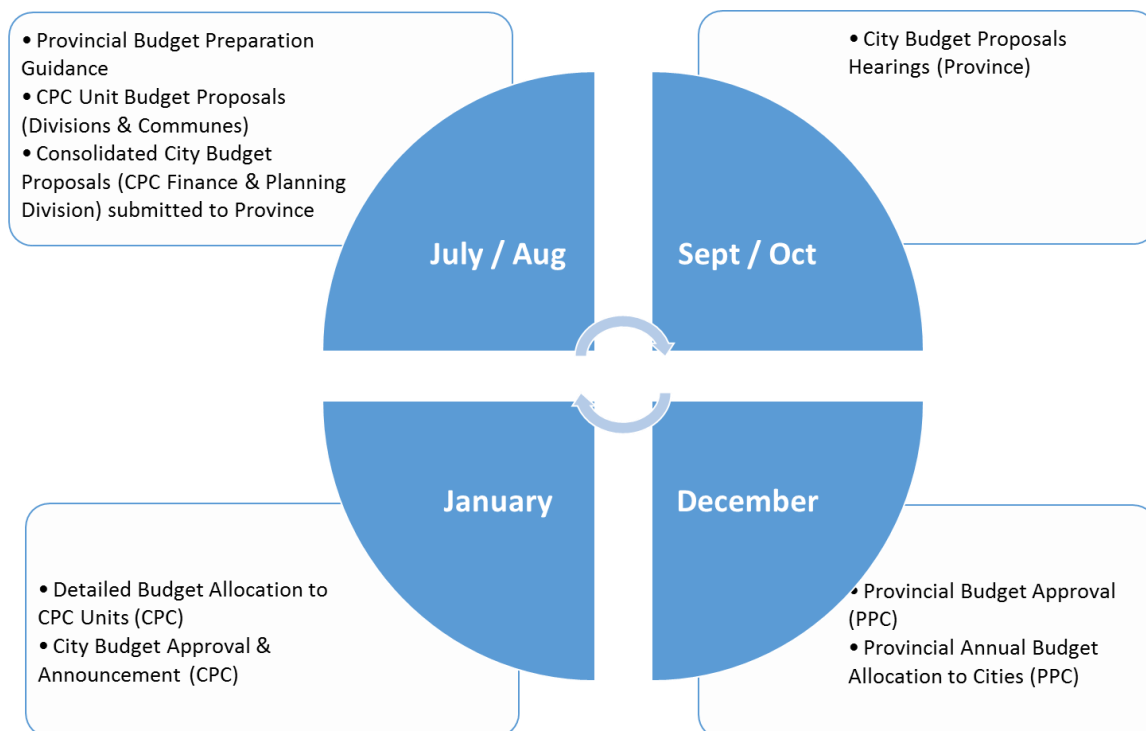


### Planning and Budgeting

34. All cities prepare and periodically update Master Plans to identify their long-term investment needs. These plans are predominately spatial in nature, and seldom demonstrate a strong linkage to resource availability. Investments identified in the Master Plan are included in five-year development plans; however, it is only at the annual budgeting stage that resources from the state budget are committed to investment projects.
35. The financial year for all levels of government starts on 1 January of each year. The principal law governing the budget management is the revised organic *State Budget Law* approved by the National Assembly (NA) in 2002 and which came into force from the 2004 financial year. This revised Law has strengthened the legal platform for budget management as it clarified the powers and responsibilities of stakeholders participating in the budget process. It has also strengthened decentralization through providing greater budgetary powers to Provincial People’s Councils.
36. The NA has the constitutional power to approve the unitary “State Budget,” which comprises the central government budget plus the consolidated provincial-district-commune budgets. The PPCs have the power to determine the allocation of the budget between the three tiers of government at the sub-national level (i.e., province, district and commune). PPCs also decide on revenue and expenditure, including the types of fees and contributions that can be collected at the local level and on the financial cost norms to be followed by the various levels of sub-national government. The PPCs have enacted resolutions, decisions and guidelines for their sub-national levels of government, sectors and spending units regarding: (a) the decentralization of budget management among local levels of government; (b) the time schedules for the development of budget estimates and final accounts; and (c) budget allocation norms (the norms provided in advance by PPCs to budget spending units to develop their budget proposals, based on the estimated availability of financial resources).

37. There is a well-defined budget preparation calendar that sets out the schedule for budget preparation by line ministries and provinces as well as the schedule for presentation of the State budget by government for its consideration and approval by the National Assembly. This is shown in Figure 2, below, for provincially-funded and city-funded expenditures, respectively. This process is somewhat cumbersome and lengthy as it requires multiple approvals by higher levels of government (commune budgets are approved by the districts; district budgets are approved by provinces; and provincial budgets are approved by the NA).

**Figure 2: Budget Cycle for City People’s Committees**



38. The national budget system notionally aggregates public spending upwards from commune to district/city, to provincial and then national level. National government budget allocations to provinces are made once initial spending projections and revenue sharing arrangements have been finalized. They thus typically “fill the gap” between assigned revenues and expenditures, with supplementary allocations for specific national priorities (National Target Programs). Funding to CPCs is routed through provinces.

39. The system of intergovernmental fiscal relations, including revenue assignments and the role of transfers, is reviewed in the Technical Assessment. Transfers in Vietnam take the form of retained revenues (revenue sharing arrangements) and conditional, specific purpose transfers originating largely from central government and transferred via the provinces. In practice this system often creates perverse incentives for local revenue collection and reporting, and has led to funding gaps for certain CPC functions. It has also reduced the expenditure discretion of CPCs. Fund flow predictability for CPCs is also weakened by routing transfers through provinces, which may divert resources to meet immediate cash-flow needs. Government, however, recognizes the importance of aligning functional and fiscal decentralization and improving resource predictability. The RBNUDP-NM is designed to assist government to introduce a performance-based fiscal transfer instrument to



complement decentralization reforms through expanding CPC expenditure discretion while strengthening the incentives that they are provided for effective expenditure management and own source revenue enhancement.

## Procurement

40. It is expected that the seven Program cities would be delegated procurement responsibility for most of the workload under the Program. The remaining portion of procurement (mainly consulting and non-consulting services for policy development, capacity building, technical assistance, program management, results verification and program oversight) will be carried out by Ministry of Construction and State Audit of Vietnam. Thus, in most cases, and except for procurement plans (which require Provincial People's Committee's approval), all procurement documents are approved by the City People's Committees. At present, the average time taken for procurement in participating cities was reported to be between 1.5 and 2 months.
41. The Program will finance mainly contracts for: (a) civil works, typically including upgrading of low income areas (LIAs), rehabilitation and upgrading of urban roads, construction of bridges and other local infrastructure services; and (b) consulting services required for such works, mainly including construction supervision.<sup>7</sup> In addition, the Program will also finance contracts for small-value goods and equipment, consulting services, training and workshops for capacity building, and project management. It is estimated that there would be about 90 contracts for civil works (with values ranging from US\$0.04 to 20 million and representing more than 90 percent of the Program's total investment costs); nearly 200 contracts for consulting services (valued from several thousands to several hundreds of thousands of US dollars) and a small number of goods contracts to be procured over the life of the Program.<sup>8</sup> These contracts will be implemented in two phases (Phase I: 2015-2017 and Phase 2: 2018-2020). There are no large contracts that are valued at or above OPRC thresholds under the Program. It is expected that 90 percent of Program procurement, in terms of values, will be done under open competitive bidding procedures. The rest may be procured through other methods -- mainly direct contracting and shopping.
42. The procurement rules and procedures to be followed under the Program will be those stipulated in Vietnam's revised Public Procurement Law No. 43/2013/QH13, which was ratified by the National Assembly on November 26, 2013.<sup>9</sup> The new Law shall be effective on July 1, 2014. The Decrees guiding the implementation of the Law are being prepared by the Government and are expected to be issued by that date. In addition, the Government will also issue various Circulars, mainly on model bidding documents, to further guide and support the implementation of the Law.
43. A review of the revised Public Procurement Laws and draft regulations implementing Decrees found that they: (a) require procurement planning to be prepared and approved in a timely manner with

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<sup>7</sup> Sub-project detailed design is being financed through the PPTAF and will not be eligible for Program financing.

<sup>8</sup> Except for a number of major consulting services for the preparation of feasibility studies, detailed designs, bidding documents, EIA/EPC) and small goods contracts to be financed by the PPTAF (approx. US\$6 million). Note that these procurements are procured following the World Bank's *Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* dated January 2011 (the Consultant Guidelines) and *Guidelines: Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* dated January 2011 (the Procurement Guidelines).

<sup>9</sup> The existing legal and regulatory framework on public procurement includes the Procurement Law No. 61/2005/QH11 dated November 29, 2005, Law No. 38/2009/QH12 on Amendments to the Procurement Law dated June 19, 2009 and subsequent implementing Decrees (including Decree No. 111/2006/ND-CP, dated September 29, 2006; Decree No. 58/2008/ND-CP dated May 5, 2008; and Decree No.85/2008/ND-CP dated October 15, 2009). These shall be replaced by the revised Public Procurement Law since July 1, 2014.

proper linkage to budget availability; (b) mandate open competitive bidding as the default procurement method and provide detailed procedures for open competitive bidding; (c) provide a reasonably clear allocation of responsibilities and accountabilities to the procuring entities, employers and project owners; and (d) provide sanctions against unacceptable practices including fraud and corruption. In addition, the Government will issue various Model Bidding Documents (including forms and templates of contract) and bid evaluation templates for use by procurement practitioners. The Decree on Selection of Contractors, which is being drafted and scheduled to officially issue in June 2014, however does still propose to allow an automatic use of direct contracting and single sourcing for small contracts below certain monetary thresholds.<sup>10</sup>

44. The open competitive bidding procedures described in the procurement laws and regulations generally adequately accommodate transparency, economy and efficiency of the procurement process. An open competitive bidding for civil works typically includes the following steps and requirements:

- a) *Preparation of bidding documents.* Bidding documents should be prepared using the templates issued by the Ministry of Planning. Bidding documents should clearly state bid evaluation and qualification criteria and contain no restrictions. Bidding documents must be approved by a competent agency before issuance;
- b) *Advertising of bidding opportunity.* Invitation for bids must be advertised in the Public Procurement Newspaper, which is nationally available, for three consecutive issues and published in the MPI's public procurement website ([muasamcong.mpi.gov.vn](http://muasamcong.mpi.gov.vn)). Bidding documents can be sold (at maximum VND1 million or US\$45 for one set) or released free of charge to interested bidders three days after the advertising date. The laws prohibit any practices to restrict bidders from access to bidding documents;
- c) *Preparation, submission and receipt of bids.* Bidders shall be given at least 20 days for preparation of their bids counting from the date of bidding document issuance. Upon the deadline for bid submission, the procuring entity shall immediately open all bids received in the presence of bidders' representatives. The procuring entity shall read aloud bidders' names, bid prices and discount offers and other important information; prepare the minutes of bid opening and send a copy to each participating bidder;
- d) *Evaluation of bids.* The laws require that bid evaluation must be completed within 45 days after the date of bid opening. Extension of bid validity is permissible but not exceeding 20 days. Evaluation of bids includes three main steps: (i) preliminary examination, which includes the checking on eligibility, bid security, bidder's experience and qualifications; (ii) detailed evaluation, which includes evaluation of technical responsiveness and calculation of evaluated bid prices through error corrections, adjustments, and discount application; and (iii) ranking of responsive bids to determine the top ranked bid for contract award consideration. The laws permit the use of a merit point (scoring) system for technical evaluation of bids in addition to a pass and fail methodology. This technical scoring methodology is subjective and may be abused;
- e) *Contract award, negotiations and signing.* The laws require that to be selected for contract award, the bidder must: (i) have submitted an eligible, qualified, and technically responsive bid; (ii) have the lowest corrected price or lowest evaluated bid price; and (iii) have the proposed contract price not exceeding the approved pre-bid cost estimate. The procuring entity will negotiate and sign the

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<sup>10</sup> The draft Decree on Selection of Contractors proposes a threshold of VND 0.5 billion (US\$24,000) under which goods, works, non-consulting and consulting services may be procured through direct contracting. Compared to the thresholds in the existing laws and regulations, this threshold is substantially lower meaning more mandatory use of competitive bidding for the Program. However, this threshold is not yet confirmed and may change when the Decree is officially issued.



contract with the selected bidder based on the contract form included in the bidding documents and the selected bidder's bid; and

- f) *Publication of contract award.* After the contract is awarded, the procuring entity shall publish the contract award information in the Public Procurement Newspaper. Information to be published includes name and descriptions of the contract, name of the successful bidder, and contract price.
45. In case of open competitive bidding for consulting services, the procuring entity shall advertise in the Public Procurement Newspaper to seek consultants' interests; establish a shortlist of at least three qualified firms, prepare bidding documents using the MPI's templates, issue the bidding documents to shortlisted consultants and give them at least 10 days for preparation of proposals; receive proposals and immediately open the technical proposals; score technical proposals against prescribed evaluation criteria; publicly open the financial proposals of those consultants who secure the minimum technical score and conduct financial and final evaluation to determine the highest ranked consultant; negotiate and sign the contract with the selected firm and publish the contract award in the Public Procurement Newspaper.
46. The procurement law requires that procurement plans shall be approved by competent agencies after the approval of investment decisions or they can be approved at the same time as the approval of investment decisions where conditions allow. The Law also requires that procurement plans shall be prepared for the entire projects except where conditions do not suffice. Procurement plans must be prepared based on the availability of project funding sources. The Law further stipulates that procurement packaging shall be done based on technical nature and implementation sequence to ensure no restriction of prospective bidders' participation, and to ensure the consistency of contract implementation with overall project implementation. It also prohibits any practices to wilfully divide procurements into small contracts in order to enable the use of direct contracting methods. Procurement and contract management documents are required by law to be maintained for 10 years (from the date of work completion).
47. The Government has detailed regulations and a complex cost norm system for cost estimation. For works under the Program, detailed cost estimates will be prepared based on cost norms that are established by respective provincial departments (normally departments of construction) based on the Ministry of Construction's norms on construction inputs (standardized consumption of material, labor, and construction machinery for a unit of a work item) and local prices of such inputs. These cost norms are required to be regularly updated (normally on a quarterly basis). Cost norms for works may be comparable to the market prices if they are updated in a timely manner. Costs for detailed designs and construction supervision are estimated based on a fixed percentage of the total construction costs. This fixed percentage is regulated by Ministry of Construction and varies by types and total costs of construction works. For example, the "percentage norm" for detailed design of a regular urban road with a cost estimate of VND 100 billion is 1.12 percent while the percentage norm for construction supervision for those works is 1.405 percent.<sup>11</sup>
48. For the purpose of procurement planning, several rounds of cost estimation will be conducted with different level of accuracy. Currently, as the Program is under preparation, values of contracts as being proposed by Program cities are estimates calculated based on investment (order of magnitude) unit rates. Review of these estimates shows that some appear to be rather high compared to descriptions of proposed works. At the later stage, when feasibility studies are completed, cities would also prepare preliminary estimates based on the basic designs of works. Preliminary estimates are used for preparation of initial procurement plans, budget allocation, etc. Before a particular

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<sup>11</sup> Based on MOC's Decision 957/QD-BXD dated September 9, 2009.

contract is invited for bids, cities will prepare the contract's detailed cost estimate based on detailed designs of the works. This detailed cost estimate is considered the contract's ceiling and is used for the purpose of bid evaluation and contract award, and is subject to appraisal and approval by relevant government agencies. Under direct contracting arrangements, this ceiling is used to negotiate price and bidders are normally asked to voluntarily offer a discount of a few percent below the established ceiling. Under open competitive bidding, bids offering prices above the approved cost estimate are rejected.

49. The RBNUDP-NM constitutes the first regional implementation of the NUDP. As such, historical Program performance data is not available, and this assessment uses the experience and performance of the city PMUs as a proxy for expected performance under the Program. The PMUs each have between 10 and 20 staff. The majority of PMU technical staff holds a certificate of competence in procurement from MPI. However, the requirement for this certificate is only attendance at a three-day training course, for which qualified engineers with at least three years' experience are eligible. The City may assign additional staff to the PMU to strengthen it for implementation of the Program, but it seems unlikely that there will be staff with greater procurement expertise available from within other units of the City administration.
50. To assist the city's People's Committee's decision making, a department under the city (normally the Finance and Planning Unit) appraises procurement documents and makes recommendations to the City People's Committee. The city's overall project implementation (including its procurement performance) is annually inspected by the provincial inspectors and further audited by SAV. This focusses on procedural compliance issues. There are no separate procurement post reviews or audits.

## **Control, Reporting, and Auditing**

### ***Treasury management and funds flow***

51. The State Treasury is responsible for management of the State Treasury funds. The provincial branches of the State Treasury play important roles in the disbursement and payment control processes. All payments are made through the treasury system. The sharing of information and data and the cooperation in payment control and budget between the treasury and financial bodies are conducted through the Treasury and Budget Management Information System (TABMIS).<sup>12</sup>
52. For construction works and projects that are to be funded from provincial budget, funds are allocated in accordance with the approved budget estimates. The provincial Department of Finance (DOF) sets the fund allocation limits in line with the plans in TABMIS, and the provincial State Treasury makes payments accordingly. If construction works are funded from the CPC budget, the CPC Finance and Planning Unit will set the fund allocation limits in TABMIS, and the CPC State Treasury Unit will make payments accordingly. Payments can also be made from advances against budgeted funds. However, in some cases the spending units may not complete payment procedures to liquidate these advances by the end of the financial year, even given that the financial year is already extended by one month to permit the recognition of expenditures and payments made in January to the previous financial year. This leads to construction advances being very high at year end, which are then transferred to the following financial years and recorded as a type of "revenue" for the new financial year. This practice causes misleading financial information and confusing budget control.

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<sup>12</sup> TABMIS is an integrated computerized financial management system built by the World Bank-financed Public Financial Management Reform Project. Since its rolling out in 2008, TABMIS has provided the capability to record and control commitments, improve cash flow management, and strengthen expenditure management and controls.

53. Recurrent expenditure items are reviewed and funds are allocated based on expenditure norms or activities. All expenditure items that are included in the budget estimates developed by spending units and supported by quarterly plans and registered payment schedules are fully met from the allocated budgets. New expenditure items that arise outside the budget estimates and plans (due to new policy, merging of Units, staff increases, newly established units, etc.) are funded in line with their spending requests. Procurements and repairs are usually conducted in the third and fourth quarters of the year.
54. It was observed that, due to the lack of funds in the State Treasury at the central and provincial level at certain times during the year, mainly due to several instances of unmatched incoming cash flow and outgoing cash flow, some funds that are not allocated at the beginning of the year are instead allocated mid-year or even at year end. In that case, although the construction project is approved and included in the annual budget, when the investment owners request the State Treasury to make payment to a contractor or a supplier, they still face a delay by State Treasuries in releasing funds. Discussion with a number of provincial State Treasuries also revealed that the State Treasury can sometimes be “flexible” in rotating the sources of funds (i.e., funds allocated to one project can be temporarily utilized for another project to solve urgent cash-flow needs, and then be reimbursed later). This practice may cause delays to the Program if its allocated funding is temporarily utilized for another urgent need of the province.
55. Although delays in allocating funds, transferring funds, and therefore paying contractors are “common practice” in most government-funded construction projects, this issue is considered unacceptable in a result-based program such as the RBNUDP-NM as it may cause severe harm to the timely achievement of results and reporting of Disbursement-Linked Indicators (DLIs), which trigger the Bank disbursements. The MOC has noted this issue and has proposed to MOF a specific mechanism for this newly established Program, to enable the formulation of result based financing into the Government annual budget cycle (which is traditionally an input based grant from MOF to provinces and from provinces to cities).
56. Program funds will be transferred by MOF to special accounts of CPCs opened at the respective Provincial State Treasuries. The basis for this transfer will be the City Annual Plans, in which the Program’s activities are included, as approved by the PPC in the normal budget cycle. Depending on the time of the signing and effectiveness of this Program, the first advance may be in time to fall within the Government normal annual budget cycle, or may need to be treated separately as a special budget revision during the year. The MOF will need to issue official guidance on the financing mechanism and disbursement arrangements of the Program before negotiation, including the establishment of special accounts for each CPC at the State Treasuries, to enable a results-based disbursement from the central budget to cities, and to enable pre-finance opportunities for cities to cover any gaps in funding while the achievement of the results is in progress and not yet completed, verified and reimbursed. The guidance will also clearly provide procedures for the transfer of funds from MOF to Cities through the special account mechanism.
57. It has been agreed with Government that the reconciliation of advances will be done annually as the basis of disbursements to individual cities, with actual expenditures offset against advances as the basis for a subsequent advance. A full reconciliation and re-allocation of city allocations will be done at the Program midterm. The reconciliation at Program closing will thus be the final rather than the first reconciliation of advances.

### ***Accounting and financial reporting***

58. The Accounting Law, which was approved by the NA in 2003 and became effective as of January 1, 2004, governs the accounting and reporting for government and its entities at all levels. The Law: (a) defines applicable principles and requirements and the scope of accounting; (b) prescribes the types of accounts, chart of accounts, financial statements, their disclosure and publication, their audit and inspection; and (c) assigns to the MOF the responsibility for formulating accounting standards in conformity with international financial reporting standards. An important provision of this law is the requirement for all spending units to publish their annual financial statements within 30 days of the date of approval by relevant authorities.
59. The Ministry of Finance, however, is still in the process of formulating accounting standards for the public sector. To date, only Decision 19 has been issued for government administrative agencies (governing mainly recurring expenditures) and Decision 214 for investment owners (capital expenditures). These accounting policies utilize modified cash-based accounting methods and are not yet compliant with international accounting standards for the public sector.
60. The Finance and Planning Unit is responsible for the consolidated financial statements of the whole CPC, including Units and communes, as described in the Technical Assessment.<sup>13</sup> By March of each year the Finance and Planning Unit completes the City financial statements of the previous financial year for the CPC Chairman to submit it to the Provincial Department of Finance for reviewing and recording. The CPC financial statements are comprehensive, based on information systematically generated from TABMIS, include both recurring and capital expenditures (funded by City's budget), and clearly present all sources of a City's income.
61. The State Treasury of every province also records all provincial expenditures on a cash basis, using TABMIS. A separate code is given by TABMIS to each program, project and sub-project. This enables the financial reports generated by the State Treasury to be both detailed and comprehensive. The State Treasury can generate consolidated financial reports on a monthly, quarterly and yearly basis with breakdowns of revenues and expenditures, but with the same limitation of being cash-based. Additionally, in some cases, delays to the financial year end result in expenditures in January or even later being recorded in the financial statements of the previous year.
62. Since late 2012, TABMIS has been successfully launched in all 63 provinces, with full technical functionality and capacity given to the State Treasury and Finance functions (provincial Department of Finance and CPC Finance and Planning Unit). The Ministry of Finance, under the Bank Public Financial Management (PFM) technical assistance project, provides continuous training to State Treasury and Finance staff at provincial and lower levels to make full use of TABMIS. The system functions well in all the provinces and the cities of this Program. Both Treasury and Finance agencies are equipped with adequate qualified personnel.

### ***Internal control***

63. In accordance with the law, expenditures from the State budget must be controlled before, during and after payment. In order to be paid, expenditures must be listed in the approved budget estimates, be in line with the standards and norms of the State, be approved by the authorized officer of the spending

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<sup>13</sup> The CPC is divided into different divisions: CPC Office, Education, Health, Social, Environment, Culture, Forestry, Land, Natural Resources, Tax, Statistics, Finance and Planning. Most of those divisions are independent budget spending units, having separate State Treasury accounts, accounting records and financial reports. Some other divisions are dependent, sharing accounts with the CPC Office.

unit, have adequate supporting files and documents, and be approved by the State Treasury of the relevant level of government.

64. The Treasury system is the main source of control over expenditure. Budget spending units are required to open an “account” at the State Treasury and are under the control of the financial agencies and the State Treasury in relation to compliance with and settlement of the budget. The State Treasury has the power and responsibility to determine which expenditure payments can be legitimately made from the State budget.
65. The participating Program cities follow the same principles. Expenditures funded from the CPC budget will be approved by the CPC State Treasury Unit (and reported to the Provincial State Treasury). Expenditures funded by the provincial budget will be approved by the PPC State Treasury. Under the city, there are communes and Units that have their own accounts at the CPC State Treasury Unit and are responsible for their own expenditures (including capital expenditures and payrolls). The CPC’s Finance and Planning Unit only plays the role of consolidating budget and financial reports.
66. According to the Budget Law, budget expenditures should be paid directly by the State Treasury to suppliers and beneficiaries. However, due to the popularity of cash payments in Vietnam, this principle has not been completely applied. For some administrative expenditures with a value less than VND 5 million and other special expenditures, advances of funds are made to the spending units which then make payments to the relevant suppliers or beneficiaries and subsequently submit the supporting documentation to the State Treasury. The State Treasury then verifies and records the actual expenditures against the relevant advances.
67. The 2005 State Audit Law requires internal auditing to be implemented in every organization using the State budget, funds and assets. The law empowers the SAV “to direct and instruct on the internal audit profession and operation, and on the use of internal audit results of agencies and institutions.” Government has already decided to separate the modalities of the internal audit function for the existing system of inspectorates. The implementation of the law in the context of this Program is captured in the PAP. However, there are as yet no implementation guidelines to clearly define internal auditing functions, roles and responsibilities, and currently no active leadership on the implementation of internal auditing within the public sector.

### ***Program financial statements audit***

68. The State Audit of Vietnam is the Vietnamese Supreme Audit Institution (SAI). The SAV operates from a relatively clear statutory base. Although the Vietnamese constitution does not make reference to the state public audit, the State Audit Law passed by the NA on June 14, 2005 which came into effect on January 1, 2006, created the legislative basis for the legal position, functions and working modalities of the SAV. The State Audit Law sets out principles on which the SAV should operate free of influence of the executive. The current legislation protects SAV’s independence on two levels: (a) institutionally as the Auditor General is elected by the NA; and (b) operationally, as the SAV decides upon its annual audit plan and needs neither Government nor the NA to agree to the plan or report.
69. The State Audit Law does not specify the relations between the State Auditor, the MOF Inspectorate and the State Inspectorate. As a result, overlaps in execution of the roles and responsibilities of the three bodies exist. The SAV self-assessment in 2013 revealed that the SAV does not yet comply with International Organization of Supreme Audit Institutions (INTOSAI) in terms of auditing standards and operational manuals. The consultant work funded by the Bank Institutional Development Fund (IDF) in 2013 confirmed this statement. The 21 auditing standards issued by SAV in 2010 and currently in use are actually principles rather than auditing standards. They are also not supported by

implementation guidance or audit manuals. Instead, SAV has several policies and guidance documents that have been issued in various forms at different times, to govern its audit work. With the Bank IDF and support from other donors, the SAV has committed itself to issuing auditing standards equivalent to the International Standards of Supreme Audit Institutions (ISSAI) by the end of 2014.

70. The SAV normally only visits the cities every two to three years, primarily due to resource limitations. Selection of the agencies to be audited for the year is based on the risks and issues that SAV has identified as well as the requirements of the National Assembly and Government. The annual audit plan is submitted to the National Assembly for approval before commencement of the audit year. The audit reports issued are comprehensive, covering all types of expenditures and sources of funds. The reports do not however provide an audit opinion on the accuracy and fairness of the City financial statements and compliance with laws and regulations. Instead, they provide a list of findings and recommendations from the audit work.
71. SAV will prioritize annual auditing for this Program, similar to other donor-funded projects where a commitment is made to provide an opinion on annual project financial statements, and introduce annual auditing of the financial statements of participating CPCs. The audit TOR will be agreed between MOC and SAV and reviewed by the Bank. It will cover all cities with necessary audit scope to ensure the issuance of an audit opinion. The audit of the Program will also be included in SAV's annual audit plan to be approved by National Assembly.
72. The cities will prepare the financial statements for their own components then submit them to MOC for consolidation. MOC will consolidate the sub-program financial statements prepared by cities with its own sub-program financial statements to create a consolidated Program financial statement for SAV to audit. The quality of SAV's audit on other donor funded projects is considered to be acceptable. Technical assistance will be provided for the Program to assist SAV in undertaking the audits and physical verification required at the city and national level.

## **Governance and Accountability**

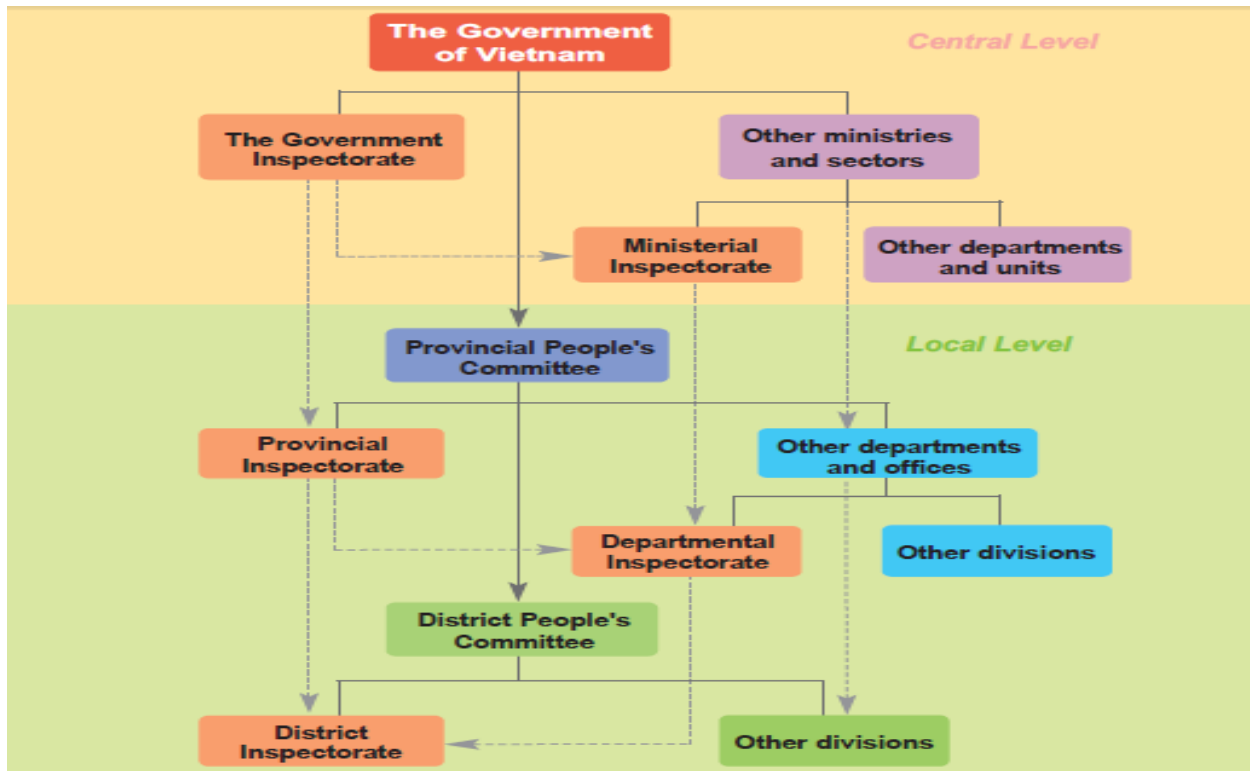
73. The system of government in Vietnam is well established. Despite the recent decentralization of authority, Vietnam's government structure remains strongly hierarchical, though with a number of parallel systems that may duplicate functions. This system contains the basic elements of good governance, including a separation of policy-making, execution and oversight functions, both between and within levels of government, and a system of regular reporting to high levels of government. As elsewhere in the world, the form of local governance in Vietnam is evolving within ongoing state wide reforms, and this process is being assisted by the RBNUDP-NM.

### ***Legal framework***

74. All civil servants are required to conform to the **Law on Cadres and Civil Servants (2008)**. This Law provides certain ethics and code of conduct standards including requirements for civil servants to perform their duties with integrity and in an impartial manner, and prohibits fraud and corruption.
75. Bidding documents, required by the Procurement Law, must include a provision clearly stating various prohibited acts in procurement process including fraud and corruption. After bids are received and opened, they shall be required to be preserved at a safe place; information on such bids and bid evaluation processes shall be treated as confidential. Procurement decisions by PMUs are reviewed by a city's department (Finance and Planning Bureau) and approved by the CPC.

76. Activities to prevent and combat fraud and corruption in Vietnam are governed by the 2005 Anti-Corruption (AC) Law, which introduced new approaches to anticorruption such as asset declarations for civil servants, job rotation, and a stronger focus on transparency. The law includes ambitious and all-embracing provisions on the prevention, detection, and handling of corruption, as well as the organization and mechanisms for concerned agencies (including media, international organizations, etc.). The guideline for implementing the 2005 AC-Law was issued through the Prime Minister's Decision 30/2006/QD-TTg (6 February, 2006) and Resolution No. 4-NQ/TW (21 August, 2006) of the Party's Central Committee (Session X). The AC Law was most recently amended in 2012, which introduced stricter transparency guidelines for public sector governance. Most notably, the amended AC Law is enhanced by Decrees No. 78 and 90 which clarify the implementation of provisions under the AC Law with regards to the assets and accountability of public officials.
77. The 2005 Anti-Corruption Law is also complemented and strengthened by the **2011 Laws on Complaints and Denunciations** (Decrees 75/ND-CP and 76/ND-CP) which regulate the process and procedures for the handling and settlement of complaints. While the process is described and analyzed in more detail below, it is important to note the clarification of roles of different government bodies in charge of handling fraud and corruption complaints, as specified in Section 2 of this Law.
78. This is also in line with the **2004 Law on Inspection** which governs the extensive Government Inspectorate system of Vietnam. The key roles of the GIs are to: (a) carry out socio-economic inspections; (b) examine and inspect the settlement of citizen's complaints and denunciations; and (c) detect corruption cases and recommend how to handle them. This effectively establishes a multi-tiered system of non-financial oversight, with inspectorate bodies existing at the central, province and district administrative levels of government, together with specialist sector inspectorates at the central level (illustrated in the Figure 3). This operates in parallel to the internal audit system being established under the 2005 State Audit Law (discussed above). Due to the establishment of numerous Inspectorates, their authority to process and settle complaints and denunciations are tightly defined vis-à-vis each other. If the denunciation does not fall under their jurisdiction, they must refer it to another authority.

**Figure 3: Government inspection systems**



79. The cities in this Program are under direct line of inspection of: (a) MOC; (b) Provincial Inspectorate; (c) provincial departments: of Planning and Investment (DPI), Finance (DOF) and Construction (DOC); and (d) the Provincial Anti-corruption Committee. Some Cities receive at least one delegation per year but some others seem not to receive adequate oversight from central or provincial bodies. Thai Nguyen and Bac Kan CPCs were not subject to any inspections over the last three years.

### ***Complaints handling system***

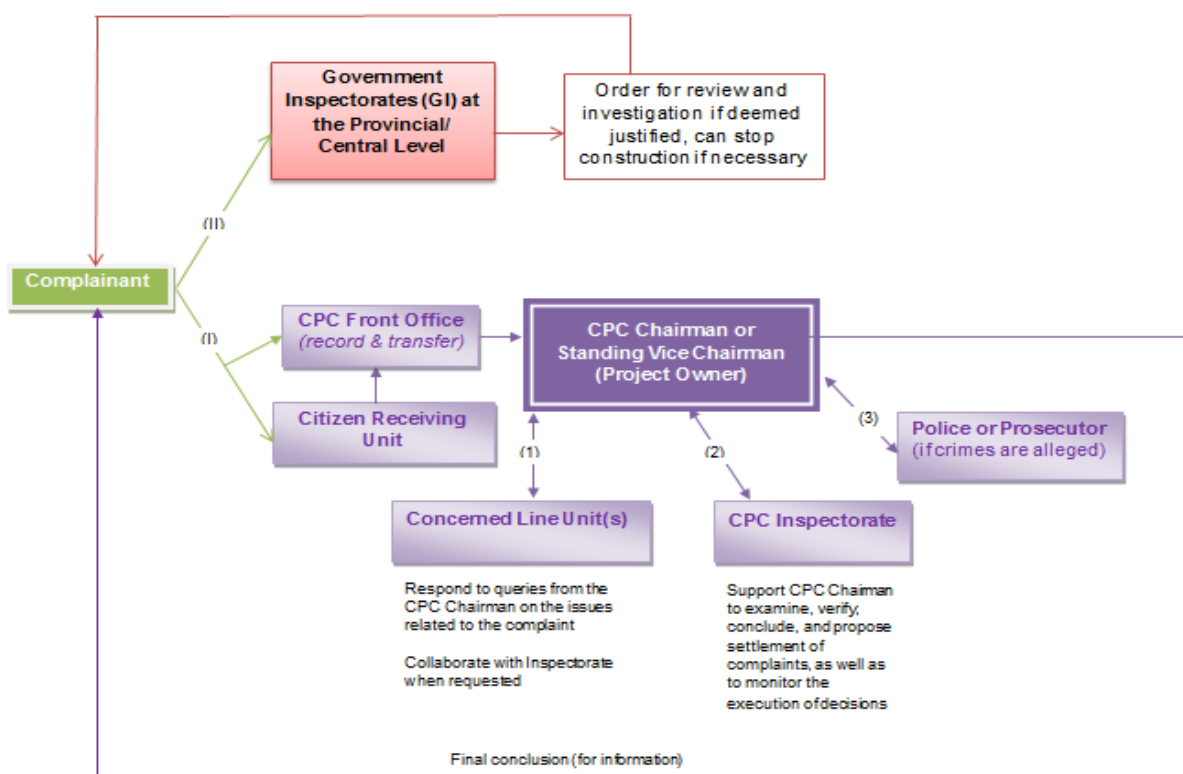
80. According to the Law on Complaints and Denunciations and the Anti-Corruption Law, citizens can provide fraud and corruption complaints to various offices, but they can be summarized into two main channels: (a) the People's Committee at the appropriate level of government; and (b) the GI agencies (see Figure 4). In the RBNUDP-NM, complaints related to sub-projects, which could include allegations of fraud or corruption, will most likely be submitted to the CPC as the owner of investment sub-projects, or to the GI under the MOC or that under the provincial Department of Construction.

- a) *Through the City People's Committee.* A complaint is often submitted in written format with full details of the complainant to the Front Office of the CPC or through the Citizen Receiving Unit (*Phòng tiếp dân*) which will also transfer to the Front Office to log and forward the complaint to a standing member of the CPC leadership (Chairman or Vice Chairmen). In addition to the written complaints channel, a complainant may also attend Meeting Sessions chaired by CPC leaders, held at least once or twice a month, to raise the issue. The complainant may follow the same procedure to submit a complaint at different levels of government (district, province and state levels) but they will most likely forward the complaint to the CPC as the most appropriate level to handle it.



Upon receiving the complaint, the CPC leader will review and request an explanation and/or clarification from the respective unit or individual (for the RBNUDP-NM this will most likely be the Project Management Unit or the Urban Management Unit under the CPC). During our interviews, CPC leaders noted that they receive “numerous” complaints, but most of them relate to the delays in land resettlement. None recalled any credible complaint relating to fraud and corruption in their city. Upon receiving the explanation from the concerned unit or individual, if the city leadership considers the allegation credible, the CPC Inspectorate will be asked to take the lead in the inspection. Under the CPC, the GI Unit is relatively small with only six to seven staff, including two to three Chief/Vice-Chief Inspectors, most with university degrees. If the initial inspection reveals that crimes are alleged, the case file will be turned over to the police. If warranted, corruption charges can be brought by local prosecutors in Vietnam’s court system. Once the case is concluded, a formal response will be sent to the complainant to inform them of the key results and decisions taken. The formal response is required to be shared with the complainant within 45 days from the date of receipt. If not satisfied with the decision, the complainant reserves the right to appeal through a similar process to the higher authority (in this case, the Provincial People’s Committee).

**Figure 4: Complaints handling procedure**



- b) *Through the Government Inspectorates.* In addition to the CPC system for handling complaints, citizens can also submit fraud and corruption allegation to the MOC GI and DOC GI, to be handled and inspected by some 130 inspectors at the national MOC GI or 15 to 20 inspectors at each provincial-level DOC GI. These inspectors reserve the right to stop construction for investigation if they see any sign of fraud and corruption. Similar to the CPC's system, the Inspectorate passes on the case to the police and prosecutor once crimes are alleged. Both of these

parallel complaints handling systems contain a reporting mechanism that can capture information on the number, type and handling of fraud and corruption allegations, which they periodically report up to the national level.

81. Neither the existing Procurement Law (issued in 2005) nor the new revised Public Procurement Law (just approved in November 2013) have a separate procedure for handling allegations of fraud and corruption in procurement,<sup>14</sup> although they include provisions on prohibiting fraudulent and collusive practices. Currently, procurement complaints are handled in accordance with the procedures stated in Decree No. 85/2009/NĐ-CP that require complaints to be duly signed and stamped by a legitimate representative of the complaining bidder (anonymous complaints are not considered). For complaints related to contract award, the complainant must deposit a fee equivalent to 0.01 percent of the contract's offered bid price (minimum VND 2 million and maximum VND 50 million) that will be forfeited if the complaint is not substantiated. Though the Government is in process of drafting a new implementing Decree following the issuance of the revised Public Procurement Law, which shall be applicable to the Program, the procedures for handling procurement complaints are expected to basically remain the same.<sup>15</sup>
82. Complaints are handled by procuring entities or program owners and appeals are reviewed by a competent agency – normally the Provincial People's Committee. Complaints are handled as follows. First, they are reviewed by the procuring entity (equivalent to PMUs under the Program), who is responsible for responding to the complaining bidder within five working days. If the procuring entity is incapable of resolving the complaint or if the bidder is dissatisfied, the bidder may submit their complaint to the employer (equivalent to cities under the Program); and the employer is responsible for replying to the bidder within seven working days. If the bidder is still dissatisfied, it may escalate to the competent agency (equivalent to Provincial People's Committees under the Program). The competency agency is responsible for responding to the bidder within ten working days. If the bidder remains unhappy, they may approach a court for redress. In case of complaints about bidding results, the complaints will be resolved based on the review and recommendation of a Consultative Committee, established on a case-by-case basis and headed by an authorized representative of the Department of Planning and Investment.

### ***Anonymous complaints***

83. According to the Law on Complaints and Denunciations, CPCs are not required to handle anonymous complaints. The inability to submit anonymous complaints may be a disincentive for citizens to provide information about fraud and corruption in the Program. However, all participating CPCs/GIs maintain the practice of accepting and logging anonymous complaints for their records. The officials noted that if anonymous complaints contained credible or serious allegations the inspectors would investigate them fully. The lack of a clear, consistent and affirmative policy and procedure for handling the anonymous complaints is a clear weakness in the current complaints handling system.

### ***Complaints consolidation under RBNUDP-NM***

84. Building upon the existing system of handling complaints at the city level, the Urban Development Agency (UDA) under MOC, which serves as the key implementing agency and coordinator for

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<sup>14</sup> This is to distinguish fraud and corruption complaints with procurement petitions, for which the handling process is described under Integrity Aspects in the Procurement Section of this Assessment.

<sup>15</sup> This fee applicable to complaints regarding contract award is being proposed to double (0.02 percent and VND 100 million, maximum) in the draft Decree on Selection of Contractors, expected to be issued in June 2014.

RBNUDP-NM, will aggregate and inform the Bank of the number of fraud and corruption allegations, as well as how they are handled (investigated, mitigated and sanctioned). The information will be collected from each CPC and respective PMU, as well as from concerned GIs under MOC, MPI, MOF, and will be done at least annually.

### ***Sanction and debarment process***

85. The abovementioned Laws on Anti-Corruption, on Complaints, and on Denunciation also regulate sanctions in line with the outcomes of the investigation carried out in the complaints handling process described above. Contractors can also be sanctioned for multiple warnings of poor performance as per the Procurement Law (Art. 75(1) (c)). This provision provides significant discretion to the tendering authority to determine “poor performance” and if misused could lead to sanctions and debarments for reasons beyond the violation of procurement rules and procedures or for fraud and corruption. Counterparts met during field visits were often unable to tell the team whether there had been any “poor performance” debarments in previous infrastructure projects.
86. Once the case is concluded, the CPC and GI will issue administrative sanctions on the responsible individual and firms. The outcomes are also reported vertically (to the Provincial People’s Committee and national-level MOC Inspectorate, respectively) and directly to the Ministry of Planning and Investment who maintains a national list of debarred firms and individuals (if related to procurement). This is consistent with Article 63 (1) of Decree 85/2009/NĐ-CP issued by the Government on 10/15/2009, which regulates that any procurement sanctions issued will be applied nationally. Cities say that they check the national debarred list when taking procurement decisions, but there seems to be a mix between “blacklisting” as a result of committing a fraudulent or corrupt act and “blacklisting” for the lack of technical performance.

### **Experience under Past Bank Projects**

87. The Bank has prepared and is supervising the implementation of the first PforR Program (Rural Water Supply and Sanitation under the National Target Program – RWSS NTP) in Vietnam, and also has experience with a range of urban projects in Vietnam. Lessons learned in the preparation of the RWSS NTP were examined and adopted in this assessment. A particular lesson has been that delays in implementation can result from limited understanding of the operational modalities associated with the PforR mechanisms, particularly in relation to existing systems and the arrangements for funding advances. The Bank’s experience in urban projects has shown that one of the common procurement issues that caused implementation delays in those projects was the unfamiliarity and inexperience of project implementing agencies with Bank procurement rules and procedures and the *de facto* application of both Bank and Government rules and procedures. By allowing the use of only Government rules and procedures in this Program, that bottleneck will be removed. However, other issues that have arisen under those projects that may continue to occur during the implementation of the Program. These include: (a) procurement capacity weaknesses; (b) inappropriate bidding practices (such as excessive rejection of bids for minor deviations or omissions); (c) procurement complaints; and (d) collusion in bidding. Lessons learned in other projects suggest that under the Program, such issues could be effectively mitigated through intensive training and capacity building, full reporting and serious handling of procurement complaints, and strengthened procurement oversight.

### ***Previous relevant fraud and corruption complaints/investigations***

88. Few complaints on fraud and corruption were reported by the CPCs in the Program area interviewed during this assessment. Most of the complaints filed or expressed involved issues related to land compensation. This small number should not be attributed to the citizens’ lack of knowledge about

the complaints system or their rights to file complaints, as citizens do use the complaints system for other issues. It is more likely to reflect the limited scope of past infrastructure projects in the cities, which has not warranted significant attention from the citizens, or the use of the procurement complaints procedures by bidders.

89. Similar to the CPCs, the GI of MOC and DOCs receive many complaints, but only a small fraction falls under their jurisdiction and not many of them relate to fraud and corruption. Most of them involved issues beyond fraud and corruption and included complaints on resettlement and compensation, zoning, and construction order.

### ***WB's experience with integrity issues in the sector***

90. INT has recently conducted two investigations into fraud and corruption in the same sector as the RBNDUP-NM based on disclosures to the World Bank by two international firms working on a number of Bank-funded projects in Vietnam. In both investigations, INT has evidence that the international firms used a local Vietnamese agent to make payments to project and government officials in order to influence the award of contracts and to be paid for their works in Vietnam. The firms failed to disclose the nature of their relationship with the Vietnamese agent as required under their contracts. They also fraudulently covered up payments to the agent through false claims for purported "ghost" services. In the one completed investigation the international consulting firm disclosed and admitted its misconduct in Bank-financed contracts in a number of Vietnam projects and reached a negotiated settlement with the Bank, agreeing to a sanction of conditional non-debarment for two and a half years. The firm dismissed employees/staff involved in the payments to project and government officials and has taken steps to implement a more robust integrity compliance program to prevent future misconduct. More generally, INT investigations in the sector have identified instances of misrepresentation of key staff and their qualifications by consulting firms and the use of payments to project officials in order to obtain tender and evaluation information and documents.
91. The use of local agents to funnel payments to project and government officials has been identified in a number of INT investigations. To address this risk, clients and Bank teams will need to focus greater attention on ensuring that bidders and contractors more fully disclose any relationships they have with local agents. Use of false claims for "ghost" services by local sub-consultants highlights the need for stronger and more consistent due diligence of subcontractors and greater scrutiny of subcontractors' invoices.

## **C. The Program Expenditure Framework**

92. The assessment of the Expenditure Framework focuses "on those government budget and expenditure management issues that may put at risk the capacity of the program to reach its expected results." It draws extensively on experience with the similar national programs financed through results-based lending, in clarifying both policy and practice in program implementation. It also draws extensively on the design of the Program, specifically the introduction of a new, performance-based fiscal transfer to support cities to plan, execute and sustain investments, alongside complementary measures to enhance city capacities and improve oversight by MOC and SAV, and support the ongoing development of national policy frameworks on urban development.
93. The technical analysis concluded that the government has put in place budget and expenditure management systems and practices that, with some well-recognized difficulties, support the Program in reaching its expected results. Two sources of difficulty stand out, both of which are addressed by the structure of the proposed operation. The first is a budget cycle (common to all of Vietnam's

government budgeting) with timing inconsistencies that result in very late budget decisions and fund transfers that are disruptive to investment programs. The second is that the five-year plans and annual plans are made against notional resource availability, an important part of which is outside of central government control. In other programs, actual resources fell about 10 percent below initial projections and even those were concentrated in the last three years of the program. This provided a highly uncertain funding environment for cities implementing government programs. Finally, the long-term sustainability of key investments in urban infrastructure depends on adequate budgeting and sufficient resourcing in relevant sectors, across provinces and cities.

94. The IDA Credit will finance about 83 percent of the expected RBNUDP-NM expenditures in participating cities. The proposed IDA allocation will be an annual transfer. Government will provide Program cities with a predictable annual allocation within a multi-year Program envelope, including sufficient advances to commence with Program implementation. Funding to cities will also be disbursed in a single, predictable release, subject only to individual cities achieving pre-specified performance targets that match the World Bank DLIs. The remaining resources are those generated at the provincial, local, and household levels.
95. The expenditure framework in the program provides adequate resources to participating cities to execute a set of high priority sub-projects. The population weighted distribution of resources and the counterpart financing requirement provide suitable proxies to match resources to actual needs and priorities, across and within cities. These resources will provide a significant but manageable addition to resources available in each city, and thus provide a real incentive for cities to comply with performance requirements to actually receive disbursements.
96. This compliance with performance requirements will, in turn, strengthen the overall sustainability of the Program and sub-project investments, particularly through expanding own source revenues for operations, maintenance and future investment needs. Capacity support activities in the Program are also designed to assist cities to improve overall asset and revenue management practices. At the national level, the Program supports activities to assist in the further articulation of the national expenditure framework for urban governance in general and the NUDP in particular. These clarifications will enhance longer term funding predictability and thus the sustainability of support provided in the Program.
97. The RBNUDP-NM is decentralized in design and execution, with the city being the level of government with primary implementation responsibility. That said, the central government has a clear view (supported by the donor community) of the appropriate mix of program elements for effective urban infrastructure delivery.

## **D. Program Fiduciary Performance and Significant Fiduciary Risks**

98. The analysis of institutional frameworks and fiduciary arrangements under the Program has enabled an evaluation of its performance and the identification of significant fiduciary risks. This section reviews this as a precursor to identifying specific risks and mitigation measures in subsequent sections of the document.

### **Program budgeting and costing**

99. Vietnam's PFM legal framework provides a good foundation for government budgeting at both central and local level. Each city has a comprehensive five-year overall plan and detailed annual social-economic development plan approved by the Provincial People's Committee. There is a well-

defined budget preparation calendar and regulated budget development process. The overall budget presented in the cities' annual budget has included all sources of funds (central, provincial, city's revenue and official development assistance (ODA)). However, there remains a weak link between the financial budget and the social-economic targets contained in the plan at both provincial and city levels. The financial budget is prepared based on the projected availability of funding. Moreover, budget revisions are made only once per year, with approval of all levels, which is inflexible and may cause delay.

100. The current treasury system and procedures ensure that expenditures are listed in the approved budget estimates, are in line with the standards and norms of the State, are approved by the proper authority and supported by adequate documentation before processing. TABMIS also effectively facilitates the sharing of information and data and the cooperation in payment control and budget management between the treasury and financial bodies. However, a lack of available funds in the general State Treasury system may cause delay to the funding of specific approved projects. Moreover, funds allocated for one project can be temporarily utilized for another, which does not guarantee the smooth financing for results of the Program.

### **Procurement Arrangements and Implementation**

101. The RBNUDP-NM constitutes the first regional implementation of the NUDP. This assessment thus used the past experience of similar procurement and contract management practices in the Program cities as a proxy for implementation performance.

102. The open competitive bidding procedures described in the procurement laws and regulations are found to generally adequately accommodate transparency, economy and efficiency of procurement process. Both the existing Procurement Law and the new revised Public Procurement Law mandate open competitive bidding as default method of procurement. Choice of other methods (including direct contracting, and competitive shopping) is allowed where open competitive bidding is not feasible. The laws however permit direct contracting to be automatically used for contracts whose cost estimates are below the specified monetary thresholds (currently VND 5 billion per contract for works; VND 2 billion for goods and VND 3 billion for consulting services; these thresholds are expected to be reduced to VND 0.5 billion according to the draft Decree on Selection of Contractors). In practice, the permission of monetary thresholds-based direct contracting has caused excessive abuse through wilful packaging into small-valued contracts. Under the Program, most major works contracts are expected to be procured under open competitive bidding given their nature and complexity. For consulting services assignments, as many of them could be of small monetary value, cities should be encouraged to group them into a larger assignment to be procured through open competitive bidding.

103. The reviews of sample procurement transactions implemented by Program cities under their similar ongoing projects found that the cities have procedurally complied with the relevant laws and regulations. All procurement transactions were completed in a timely manner (1.5-2 months). However, in terms of cost effectiveness and economy, only insignificant savings were achieved through these transactions (about 0.3-0.5 percent of the pre-bid cost estimate on average). This modest result was because of the overuse of direct contracting and the lack of effective competition in bidding processes. There were few contracts procured through open competitive bidding; each bidding transaction received only three to four bids with bid prices being rather close to each other.

104. The reviews, however, revealed a number of procurement issues and practices that could adversely affect the timeliness, cost-effectiveness, competitiveness and compliance with applicable rules of the Program. These are:

- a) Procurement plans are usually not prepared for the entire project or subproject but individual works. This piecemeal approach affects the timeliness of Program implementation and service delivery. In addition, there is a risk of wilful packaging of Unit of works into small contracts for use of direct contracting which adversely impacts cost-effectiveness and competitiveness.
- b) The Procurement Law provides that in order for a bidder to be awarded the contract, that bidder must have a bid price not exceeding the approved pre-bid cost estimate. Though the Law does not explicitly state that bids offering prices higher than the approved estimate shall be rejected, there was a quasi-automatic rejection of such bids in practice without further evaluation of their technical and commercial proposals. Since it may be difficult to ensure the reasonableness of the cost estimate, this practice could lead to rejection of good bids or cause unnecessary rebidding.
- c) The Procurement Law provides that a bid shall be rejected only if it does not respond to major technical or commercial requirements of the bidding documents. The Law also permits bidders to clarify their bids (to the extent that do not substantially alter their bids) and requires that bid evaluation shall take into account such clarifications. These requirements are appropriate since there are rarely perfect bids without any deviations. However, there was a common practice in many procuring agencies of immediately rejecting bids with small insignificant errors or shortcomings (such as having some missing qualification documents, submission of non-notarized documents, etc.) without giving the bidders an opportunity to clarify the perceived issues. This practice could certainly result in the undue rejection of substantially responsive bids and reduce effective competition.
- d) The Procurement Law provides that to be eligible to bid, a bidder shall be organizationally and financially independent of the Employer and not dependent on the same managerial agency as the Employer. While this provision is considered appropriate in order to prevent conflict of interest between bidders and project owners or procuring entities, it was found that there were cases where State-Owned Enterprises reporting to the project province's People's Committee still received awards of contracts procured by the same province. This practice could harm the integrity and fairness of procurement processes under the Program.
- e) The Procurement Law provides that firms and individuals debarred for their violation of the Law, including engagement in fraud and corruption, shall not be allowed to bid. The Bank also maintains a similar list of debarred firms and individuals and its policy is not to permit such firms and individuals to participate in Bank-financed procurement. However, the Law does not recognize the Bank's debarment list. This gap could lead to unexpected contract awards to Bank debarred firms or individuals under the Program which would be a serious violation of the Bank's Anti-Corruption Guidelines for PforR operations.<sup>16</sup>

105. The above issues can be addressed through: (a) Program activities and agreed actions in the Program Action Plan; (b) the inclusion of these program actions in the definition of CPC sub-projects eligible for financing from the performance-based transfer (through DLI 2); (c) through intensive capacity development measures to be carried out for Program cities, SAV, and other stakeholders; and (d) preparation and enforcement of a clear and hands-on Program Operational Manual.

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<sup>16</sup> Bullet (g), paragraph 6 of World Bank's *Guidelines on Preventing and Combating Fraud and Corruption on Program-for-Results Financing* dated February 1, 2012 requires the Borrower to "ensure that any person or entity debarred or suspended by the Bank is not awarded a contract under or otherwise allowed to participate in the Program during the period of such debarment or suspension."



106. MOC is responsible for organizing such training courses as part of their capacity building responsibilities. Cities should also hire qualified consultants to assist them in handling the procurement process. In addition, the Government has established an e-Government Procurement system (e-GP, available at [muasamcong.mpi.gov.vn](http://muasamcong.mpi.gov.vn)). This e-GP system allows procuring entities to electronically handle bidding process (e-tendering) in a more transparent and fair manner with lower administrative costs. Program cities should be encouraged to gradually adopt this electronic procurement system for the Program.
107. In particular, there will be several large value bridges and other works contracts under the Program (several million US\$). These works require substantial time for preparation of detailed designs (6-12 months); bidding (2-3 months) and construction (18-24 months). Unrealistic or short-sighted procurement planning would impact the timely delivery of these works as well as the entire Program. To mitigate this risk, cities should give these works the highest priority and carry out early planning that is regularly updated during the actual implementation period. One of the mitigation measures that should be put in place is to hire detailed design consultants at an early stage using PPTAF funds.

### **Contract Management Performance**

108. Bidding documents, which follow MPI's Model Bidding Documents, include a contract form. The most commonly used forms of contracts for works are lump sum and admeasurement (bill of quantities); meanwhile most consulting services contracts follow lump sum form. Prior to signing contracts, procuring entities conduct contract negotiations with the selected bidder to finalize contract details. Generally, contracts signed by the Program cities were found to be consistent with the bidding documents. They contain key conditions and terms such as performance security, insurance, advance payment and progressive payments, completion dates, liquidated damages, safety and environment, warranty obligations, etc. These forms of contracts are assessed to be adequate to be used for the Program.
109. Program cities reported that contracts must normally be completed within the approved contract prices since it is difficult to seek additional budgets. However, while cities appeared to be able to carry out cost control for small works contracts, they found this challenging for large works. In such cases, cities often chose to phase construction by dividing the works into smaller portions that could then be completed according to the available budget. Variation orders were permitted in the contract documents but were often slowly processed due to time consuming clearance and approval processes, especially in case of budget overrun. Payments were made in a reasonably timely manner for small contracts with confirmed budgets. However, for some larger works where budgets were unstable, payments were often delayed. Contractual claims are not a common practice by contractors and also generally not accepted. Government laws and regulations do provide procedures for resolving contract disputes; however, no contract disputes or claims were recorded. This may be an indication that contract governance depends more on informal negotiation of issues than on proper application of contract conditions and relevant regulations. Training in contract administration could help in improving these practices. It will be important for Program cities to maintain sufficient budgets to enable good contract management.
110. Program cities reported that construction of small works under their ongoing projects was generally completed on time. However, construction of larger works was often delayed as a result of two major challenges: shortage of funds for contract payments and issues relating to resettlement. It is envisaged that implementation of civil works contracts under the Program may face similar challenges. In particular, the large road and bridge works under the Program (valued at several millions of US\$ or higher) would require a substantial regular cash flow (including 20-30 percent of contract prices as advance payments and millions of US\$ for monthly payments). Due to the nature of the PforR



instrument, a major portion (75 percent or more) of disbursements can only be made once the works have been completed and certified. A shortage of cash flow is assessed to be one of the biggest challenges to good contract management and timely delivery of works and services under the Program. To effectively address this challenge, Program cities would have to ensure proper management of the advance disbursement and other partial disbursements as well as to find temporary funding sources. Another option that was considered is to partially transfer this risk to contractors by asking them to advance funds for construction. This option is not recommended as it has limited applicability and may impact the fairness of bidding, the contracting process and the quality of work produced.

## **Record Keeping and Reporting**

111. Finance agencies and State Treasuries at all level (central, provincial and city) are utilizing the full functionality of TABMIS in budget execution and the production of financial reports. Reconciliation between spending units (CPC Units and PMUs) and the State Treasury is done on a monthly, quarterly and yearly basis. The CPC Finance and Planning Units and the Provincial State Treasuries are equipped with qualified and experienced staff who are skilled in the use of TABMIS as well as preparing financial reports in accordance with regulations. CPC annual financial statements are reviewed and authorized by the provincial Departments of Finance in a timely manner.
112. There are still a number of gaps in the city financial statements when compared to international standards and generally accepted practices. Capital expenditures (construction) implemented by a city but funded from the provincial budget are not included in the city's financial statements. The city, through its PMU(s), only prepares the financial reports for each works when it completes the sub-project, and then sends the reports to the provincial Department of Finance for review. Both provincial-funded and city-funded works-in-progress and works completed but not yet paid, are not recorded anywhere in the city financial statements. Instead, a number of expenditures incurred and paid in January of the following financial year are still recognized in the financial statements, in order to utilize the previous year's budget allocations. Those discrepancies make the city financial statements misleading.
113. Procurement and contract management documents are required by law to be maintained for five years (from the date of completion of the works) or longer for certain types of documents. Generally, Program cities have satisfactorily complied with this requirement. However, their filing systems are rather fragmented with documents being kept by different departments. This practice creates difficulties for document retrieval, inspections or audits. Cities should be requested to maintain their procurement files in a more systematic manner under the Program.
114. Procurement performance reporting was assessed to be rather poor and general. Reports on project implementation typically include general information on the procurement transactions conducted but lack details on the quality of such transactions (e.g., their timeliness and competitiveness). Reports on inspections and audits provide a short paragraph with generic comments on the compliance of procurement performance with procurement laws and regulations. For the Program, it is necessary to improve the quality of procurement reporting including the quality of inspection and audit reports. Such reports should be required to provide more substance on the quality of procurement processes conducted and highlight specific areas that need further attention or actions. Program monitoring should include a simple management information system (MIS) which would, *inter alia*, track implementation of procurement plans and procurement outcomes including key dates, numbers of bids submitted, numbers of bids included in price comparison, timeliness of procurement processes, and timeliness of implementation, etc.

## Staffing

115. The Program will be implemented in seven participating cities. Each city will establish a Project Management Unit to implement its respective sub-projects. Key staff for the PMUs are expected to be drawn from existing PMUs or from other departments in the city. In general, those persons already have some level of procurement experience and have already received procurement training. However, they still lack the experience and technical expertise necessary for the proper handling of competitive bidding and contract management for large works contracts. Once appointed they will therefore require additional training on procurement and contract management. This should be supplemented by the provision of more qualified technical experts. In addition, PMUs should hire qualified consultants for procurement and contract management work. MOC should organize procurement training for PMUs and develop a detailed Program Operational Manual for their reference.

## Controls, Oversight and Accountability

116. The Government personnel system is well governed by an extensive array of regulations and instructions that includes several mechanisms for controlling staff expenses. The 2005 State Audit Law requires internal auditing to be implemented in every organization using State budget, funds and assets. Expenditures are controlled by the relevant level of the State Treasury.

117. However, the use of cash payments is a popular practice. There is no vendor management and associated expenditure payment control system. Key controls are not in place, such as checking of duplicate payments by vendor or invoice. There is no established internal audit function at city level and the legal framework on internal auditing is weak with no clear definition of the concept, scope and nature of internal auditing and its role in the internal control framework of government. The inspection function is similarly fragmented, under-resourced and technically weak. There is limited use of citizens' feedback and a weak complaints and denunciations system is used to assess service quality and hold agencies accountable for performance.

118. Reviews of current practices found that in most Program cities, after completion of works, the cities hired an independent auditing firm to audit the entire process, including a review of the procurement and contract management process. This independent audit was carried out to facilitate the final account of contracts as well as the subsequent inspection by the provincial inspectors. Provincial inspectors (from the Provincial Inspectorates and the Department of Planning and Investment Inspectorates) usually carry out annually planned inspections of all aspects of project implementation by the city including procurement performance.

119. In addition to this regular inspection, SAV periodically carries out an audit of the city's project implementation on an ad hoc basis. This audit also includes a review of compliance with procurement law and contract management performance. The audit report is comprehensive and covers all expenditures and sources of funding. Findings of auditors are seriously followed up by provinces and cities. However, audits are currently conducted on 2-3 year cycles rather than annually, and do not provide an opinion on a city's financial statements, compliance and internal control systems. According to the Program cities' reports, no major issues were detected by past inspections and audits except some minor problems with incorrect contract payments.

120. Generally, the assessment found that existing legal requirements and decision making arrangements can in principle protect the integrity of the bidding process. However, there are concerns about violations or noncompliance since this system lacks effective enforcement. Strengthening the roles,

functions and performance of SAV in procurement audits would help to mitigate this risk. It is assessed that the procurement control and audit system applicable to the Program can assure a reasonable level of compliance by the cities with the Procurement Law. Nonetheless, such inspection and audit practices mainly cover procedural issues and do not seem to be able to provide an in-depth review of the quality of procurement performance in terms of economy, efficiency and value for money. To help improve the quality of the Program's procurement performance audit, it is necessary to: (a) enhance procurement oversight functions, capacity and performance of supervisory agencies such as Provincial State Inspectorates, Department of Investment Inspectorates and State Audit; (b) establish and monitor procurement performance indicators; and (c) improve the quality of procurement reporting, including the quality of inspection and audit reports.

## **Complaints Handling Systems**

121. All project cities reported that there were no procurement-related complaints received under any projects they have been implementing. This was apparently because bidders do not fully trust the government's complaint handling system, which appears to be rather rigid and lacks an effective independent mechanism to ensure complaints are fairly reviewed.

122. According to the Law on Complaints and Denunciations, CPCs are not required to handle anonymous complaints of any form. The inability to submit anonymous complaints may be a disincentive for citizens to provide information about fraud and corruption in the Program. However, all participating CPCs/GIs maintain the practice of accepting and logging these complaints for their records. The officials noted that if anonymous complaints contained credible or serious allegations the inspectors would investigate them fully. The Bank's experiences in Vietnam show that procurement complaints were frequently received under Bank-financed projects and most of them were anonymous. Bank policy requires anonymous complaints to be seriously considered and reviews of such complaints have helped to identify and address many procurement problems and unacceptable practices. The lack of a clear, consistent and affirmative policy and procedure for these (anonymous) complaints is a clear weakness in the Program's complaints handling system. Under the Program, cities should therefore be encouraged to accept and review anonymous complaints.

## **Sanctions and Debarment**

123. Contractors can be sanctioned for multiple warnings of poor performance per the Procurement Law (Art. 75(1) (c)). This provision provides significant discretion to the tendering authority to determine "poor performance" and if misused could lead to sanctions and debarments for reasons beyond the violation of procurement rules and procedures or fraud and corruption. Cities report that they check the national debarred list maintained by MPI when taking procurement decisions. There appears to be a mix between "blacklisting" as a result of committing a fraudulent or corrupt act and "blacklisting" for the lack of technical performance. In the cities we visited, the CPCs were not able to tell us about any recent examples of investigations and/or sanctions related to serious fraud and corruption cases.

## **E. Fiduciary Risks**

124. The fiduciary assessment identified the following key areas that need to be addressed to ensure that the Program is able to reach its stated goals: program planning and budgeting, bidding and contracting, program execution, program accounting and reporting, internal controls and internal audit, and governance and anti-corruption. These areas are explained below.

### **Program Planning and Budgeting**

125. The primary risk in Program planning relates to delays in approving and/or revising the annual budget to ensure adequate funding for cities to execute selected sub-projects. Budget allocations are allocated centrally to each province, which in turn need to allocate Program funds to participating CPCs. This process needs to be completed by the December of each preceding year for funds to be appropriated for expenditures in a timely manner. Similarly, budget revisions need to be made and approved upon demand of the Program. While, with the addition of IDA credit to the state budget, overall resources are expected to be adequate for Program implementation, these risks are considered to be substantial. Specifically, there are risks that: inadequate funds will be made available to cities for Program implementation; the disbursement of funds will be unpredictable; and cities or provinces will divert program funds despite the availability of budget appropriation and budget allocation.

126. To mitigate these risks it is recommended that:

- a) Cities (with guidance from MOC) prepare an overall five-year financial plan to implement the Program. Each year an accurate budget proposal should be produced by cities based on the estimated work progress and cash flow of the coming year to ensure there is no gap in the funding necessary to achieve the Program results.
- b) Central and provincial government should ensure that a mechanism for results-based financing is included in the Government annual budget cycle of related provinces, and that the annual budget allocation is adequate to achieve each year's objectives.
- c) The Ministry of Finance should issue official guidance on the financing mechanism of the Program, and specifically provide for clear procedures to transfer funds from MOF to cities through cities' special accounts that should be opened at the provincial State Treasury. These special accounts should only be used for the achievement of the Program results. This requirement should be a Condition of Negotiations; and
- d) A system of pre-financing (advances) reconciled with results based disbursements needs to be introduced to avoid delays in Program funding during implementation at the local level (before results are achieved and verified).

127. There are moderate risks associated with insufficient scrutiny of budget proposals by the legislature and a lack of transparency in the budget process. The risk of budget appropriations being diverted to other activities or programs during the year is considered to be low. A final risk factor relates to unrealistic cost estimates that result in low quality works and services. Program cities should be encouraged to prepare cost estimates based on cost norms that are reflective of market prices, and MOC should provide detailed guidance on cost estimation in the Program Operational Manual.

### **Bidding and Contracting**

128. There are risks that existing procurement procedures and processes will result in a low level of competition in competitive bidding that will impact on cost-effectiveness and competitiveness. Firstly, existing procedures may lead to an unjustified rejection of bids due to minor deviations and

omissions and as a result of bid prices exceeding cost estimates. Secondly, direct contracting procedures may be abused in ways that impact on cost-effectiveness and competitiveness. Thirdly, contract awards to dependent SOEs may generate conflicts of interest and compromise the quality of works and services delivered. To mitigate these risks it is recommended that procurement actions are included in the Program Action Plan that is agreed with Government, and effectively implemented during Program execution. Additionally, cities should be encouraged to use the e-GP system for managing procurement. MOC should provide detailed guidance on procurement matters in the Program Operational Manual.

129. The primary risk to contracting is that a shortage of cash flows causes delays to contract payments which result in slow construction and late delivery of works and services. To mitigate this risk, program cities should appropriately utilize Program advances and all DLI disbursements and should also mobilize other temporary funding sources for contract payments. Effective, timely budgeting, procurement planning and execution as well as reporting procedures are important elements that should be in place to mitigate this risk.

### **Program Execution**

130. There is a risk that a fragmented approach to procurement planning will affect the timeliness of Program implementation and service delivery, that unrealistic or late procurement planning for critical large works and consulting services contracts will result in completion delays, and that wilful packaging of works and services into small contracts for the use of direct contracting will occur. These practices, should they occur, would affect cost-effectiveness and competitiveness. To mitigate these risks it is recommended that Program cities plan procurement for entire sub-projects and phases with priority being given to critical large works and consulting services. Critical detailed design contracts should be procured in advance using PPTAF funds. Program cities should also be encouraged to bundle small contracts into larger ones for the use of competitive bidding to the extent possible. The MOC should provide detailed guidance on these matters in the Program Operational Manual.

131. There is a risk that weak procurement capacity in Program cities will result in delays, low quality procurement or noncompliance affecting timeliness, cost-effectiveness and competitiveness. To mitigate this risk it is recommended that:
- a) program cities be required to appoint or assign qualified procurement, contract management and technical experts for PMUs, and that this is included as a DLI; and
  - b) MOC provide procurement training and contract management for PMUs, and that this is included as a DLI.

### **Program Accounting and Reporting**

132. There are substantial risks of delays in recording transactions in the accounting system, due to the late transcription of transaction into TABMIS (after year end). This may result in an inability of the accounting system to prepare timely and reliable financial reports (both management reports and the annual program financial statements), and will need to be closely supervised by State Treasuries, the SAV and the World Bank. There is also a moderate risk that rigidity in the chart of accounts will prevent the addition of new codes to keep track of program related transactions, and a low risk that cities are unable to keep track of resource transfers and expenditures of service delivery units.

133. In order to ensure that Program annual financial statements are prepared in accordance with International Public Sector Accounting Standards (IPSAS) it is recommended that MOC coordinate

with CPCs (Finance and Planning Unit) to prepare Program financial statements annually. The financial statements need to cover all Program activities, expenditures and sources of funds, in accordance with the applicable IPSAS. Cities must prepare financial statements for their own components of the Program and then submit them to MOC for consolidation with direct MOC expenditures under the Program. This consolidated Program financial statement must then be submitted to SAV for auditing, and will require additional effort from SAV to assist CPCs to present financial data in IPSAS compliant formats for the purposes of the Program Audit. Program financial statements must be completed before February 15 of the following year to be ready for audit. This requirement will be reflected in the Financing Agreement.

134. The quality of SAV audits on other donor funded projects is considered to be acceptable and has been delivered on a timely basis. There is a moderate risk that the SAV is unable to prepare and submit an audit report within a reasonable period after the close of the financial year, and that it may lack the capacity, resources and skills to perform Program financial statements audits and other verification activities as required. The risk that government will not respond to or follow-up on audit findings and recommendations is considered to be low. In order to mitigate these risks it is recommended that:
- a) SAV be engaged by MOC to perform the audit of Program financial statements annually, according to an audit Terms of Reference agreed between MOC and SAV and reviewed by the World Bank;
  - b) SAV be supported to perform the Program financial audit via a DLI;
  - c) the Audit report is to be provided within an acceptable time frame, covering: (i) an opinion on the truth and fairness of the Program financial statements; (ii) and opinion on the effectiveness of Program internal control; and (iii) an opinion on the Program's compliance with the Financing Agreement, law and regulations; and
  - d) SAV be provided with capacity support to expand the frequency and content of its audit activities at city level as part of overall capacity building activities supported by the Program.

### Internal Controls and Internal Audit

135. There is a **substantial risk** that the internal audit process and Inspectorates are unable to provide assurance on the robustness of and compliance with internal controls, and cannot help to identify and address procurement problems in Program cities' performance. There is also a moderate risk that the internal control system is unable to prevent or detect serious irregularities, misuse, and inefficient use of program funds. To mitigate these risks it is recommended that:
- a) MOC establishes an effective internal audit function for this Program by assigning it to authorized and qualified people;
  - b) the Program Action Plan includes a specific commitment related to the internal audit function; and
  - c) the capacity of MOC and cities to monitor procurement performance, Program results and report on Program results, which serves as basis for disbursement, should be strengthened through capacity building activities.
136. There is a related risk that the lack of clear procurement performance indicators and poor procurement reporting does not enable effective procurement audit to be carried out. This risk can be mitigated though the establishment and monitoring of procurement performance indicators, and through capacity building measures to improve the quality of procurement reporting, including quality of inspection and audit reports.



## Governance and Anti-corruption

137. There is a risk that proper governance practices, particularly cooperation between levels of government and between political and administrative arms of local government are eroded through the duplication of activities or an over-reach of authority by one party. These risks are inherent to many systems of governance globally, and are difficult to mitigate through a single program. The Program should provide support to government (through a DLI) to continue with the evolution of the decentralized architecture for local governance through policy reviews, reforms, and preparations for the scaling up of the implementation of the NUDP.
138. There is a risk that a lack of clarity in the relative authority of various inspectorates may lead to a lack of follow-up of complaints. Due to the establishment of numerous Inspectorates, their authority to process and settle complaints and denunciations is tightly defined vis-à-vis each other. For example, according to the Law on Construction, inspectors of MOC or local construction departments are only authorized to process complaints and denunciations relating to violation of the Law on Construction. If the denunciation does not fall under their jurisdiction, they must refer it to another authority. In fact, MOC and the department of construction have referred many cases to other authorities, especially cases related to land clearance or compensation issues which are typically referred to the local authority (e.g., the competent People's Committees) who may be in conflict of interest with the denunciators. The multiple agencies dealing with complaints and the interlocking "referral system" that connects them can create a confusing and difficult situation for citizens trying to file complaints with the right authority. The multiple-entry complaints system, while providing a number of options for citizens, may be confusing and may result in complaints being passed around agencies or lost in the transfer process making it difficult for citizens to follow up their complaints. The use of written log books in some implementing provinces raises questions about the quality of the data collected. The overall reform of the complaints handling system is beyond the scope of the Program, due to its extensive nature. However, to mitigate these risks it is recommended that improved and consolidated reporting on complaints be required on a regular basis. The lack of any relevant prior complaints on fraud and corruption has meant that the team is unable to identify other gaps or weaknesses that may appear during implementation of the RBNUDP-NM. Improved reporting would assist in monitoring this situation, and would allow adjustments to be made during implementation if proven to be necessary.
139. There is a risk that inadequate staffing of inspection agencies will constrain the ability of the Program to collect, manage and investigate allegations, especially when the scope of infrastructure investments expands to three to four times the regular size that the city government (CPC) is used to. While central government GIs have numerous staff to carry out the required inspections, staffing in the city inspectorate units varies greatly. Some of the implementing cities had sufficient staff to create a dedicated complaints handling unit while others had as few as two inspectors at the city level that had to cover all functions including complaints handling. It is recommended that the adequacy of staffing is reviewed at Program mid-term, alongside a review of reports on complaints handling, to assess whether additional capacity support or other interventions are required.
140. There is a risk that the formal denial of the submission of any anonymous complaints will prevent the discovery of procurement problems and compromise the quality of procurement work. It is recommended that all complaints, including anonymous ones, be duly considered and addressed. There is also a risk that the non-application of Bank debarment/suspension lists results in contract awards to debarred firms and/or individuals. It is recommended that agreements be reached with the Government to share Bank disbarment lists with participating cities, and that their compliance is supervised and audited during Program implementation.

## F. Monitoring Fiduciary Performance over Program Period

141. While key fiduciary areas requiring specific actions for strengthening in government systems have been listed in the Program Action Plan, it will also be important to monitor the overall fiduciary performance throughout the duration of the Program. Table 2 identifies the specific indicators which should be monitored (together with the relevant baseline position) to provide the framework to measure improvements in the performance of financial management and procurement processes.

**Table 2: Fiduciary performance indicators**

<b>Indicator</b>	<b>Measure</b>	<b>Baseline</b>
<b>PROCUREMENT</b>		
Procurement planning	Number of comprehensive procurement plans prepared for all sub-projects	One procurement plan prepared for each works.
Contract packaging and distribution of procurement methods used	Numbers and percentages of contracts procured under open competitive bidding and direct contracting	A typical procurement plan for a works included one civil works contract, one consultant contract for detailed design and one consultant contract for construction supervision. This resulted in many small contracts procured through direct contracting. Currently, Program cities have proposed roughly 90 contracts for works and nearly 200 contracts for consulting services
Time for bid evaluation	Number of days between bid opening and contract award	45-60 days
Bidders' participation in open competitive bidding	Number of bidders submitting bids in each bidding process	3-4
Procurement savings	Percentages of balance between contract prices and approved pre-bid cost estimates over approved pre-bid cost estimates	0.3-0.5 percent of pre-bid cost estimates
Quality of Bid evaluation practices	<ul style="list-style-type: none"> <li>• Number of bids rejected due to offering a bid price higher than the cost estimate and/or minor deviations or omissions</li> <li>• Number of contracts awarded to SOEs dependent on implementing Program provinces</li> <li>• Results of checking against Government's and Bank's debarment/suspension lists shown in bid evaluation reports</li> </ul>	<p>Almost 100 percent</p> <p>Some cases found Occasional checking for Government's debarment lists; no checking for Bank's debarment/suspension lists</p>
Contract administration	<ul style="list-style-type: none"> <li>• Percentage of contracts completed within original completion period</li> <li>• Percentage of payments delayed</li> <li>• Number of variation orders required and</li> </ul>	<p>Most civil works contracts delayed</p> <p>Payments for civil works often delayed Variation orders frequently</p>



<b>Indicator</b>	<b>Measure</b>	<b>Baseline</b>
	processed	occurred in works contracts
Complaint Handling	<ul style="list-style-type: none"> <li>• Number of complaints received (including anonymous ones) and number of complaints actually considered and handled</li> </ul>	No procurement-related complaints received. Anonymous complaints not officially accepted
Frequency and Quality of Procurement Performance Inspection and Audit	<ul style="list-style-type: none"> <li>• Number of inspections and audits (that include procurement performance review) conducted per year</li> <li>• Number of inspection and audit reports that include detailed procurement performance assessment against agreed indicators</li> <li>• Number of inspection and audit reports that found procurement problems or noncompliance</li> </ul>	<ul style="list-style-type: none"> <li>• Inspections conducted annually. Audits conducted on ad hoc basis</li> <li>• Past inspection and audit reports provided little information on procurement compliance</li> </ul>
<b>FINANCIAL MANAGEMENT</b>		
Budget allocated by provinces vs. budget proposed by Cities	Annual variance (percent) between annual budget proposed by cities and budget allocated by provinces	In Hoa Binh, budget allocated by province meets only 80 percent of City's proposal.  Other Cities prepare budget proposals based on the availability of funds as informed by provinces
In-year budget adjustment or reallocation vs. annual budget approved	Proportion of the annual budget adjustment/reallocation made by PPC vs. the amount of budget approved annually	In-year budget revision is unpredictable, and is only decided around the end of the year when additional funds or unused funds become available.
Availability of Program funds for Program activities	Readiness of Program funds for spending units to request payments for Program activities	Lack of funds in general State Treasury system sometimes causes delay in payments for some projects
Effectiveness of internal audit function in MOC and Cities	Coverage, quality and management response to quarterly internal audit reports, frequency and distribution of audit reports	Nil. No internal audit function exists.
Quality and timeliness of annual financial statements for the Program	Completeness and timeliness of annual reports	City financial statements are produced timely but not yet follow generally accepted accounting principles.
Quality of audit report	Scope, nature and adherence to auditing standards acceptable to the Bank. Audit Opinion on consolidated financial statements	Lack of audit opinion
Timeliness of issuance of audit reports	Report received by the Bank within the period agreed in the legal agreement	Audit only every two to three years
Follow-up on audit recommendations	Evidence of timely and adequate follow-up by the Program management on audit recommendations	Seriously followed up by provinces and cities

## G. Fiduciary Elements of the Implementation Support Plan

### Main Focus of Implementation Support

142. The fiduciary elements of the Program's Implementation Support Plan are listed in Table 3.

**Table 3: Implementation Support**

Time	Focus	Skills Needed	Resource Estimate
First 12 months	Implementation of the Program Action Plan (PAP); changes in operational procedures and their communication to cities; establishment of arrangements for independent verification; strengthening of the M&E system; and city and consolidated national planning.	Legal; fiduciary; engineering/procurement; social; monitoring and evaluation; and technical (urban economics and finance)	2 supervision missions plus 2 mini-missions 2 x 5 people x 2 weeks = 20 weeks Plus 2 x 2 people x 1 week = 4 weeks Total 24 weeks
12 – 48 months	Reviewing implementation progress and crosschecking the linkage between city planning and results, providing support in case of disputes relating to Verification (national-city or between GOV and the Independent Verification Agent (IVA))	Legal; fiduciary; social; environment; monitoring and evaluation; and technical (urban economics and finance)	2 supervision missions per year 2 x 3 yrs x 4 people x 2 weeks = 48 weeks Plus mid-term review 1 x 6 people x 2 weeks = 12 weeks Total 60 weeks
Other	Independent audit/assessment of verification of results	Independent technical expertise	2 people for 4 weeks Total 8 weeks

143. The skills mix of the task team required for implementation support is shown in the Table 4.

**Table 4: Task team skills required**

Skills	Staff Weeks	Trips
Governance	6	NA
Fiduciary	8	3

### Proposed Financial Management action plan

144. It is recommended that the following actions be agreed with the Government prior to the Credit negotiations and subsequently be implemented during the Program execution:

- a) *proposed Program actions*. The government will build and implement an effective internal audit function for the Program;
- b) *proposed DLI requirements*. A Program Report is to be produced by MOC annually following a template agreed with the World Bank, summarizing key implementation aspects and fulfillment of the PAP. Sub-projects must be appraised and implemented in compliance with the PAP actions (as explained in the POM) and accompanied by an acceptable annual financial audit report for the

Program financial statements of the city. The PMU under UDA must assign a qualified staff to take charge of the internal audit function established in the PMU; and

- c) *other requirements prior to negotiations.* The Ministry of Finance should issue an official document guiding the specific budget cycle and fund flow arrangements for this Program, before negotiation.

### **Proposed Procurement action plan**

145. In accordance with the results of Fiduciary System Assessment presented above, it is recommended that the following Program Action Plan be agreed with the Government prior to the Credit negotiations and subsequently be implemented during the Program:

- a) All proposals for detailed designs, construction supervision and bids for civil works, whether below or above cost estimates, shall be evaluated; proposals and bids shall not be rejected only on the basis of minor, non-substantive deviations.
- b) At least 30 percent of city consulting contracts for detailed designs, construction supervision will be competitively bid, progressively increased to 80 percent by the end of the Program period. At least 90 percent of city civil works contracts will be competitively bid, progressively increased to 100 percent by the end of the Program period.
- c) State-Owned Enterprises dependent on Program provinces/cities/departments will not be allowed to participate.
- d) Firms and individuals on the local, national or Bank debarment/suspension lists will not be allowed to participate.

146. To facilitate the effective monitoring of Program procurement, the reporting system and practices should improve. It is therefore proposed that Program implementation reports by Program cities/MOC should include the following information on procurement performance:

- a) copies of updated procurement plans;
- b) procurement transactions completed in the reporting period which list the following information, *inter alia*:
  - i. contract title and code;
  - ii. approved cost estimate;
  - iii. procurement method followed;
  - iv. advertisement date;
  - v. participating bidders' names and their bid prices as read out and recorded;
  - vi. names of bidders rejected and reasons for rejection;
  - vii. name of successful bidder and bid price offered;
  - viii. date of contract award approval;
  - ix. contract signing date;
  - x. final contract amount;
  - xi. contractual completion date; and
  - xii. actual completion date.
- c) procurement inspections/audits conducted during the reporting period (copies of reports attached);
- d) dates, venues, and numbers of participants who attended procurement training and capacity building activities conducted during the reporting period (with lists of participants attached); and
- e) emerging procurement and contractual issues that require attention and actions.

147. The Program Operational Manual should provide for development by MOC of best practice guidelines for procurement by the city PMU, including the following:

- a) preparation of medium-term procurement plans showing all packages to be procured by the city PMU (whether or not funded by the Program) during at least an annual budget cycle. These plans would not necessarily obviate the “approval to proceed” now obtained from Provincial level immediately before initiating procurement for each package;
- b) use of market prices as a basis for cost estimate (including for consultant fees);
- c) ensuring adequate length of advertising, with tender documents available from the first day of advertising. If not directly forbidden by law, bidders should be permitted to examine tender documents at the PMU office before deciding to purchase. Clear procedures for disseminating information / clarifications to bidders should be introduced, perhaps including a pre-bidding meeting or site inspection for larger sub-projects;
- d) establishment of clear, objective and appropriate bid evaluation criteria which should be included in the Instructions to Bidders; and
- e) introduction of sole-sourcing procedures, particularly for recruitment of consultants, designed to ensure that the qualifications of the best available candidates are compared and evaluated and that there is an auditable record of the decision making process.

148. Capacity support should be provided to CPCs to support them to comply with procurement rules and procedures. Further details on this support are included in the Technical Assessment.

### **Application of the Anti-Corruption Guidelines (ACGs)**

149. It is recommended that the following actions be agreed with the Government prior to the Credit negotiations and subsequently be implemented during the Program:

- a) ***Agreement on information sharing and reporting on fraud and corruption allegations.*** Based on this assessment and the team’s field visits, there does not appear to be a unified national system for collecting and reporting on how the authorities handle allegations of fraud and corruption. Therefore, in order to ensure that the client will be able to comply with its reporting obligations under the ACGs, the client has committed to provide this information from the seven participating cities and the Ministry of Construction. The Urban Development Agency under MOC, which serves as the key implementing agency and coordinator for the RBNUDP-NM, should be tasked to aggregate and inform the Bank of the number of fraud and corruption allegations, as well as how they are handled (investigated, mitigated and/or sanctioned) per an agreed simple template (see Table 5). The information should be collected from each CPC and respective PMU, as well as from concerned GIs under MOC, and should be reported to the Bank team at least annually.

**Table 5: Proposed template for reporting complaints**

<i>[NAME OF REPORTING ENTITY]</i>	
<b>Item</b>	<i>[Summary Title of Complaint]</i>
<b>Reference No.</b>	<i>[Reference number assigned to complaint]</i>
<b>Location</b>	<i>[City / Area]</i>
<b>Date Received</b>	<i>[Date]</i>
<b>Complainant</b>	<i>[Name of Complainant or Blank if Anonymous]</i>
<b>Anonymous</b>	<i>[Y / N]</i>
<b>Alleged Perpetrator</b>	<i>[Name(s)]</i>
<b>Description of Allegation</b>	<i>[Summary of specific allegations made]</i>
<b>Stage of Handling of Allegation</b>	<i>[Initial Review, Investigation, Prosecution, etc.]</i>
<b>Description of Progress in Investigation</b>	<i>[Summary of progress made]</i>
<b>Outcome of Investigation</b>	<i>[Provide final investigative report where available]</i>

- b) ***Clarify debarments under the Program.*** In light of the readily available debarment lists at the provincial and national levels, the Bank should seek an agreement with the client to: (i) share the respective debarment list and basic information including the name of the debarred entity, date and duration of debarment, and reason for debarment (the Bank should make it readily available to MOC to share it with the participating cities); and (ii) carry out supervision and audit during implementation to establish actual performance on enforcing the debarment lists.
- c) ***Client to ensure that Program participants are obligated to cooperate with Bank investigations.*** The Prime Minister has approved the Bank’s investigative rights and MOC has issued an order to all participating provinces and cities on compliance with the Bank’s Guidelines On Preventing and Combating Fraud and Corruption in Program-for-Results Financing and full cooperation with the Bank on investigations related to the Program.