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GOVERNMENT OF VIETNAM PROJECT APPROVAL PROCESS STUDY

Decree 56 Analysis

December 2020

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Since the publication of this report, the Government of Vietnam has changed the regulations on foreign assistance and issued Decree 114, which replaced Decree 56. Most of the project approval process remains the same, but some findings in this report, especially the value-added tax refund process, are no longer correct. Please see [USAID/Vietnam's website](#) for the latest guidance.

ABSTRACT

This report outlines the implications of the new Government of Vietnam (GVN) *Decree No. 56/2020/ND-CP on the Management and Use of Official Development Assistance (ODA) and Concessional Loans from Foreign Donors* on USAID programming. The study addresses five research questions through a legal review and qualitative interviews with 25 respondents:

1. What have been the key trends in the succession of GVN ODA Decree No. 16 (2016), Decree No. 132 (2018), and Decree No. 56 (2020)?
2. In what ways does Decree 56 change the processes and requirements for project approval (relative to Decree 132)?
3. What are the procedural requirements for USAID-funded activities to seek GVN approval under Decree 56?
4. In what ways can USAID-funded activities increase the likelihood and/or the speed of approval?
5. In what ways can USAID-funded activities increase the likelihood and/or the speed of value-added tax (VAT) reimbursement?

Project approval under Decree 56 should become easier and faster. The Decree removes previous requirements for developing project proposals (except under very specific cases that require prime minister approval) and prime minister approval for technical assistance grants worth over US\$3 million. It also expands the kinds of entities that can manage ODA projects, allowing for more programming choices for USAID. Decree 56 offers a tool (the ODA Framework Agreement) to enable a donor and the GVN to enter into agreement on priorities, objectives, and conditions of their technical assistance. Finally, the decree introduces a new requirement that might make VAT refunds more challenging to acquire. However, at the time of writing, the implementation of these new VAT rules is unclear.

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Decree 56 Analysis

USAID Learns

Contracted under 72044019C00003

Prepared for:

Le Tong Giang
United States Agency for International Development/Vietnam
15/F, Tung Shing Square
2 Ngo Quyen Street
Hoan Kiem District
Hanoi, Vietnam

Prepared by:

USAID Learns
Social Impact, Inc.
BIDV Tower, Level 6
194 Tran Quang Khai Street
Hoan Kiem District
Hanoi, Vietnam

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ACRONYMS

BILAT	Agreement for Economic and Technical Cooperation between the United States and Vietnam
COP	Chief of Party
CDCS	Country Development Cooperation Strategy
DFAT	Department of Foreign Affairs and Trade
DCOP	Deputy Chief of Party
FS	Feasibility Study
GDT	General Department of Taxation
GIZ	Gesellschaft für Internationale Zusammenarbeit
GVN	Government of Vietnam
IP	Implementing Partner
INGO	International Non-governmental Organization
KII	Key Informant Interview
LSGA	Limited-Scope Grant Agreement
MA	Managing Agency
MOU	Memorandum of Understanding
MOF	Ministry of Finance
MPI	Ministry of Planning and Investment
NGO	Non-governmental Organization
OFA	ODA Framework Agreement
ODA	Official Development Assistance
PACCOM	People's Aid Coordinating Committee
Pre-FS	Pre-Feasibility Study
PM	Prime Minister
PD	Project Document
SI	Social Impact, Inc.
STAR	Support for Trade Acceleration
TA	Technical Assistance
USAID	United States Agency for International Development
VAT	Value-Added Tax
VCCI	Vietnam Chamber of Commerce and Industry
VUFO	Vietnam Union of Friendship Organizations

EXECUTIVE SUMMARY

BACKGROUND AND PURPOSE

USAID has operated in Vietnam since 2001 and has implemented a large portfolio of activities. However, USAID/Vietnam and its implementing partners (IPs) continue to face challenges in obtaining project approval and value-added tax (VAT) refunds. Following in a series of official development assistance (ODA) decrees, on May 25, 2020, the Government of Vietnam (GVN) adopted *Decree No. 56/2020/ND-CP on the Management and Use of Official Development Assistance (ODA) and Concessional Loans from Foreign Donors* (Decree 56). USAID/Vietnam contracted Social Impact, Inc., to conduct this study to understand the programmatic implications of Decree 56, including clarifying project approval procedures and providing practical advice to USAID/Vietnam and its IPs on how to undertake and accelerate project approval and VAT refund requests.

RESEARCH QUESTIONS

The study seeks to answer five research questions:

1. **Historical Context:** What have been the key trends in the succession of GVN ODA [Decree 16](#) (2016), [Decree 132](#) (2018),¹ and Decree 56 (2020)?
2. **Changes in the 2020 Decree:** In what ways does Decree 56 change the processes and requirements for project approval (relative to Decree 132)?
3. **Procedural Requirements:** What are the procedural requirements for USAID-funded activities to seek GVN approval under Decree 56?
4. **Lessons Learned:** In what ways can USAID-funded activities increase the likelihood and/or the speed of approval?
5. **VAT Reimbursement:** In what ways can USAID-funded activities increase the likelihood and/or the speed of VAT reimbursement?

METHODS

This study involved two phases. First, a legal analysis of Decree 56 provided information on research questions 1, 2, 3, and 5. Second, the research team conducted 25 key informant interviews (KIIs) with USAID/Vietnam staff, IPs, donors, and GVN agencies to address research question 4 and provide additional practical information on the other research questions.

FINDINGS AND CONCLUSIONS

QUESTION 1: HISTORICAL CONTEXT

Decree 56 follows a series of previous decrees in further decentralizing decision-making authority over ODA approval and investment management. Under Decree 16, technical assistance (TA) grants worth more than US\$2 million required prime minister (PM) approval. Decree 132 raised this threshold to

¹ Decree 132 only revised some articles of Decree 16 but did not replace Decree 16. The Ministry of Planning and Investment (MPI) combined the two decrees to make a consolidated decree.

US\$3 million.² Decree 56 removes this threshold entirely, with PM approval only needed for project proposals that are (1) accompanied with a policy framework;³ (2) in sectors related to national security, defense, and religion; or (3) procuring goods that need the permission of the PM. Since USAID/Vietnam activities do not fall under these categories, they will only require managing agency (MA) approval in the future.

QUESTION 2: CHANGES IN THE 2020 DECREE

Decree 56 introduces important changes that should reduce administrative steps, make the approval process more efficient, and give USAID more options for activity development and operation. Key changes include (1) the elimination of the project proposal step; (2) more choices of counterparts for USAID/Vietnam activities, including business associations tasked with some state administration functions per Article 3.7; (3) a new donor-managed mode of delivery for TA grants; and (4) the ability of an ODA Framework Agreement (OFA) to enable donors to set priorities, objectives, and conditions of technical assistance with the GVN over time. In principle, the time needed for TA grant approval should become shorter, probably ranging from five to nine months, compared to 12 months or more under the previous decrees.

QUESTION 3: PROCEDURAL REQUIREMENTS

The procedures for project approval of a TA grant now consist of four primary steps. First, USAID/Vietnam and the IP will engage with the MA to seek its commitment and support in obtaining project approval and hosting the project. Ideally, USAID/Vietnam will have already held discussions with the MA during the activity design stage, and meetings after the award are meant to introduce the IP and reiterate the interest and commitment to the activity. Second, with MA and USAID/Vietnam authorization and guidance, the IP will work with the assigned department within the MA on developing the Project Document (PD) for approval by the head of the MA and review by USAID. Third, after internal reviews by different departments within the MA, the MA head will send the draft PD to the Ministry of Planning and Investment (MPI), Ministry of Finance (MOF), and other ministries for comment.⁴ These ministries will have 10 working days to review and provide comments to the MA. The MA will either convene a review meeting or request responses in writing to accommodate these comments into a final version of the PD within 20 working days. Fourth, the MA will issue PD approval, and MPI will notify the donor of approval.

Since Decree 56 became effective on May 25, 2020, ongoing activities that are not yet approved will need to follow the procedures under Decree 56.

² In addition to increasing the threshold, Decree 132 separated TA grants from ODA investment projects and clarified that for ODA, the PM approval of TA project proposal is named “implementation policy.” The former name of this under Decree 16 was “investment policy,” and Decree 16 did not separate TA grants from other forms of ODA.

³ These are usually large concessional loan programs by multilateral agencies such as the World Bank and Asian Development Bank.

⁴ MPI issued [Decision 828](#) on May 27, 2020, on administrative procedure for review of project documents by MPI. Many provinces have issued similar decisions on new ODA procedures. We have not seen similar decisions from the MOF or other ministries.

QUESTION 4: LESSONS LEARNED

Difficulties in seeking project approval divide into five main challenges: (1) the assistance is not considered ODA under the ODA rule of Vietnam; (2) the MA is unaware of the activity and unwilling to be the MA for the activity; (3) disagreement and/or poor coordination among MA, IP, and/or USAID/Vietnam delays PD development; (4) the MA lacks incentives to support project approval (i.e., the activity does not help the MA advance its agenda); and (5) the paperwork requirements for ODA approval are overly stringent. The following best practices can help USAID and IPs overcome these challenges.

Best Practices: Pre-Award Activities (USAID-LED)

The project approval process should start before USAID makes an award, with pre-award activities focusing on identifying, informing, preparing, and engaging the MA during activity development. Where possible, USAID and the MA should agree on the main parameters of the activity, defining them in a limited-scope grant agreement (LSGA), letter of intent, or other written documents.

Where possible, USAID/Vietnam should:

- Identify the potentially most appropriate MA for each activity. This can be done as part of an institutional mapping exercise and would benefit from discussion with sectoral experts.
- Engage with leadership and technical staff from the targeted MA to seek support and understand their needs for the activity. USAID/Vietnam may want to invite a representative of the MA to participate in the procurement evaluation if desirable and feasible.
- Secure an LSGA with the MA that sets aside funding for the program and specifies key parameters of the activity. Where this agreement is not possible, a memorandum of understanding (MOU) or written confirmation from MA leadership would be helpful.
- Include a startup/inception phase⁵ in the contract, where the IP mobilizes a small team to work on project approval, a work plan, and other preparatory work in close coordination with the MA. Key deliverables for this period would be completion of the PD and project approval.

Best Practices: Post-Award Activities (IP-Led)

IPs should lead post-award activities on project approval in close cooperation with the MA and USAID/Vietnam. These activities aim to build partnerships between the MA, IP, and USAID/Vietnam. The IP chief of party (COP) and deputy chief of party (DCOP) should lead these efforts and build relationships with the MA while developing the PD. Some IPs have hired consultants who specialize in project approval to support the process. However, they are no substitute for personal involvement of the COP and DCOP. Translating the request for proposal, proposal, and contract into the PD will require negotiation and compromise. The key to doing this effectively is to understand the needs, agenda, and operating principles of the MA. The IP and USAID/Vietnam should use this knowledge to manage expectations, building common ground and lasting partnerships.

⁵ Several other donors use this practice, including the United Kingdom Department for International Development, the Canadian International Development Agency, and the Australian Department of Foreign Affairs and Trade.

Where possible, the IP should:

- Develop the PD as soon as possible and work with the MA on fleshing it out. The PD should include the name of the IP, the project office, full-time expatriates, and a reference to the [Agreement for Economic and Technical Cooperation between the United States and Vietnam \(BILAT\)](#) to facilitate future VAT refund requests.
- Develop a financial and procurement guide and share the document with the MA. Some MAs will ask to review the financial and procurement guide as part of its project approval process.
- Maintain a transparent flow of communications with the MA and USAID/Vietnam to ensure consistent messaging and information flow.

USAID/Vietnam should facilitate this process and participate in meetings between the IP and MA as often as possible (e.g., introducing and supporting the IP in working with the MA, providing letters of introduction and confirmation of the status of IPs as main contractors of USAID/Vietnam, supporting negotiation, etc.).

QUESTION 5: VAT REIMBURSEMENT

VAT reimbursement looks simple on paper but is extremely challenging in practice. This process begins immediately after project approval, with the acquisition of a project seal. International non-governmental organizations (INGOs) can apply for an operation license from the People's Aid Co-ordinating Committee (PACCOM) under the Vietnam Union of Friendship Organizations (VUFO) as an intermediate step toward obtaining a seal. Under Decree 99/2016/ND-CP on Seal Management, U.S. companies will need to apply for a seal as "other organizations." These companies will need to prove that they are "legally set up" by showing the approved PD and other documents (listed below under question 5 in this report). While there are several successful cases with this approach, others have experienced additional barriers. These include local tax offices asking for papers not required by law, such as power of attorney of home office to the project office or clarification of other taxes such as contractor withholding tax or personal income tax of expatriates. It is, therefore, important to reference the BILAT in the approved PD, which clearly exempts these taxes for USAID contractors.

Not only does Decree 56 not help ease the process for donor-managed ODA projects, but it also introduces a new requirement to have a Certificate of Recurrent Expenditures to accompany a VAT refund request. At the time of writing, these certificates are impossible for IPs to obtain because they are designed for GVN agencies. The research team and USAID/Vietnam met with MPI and MOF General Department of Taxation (GDT) to clarify this. The MPI indicated that this should not apply to donor-managed ODA but referred to the MOF for any questions about taxes. The GDT agreed that this is more appropriate for TA managed by the GVN or one-time reception of goods or services. USAID Learns has requested the GDT to reform the current VAT refund policy for USAID-funded ODA projects by (1) allowing the COP or Project Director certified by USAID to apply for VAT tax code and sign all VAT refund requests without the need for a seal and (2) removing the requirement for the Certificate of Recurrent Expenditure for donor-managed TA. If this proposal is accepted, the VAT refund process would be significantly easier and could be done right after project approval without a project seal.⁶

⁶ MOF applied this procedure to the USAID-funded Support for Trade Acceleration (STAR) activity from 2001 to 2013. VAT refund was obtained without issue.

RECOMMENDATIONS FOR USAID/VIETNAM

1. **Develop a project approval guide for USAID and IPs.** Based on the findings of this report, USAID should provide guidelines on project approval for different activity types and institutionalize steps to engage MAs on project design and implementation.
2. **Identify and engage targeted MAs based on institutional mapping and consultation during activity design.** Selection of the MA should, at minimum, involve the following key criteria: (1) MA interest in hosting the activity, (2) the amount of support or benefit that the MA will receive from the activity to motivate the MA to host the activity, and (3) the jurisdiction and expertise of the MA over the activity subject matter. There may be more than one possible MA for a given activity, and selection of the right MA is important.
3. **Provide guidance and support to the IP to enable them to complete project approval and VAT refund status.** Though the IP is responsible for project approval, USAID/Vietnam should support IP efforts to work effectively with the MA in seeking project approval. From the perspective of the MA, USAID/Vietnam is the donor who funds the project, and the PD reflects the agreement between the donor and the MA.
4. **Integrate project approval into IP awards and allow an inception phase for IPs to work on project approval.** Project approval responsibilities should be included in Requests for Proposal (RFPs) and awards. USAID should guide IPs regarding this obligation. An inception phase can enable IPs to focus on and complete project approval. Deliverables during the project startup and inception phase should be reasonable, as the activity will not be able to conduct programming without project approval.
5. **Explore the possibility to enter into an OFA with the GVN to ease project approval.** An OFA is not an ODA treaty and does not replace BILAT. An OFA will establish a joint agreement between the GVN and USAID on key ODA priorities and objectives over a period of time. USAID/Vietnam activities vary in mechanism, scope, and funding sources. Some fit neatly within the GVN ODA rules, while others do not, even though they are official U.S. government assistance to support Vietnam's development under the BILAT. The reasons for non-recognition from the GVN often include (1) the assistance is provided to an entity that does not qualify to act as an MA or ODA recipient; (2) no qualified MA can be found; or (3) activities are not approved. It is, therefore, important to have a high-level agreement with the GVN on objectives, priorities, and conditions for USAID/Vietnam activities. This agreement would guide the development, startup, and implementation of USAID/Vietnam activities and accelerate project approval.

RECOMMENDATIONS FOR IMPLEMENTING PARTNERS

1. **Build a partnership with the MA at the leadership and operational levels in developing the PD.** Development of the PD is an opportunity for both the MA and the IP to understand the needs, motivations, and abilities of both sides in addressing the challenges that the activity seeks to address. It is important that the IP seeks the support and endorsement of MA leadership, and the PD is the first step in a longer-term relationship. At the same time, the IP needs to develop a good working relationship at the operational level, as department staff will be the ones that work most directly with the IP on the PD.

2. **Be flexible and ready to accommodate sensible changes.** The IP is under a contractual obligation to deliver certain outcomes based on the approved scope of work and program description in the award. The award is the agreement between USAID/Vietnam and the IP. The MA often has its own views on challenges, needs, and possible solutions, and, as such, the MA often requests changes during the development of the PD. In some cases, the IP and USAID/Vietnam will need to accommodate sensible changes to help achieve the overall goals and objectives. In other cases, when the MA requires major changes to the project components or objectives, the IP may need to modify its award with USAID/Vietnam. Therefore, it is important to keep USAID/Vietnam abreast of the progress of project approval, as it has contractual bearing. The chances of such major changes are minimized when USAID/Vietnam has the agreement of the MA in writing during the design phase.
3. **The COP and DCOP need to be personally involved in project approval.** Working on project approval should be a high priority for the COP and DCOP. The MA will ask important questions regarding activities, counterpart roles in activity implementation, and use of resources. They want answers to these questions from the leaders of the activity. The COP and DCOP, therefore, need to work with the MA to manage their expectations and provide correct answers to these questions.

INTRODUCTION

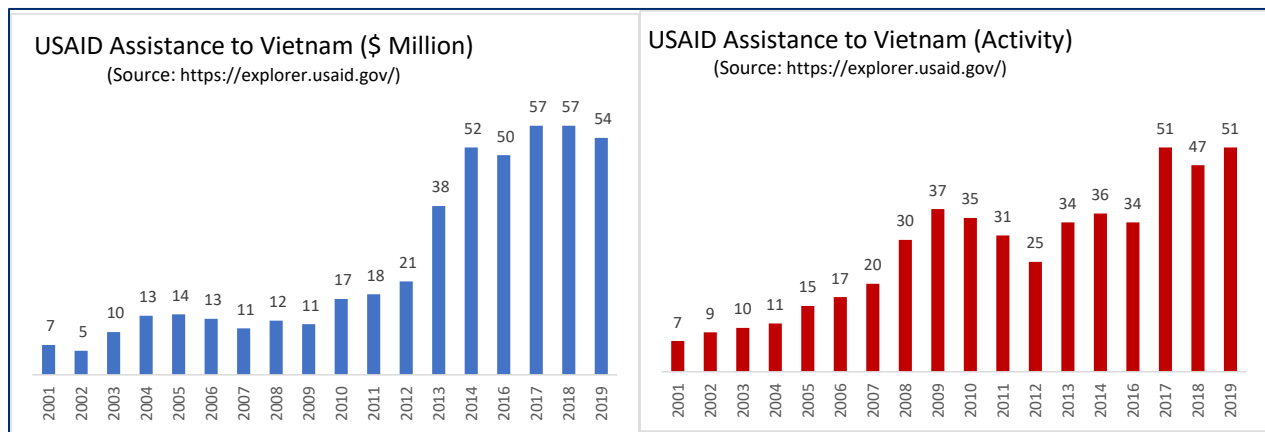
On May 25, 2020, the Government of Vietnam (GVN) issued [Decree No. 56/2020/ND-CP](#) on the Management and Use of Official Development Assistance (ODA) and Concessional Loans from Foreign Donors (Decree 56). Decree 56 entered into force on the same day, replacing [Decree No. 16/2016/ND-CP](#), dated March 16, 2016, (Decree 16) and [Decree No. 132/2018/ND-CP](#), dated October 1, 2018 (Decree 132).

Decree 56 changes how the GVN receives and manages ODA and has significant implications for how USAID designs, seeks approval for, and manages its activities in Vietnam. This study examines the procedures for project approval under Decree 56 and how USAID, its implementing partners⁷ (IPs), and Vietnamese counterparts can best increase the likelihood and speed of project approval. A secondary objective of this study is to help USAID/Vietnam and its IPs understand the value-added tax (VAT) reimbursement processes and increase the likelihood of obtaining VAT reimbursement.

CONTEXT

Since 2001, USAID/Vietnam has provided US\$881.6 million in assistance to Vietnam.⁸ This investment has helped strengthen U.S.–Vietnam bilateral trade and relations through support to development challenges such as health, environment, support for vulnerable populations, climate change, energy, higher education, and economic governance. Figure I below shows a significant increase in assistance to Vietnam since 2001, in both dollar and activity terms. Under the new [2020–2025 Country Development Cooperation Strategy \(CDCS\)](#), USAID/Vietnam expects to scale up its assistance further to enable Vietnam to achieve its goal to become an upper middle income country by 2030.

FIGURE I: USAID ASSISTANCE TO VIETNAM



Despite this positive relationship, USAID and its IPs have experienced substantial challenges obtaining activity approval from the GVN, in some cases resulting in significant delays in implementation. In turn, these delays have increased risks associated with tax liabilities, including personal income tax for

⁷ For the purposes of this report, implementing partners are organizations contracted by USAID to implement its activities. Counterparts are organizations that receive or benefit from the activities conducted by the implementing partners.

⁸ Source <https://explorer.usaid.gov/> as of Oct. 10, 2020.

expatriates, corporate income tax for contractors (or contractor withholding tax), and VAT reimbursements, because the exemption of these taxes only applies to approved ODA projects. The approval process lacks a shared understanding of effective practices in obtaining project approval. Furthermore, depending on government counterparts, the degree of political engagement, visibility, technical areas of implementation, and other factors such as the priority and urgency of the project in question, approval timelines have been unpredictable.

Project approval is important to ensure legitimate operations in Vietnam and GVN ownership over assistance from the American people to Vietnam. The GVN does not recognize unapproved activities as ODA; hence, they cannot enjoy ODA privileges such as the tax exemption provided under GVN law and the Agreement for Economic and Technical Cooperation between the United States and Vietnam (BILAT). More importantly, implementation is more challenging, as counterparts may question the legitimacy of unapproved activities.

Despite a strong record of attracting ODA, the GVN wanted to simplify and delegate decision making on ODA projects to ministries and provincial governments to ease the approval process and implementation. At the same time, the new [Public Investment Law](#) and the [Public Debt Management Law](#) adopted in 2019 and 2017, respectively, necessitated a new decree on ODA to align with new provisions. The GVN adopted Decree 56 on May 25, 2020, to govern ODA in Vietnam.

PURPOSE AND AUDIENCE

USAID/Vietnam, through Social Impact, Inc., conducted this study to assess the implications of Decree 56. The purpose of this study is to assist USAID/Vietnam and its IPs to build a shared understanding of the requirements and best practices for project approval under Decree 56. This will ease and speed up project approval and implementation of USAID/Vietnam activities. Specifically, the study (1) identifies changes in the project approval process under Decree 56, (2) clarifies the project approval process under Decree 56, (3) documents good practices, and (4) recommends effective and efficient paths to project approval and VAT refunds for USAID/Vietnam activities. A secondary objective of this study is to help USAID/Vietnam and its IPs understand VAT reimbursement processes and increase the likelihood of VAT reimbursement.

This report strives to serve three audiences. USAID/Vietnam can use this study to better facilitate project approval and programming in Vietnam. IPs can use this report to understand the requirements and procedures for project approval under Decree 56. Finally, this report may help Vietnamese counterparts cooperate with USAID in designing new activities and in facilitating project approval in Vietnam.

RESEARCH QUESTIONS

The study seeks to answer five research questions:

1. **Historical Context:** What have been the key trends in the succession of GVN ODA Decree 16 (2016), Decree 132 (2018),⁹ and Decree 56 (2020)?

⁹ Decree 132 only revised some articles of Decree 16 but did not replace Decree 16. MPI combined the two decrees to make a consolidated decree.

2. **Changes in the 2020 Decree:** In what ways does Decree 56 change the processes and requirements for project approval (relative to Decree 132)? What are the likely implications of Decree 56 on USAID programming?
3. **Procedural Requirements:** What are the procedural requirements for USAID-funded activities to seek GVN approval under Decree 56?
 - a. What types of USAID-funded activities are governed by the ODA Decree? Does this represent a change from the previous Decree?
 - b. For projects that have already started the approval process, what are the procedures?
4. **Lessons Learned:** In what ways can USAID-funded activities increase the likelihood and/or the speed of approval?
5. **VAT Reimbursement:** In what ways can USAID-funded activities increase the likelihood and/or the speed of VAT reimbursement?

Phase I of the study focused on questions 1, 2, 3, and 5. Phase II elaborated on questions 3, 4, and 5.

METHODOLOGY

OVERVIEW

This study involved two phases. Phase I consisted of a legal review of Decree 56 and related documents, supplemented by targeted key informant interviews (KIIs) with USAID and the Vice President of the Vietnam Tax Advisory Association. This phase aimed to understand the most important implications of Decree 56 on USAID project approval processes. Phase II of this study elaborated on the preliminary findings and conclusions under Phase I with information through KIIs with a wide range of stakeholders, including USAID staff, IPs, GVN agencies, and other development partners. During Phase II, a validation event allowed key informants to review and validate findings and share their comments with the research team.

RESEARCH DESIGN

DOCUMENT REVIEW

The research team included the Team Leader and the Legal Advisor, reviewed the following documents in completing this assignment:

1. ODA decrees (Decrees 56, 132, and 16);
2. A non-ODA decree (Decree 80);
3. Tax regulations (VAT Tax Law, Circulars 156, 95, and administrative rulings on Tax Refund for ODA projects);
4. Decree on Seal Management; and,
5. Agreement for Economic and Technical Cooperation between the U.S. and Vietnam (BILAT).

The full list of documents reviewed is in Annex I.

KEY INFORMANT INTERVIEWS

The research team conducted 25 KIIs with USAID, IPs, GVN agencies, and development partners to seek evidence on best practices and more informed recommendations. Key informants provided insights on their experiences in seeking project approval, VAT refunds, and interpretation of rules. Table I below lists the stakeholders interviewed. A full list of KIIs is in Annex II, and the data collection instruments are in Annex III.

TABLE 1: KEY INFORMANT INTERVIEWS

RESPONDENT CATEGORY	# OF KIIS
USAID	7
Implementing Partners	12
Government Agencies: Ministry of Finance (MOF), Ministry of Planning and Investment (MPI)	3
Development Partners: GIZ, DFAT, CIDA	3
TOTAL	25

LIMITATIONS

The findings in this report are based on a legal review of Decree 56 and related regulations, interviews with a wide range of KIIs, and the experience of the team leader, who has successfully worked on project approval and VAT refunds for four USAID/Vietnam activities. As this study was conducted shortly after the GVN issued Decree 56, the key informants had not yet had experience with the implementation of the decree, although some respondents had recently started the project approval process under Decree 56. The lessons and recommendations are, therefore, drawn largely from the analysis of Decree 56, experiences in project approval under the old decrees, and limited exposure to the implementation of the new decree. These lessons and recommendations on project approval and VAT refunds remain relevant and useful, as Decree 56 does not change the fundamental requirements of project approval, even though it simplifies the process significantly.

FINDINGS AND CONCLUSIONS

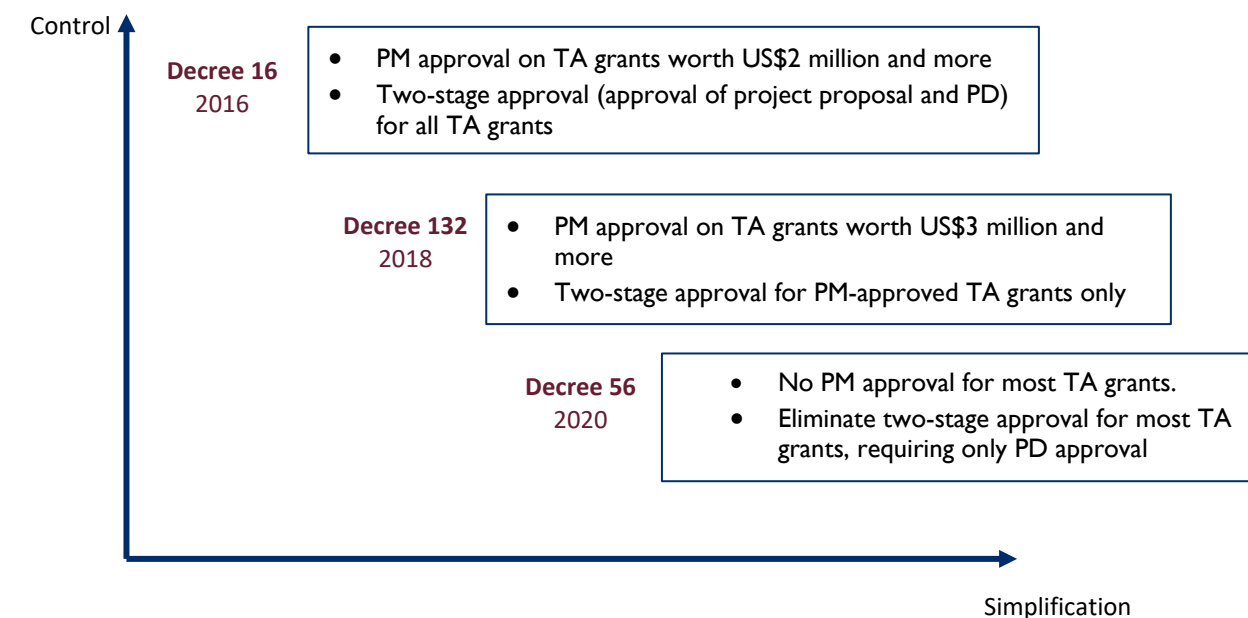
QUESTION 1: HISTORICAL CONTEXT

What have been the key trends in the succession of GVN ODA Decree 16 (2016), Decree 132 (2018), and Decree 56 (2020)?

FINDINGS

Decree 56 continues the trend of process simplification and decentralization of approval authority over technical assistance (TA) grants. Decree 56, like previous decrees, further decentralizes decision-making authority over ODA consistent with the Public Investment Law. Under Decree 16, project proposals for TA grants worth more than US\$2 million required prime minister (PM) approval. Decree 132 raised this threshold to US\$3 million.¹⁰ Decree 56 removes this threshold entirely, with PM approval only needed for proposals that are (1) accompanied with a policy framework, (2) in sectors related to national security, defense, and religion, or (3) procuring goods that need the permission of the PM. For projects in these categories, after the PM approves the proposal, the head of the Managing Agency¹¹ (MA) can approve the Project Document (PD). Since USAID/Vietnam activities do not fall under the three categories requiring PM approval, they only require MA approval under Decree 56. Figure 2 below illustrates the trend of decentralization and simplification of ODA management over time.

FIGURE 2: TREND IN ODA DECREES



¹⁰ In addition to increasing the threshold, Decree 132 separated TA grants from ODA investment projects and clarified that for ODA, the PM approval of the TA project proposal is named “implementation policy.” The former name of this under Decree 16 was “investment policy,” and Decree 16 did not separate TA grants from other forms of ODA.

¹¹ An MA hosts the project and works with the implementing partner on the development of the Project Document and other papers to obtain project approval. Under Decree 56, the head of the MA is tasked with approving most TA projects. The findings under question 2 provide a more detailed description of the organizations.

CONCLUSIONS

Decree 56 continues the trend of delegating decision-making authority and simplifying the approval process for TA grants. With the delegation of decision-making authority to the heads of MAs, project approval should be faster.

QUESTION 2: CHANGES IN THE 2020 DECREE

In what ways does Decree 56 change the processes and requirements for project approval (relative to Decree 132)?

FINDINGS

Decree 56 simplifies the process and requirements for project approval. In addition to the delegation of decision-making authority noted above, Decree 56 contains important changes that are expected to ease project approval.

The project proposal requirement is eliminated for most TA grants. Decree 132 removed the requirement for separate project proposal approval for ODA grants that did not require the PM approval. As the PM retained approval authority for projects worth more than US\$3 million under Decree 132, most USAID/Vietnam TA grants had to prepare a project proposal for PM approval and a PD for MA approval. Decree 56 eliminates the US\$3 million threshold under Decree 132. This effectively removes the project proposal requirement for USAID/Vietnam TA grants, except in the rare cases still requiring PM approval described above. The IP and the MA can begin developing the PD immediately and skip the project proposal stage. The elimination of this intermediate step is expected to significantly reduce the time needed for project approval, as discussed in more detail under question 3 below.

A broader definition of MAs gives USAID/Vietnam more choices for partnering. A key question for a TA project is which organization should host and manage the project. The donor typically decides this based on which agencies operate in the project's sector and are willing to host and manage the project. Decree 56 broadens the types of organizations that can manage ODA projects, with Article 3.7 retaining all entities listed under Decree 16 (all ministries, ministerial organizations, provinces, and mass organizations) while adding, "social-professional/industry organizations implementing a task assigned by a competent authority, other organizations that are tasked with a public investment plan containing projects using ODA, and concessional loans."

There is no legal definition of "social-professional/industry organizations" in Vietnamese law, though these are generally understood to be professional/business or state-linked associations. Laws and administrative documents often use this term to designate organizations. For example, the Law on Lawyers states that the Bar Association is a social-professional/industry organization, and the decision to establish the Vietnam Seafood Association states that the association is a social-professional/industry organization.¹² Decree 56 clarifies that only the head offices of those business associations that are tasked with some form of state administration by the GVN, i.e., closely linked to the GVN, can manage ODA projects. Decree 56 clarifies that central offices of organizations that are tasked with public investment projects can act as MAs for ODA projects. This "catch-all" term in the definition of MAs enables organizations that are not listed

¹² For a discussion of different kinds of organizations, please refer to <https://tinyurl.com/yyjlgxgv>.

specifically in Decree 56 but are part of the GVN system, such as the National University, to serve as MAs for the purposes of managing ODA.

Similar to Decree 16, Decree 56 governs:

“ODA and concessional loans granted by foreign governments, international organizations, inter-government or international organizations, governmental organizations authorized by foreign governments (hereinafter referred to collectively as foreign donors) to the State or Government of the Socialist Republic of Vietnam.”

This means that, in order to qualify as ODA, any activity must be managed by an MA, as stipulated under Decree 56 and analyzed above, and the MA must approve the activity in accordance with Decree 56. An activity that does not meet one of these two conditions will not be regarded as ODA under Decree 56.

Decree 56 clarifies the definition of donor-managed TA. Decree 56 defines USAID/Vietnam’s approach to funding IPs to implement activities in Vietnam as “donor-managed technical assistance.”¹³ Unfortunately, Decree 56 lacks important details on how to operationalize this mode of TA delivery, especially regarding the formation and status of IPs’ project offices. Instead, Decree 56 specifies that donor-managed TA will follow the provisions of ODA agreements and PDs. Decree 56 extends the use of OFAs to TA, which is discussed in more detail below.

2.1 What are the likely implications of Decree 56 on USAID programming?

FINDINGS

Decree 56 provides a new instrument—the ODA Framework Agreement (OFA)— to engage the GVN on the establishment of mutual priorities and objectives. An OFA enables the GVN and a donor to set priorities, objectives, and conditions of their ODA over a period of time. Decree 56 defines an OFA as:

“[A]n agreement on cooperation strategy, policy and framework, priorities; principles and conditions in connection with the use and commitment of ODA and concessional loan for one year or multiple years, and other contents as agreed upon by the signatories;”

Decree 56 clarifies that OFAs are not ODA treaties and do not follow the procedures for treaty rectification under the Law on Treaties. Under Decrees 16 and 132, OFAs were only available to ODA loan programs, and Decree 56 extends this to include TA grants.¹⁴ For TA grants, the Ministry of Planning and Investment (MPI) is assigned as the signatory to OFAs on behalf of the GVN after the PM approves the OFAs. An OFA between USAID/Vietnam and GVN could help in the following areas:

- Clarify how USAID-managed TA will be delivered with the engagement of IPs, the establishment and status of project offices, and MA engagement and selection.
- Formalize the CDCS into a joint agreement.

¹³ Decree 132 included this mode of delivery, and Decree 56 strengthened it.

¹⁴ ODA agreements were previously used only for concessional loans that were often associated with conditional policy changes.

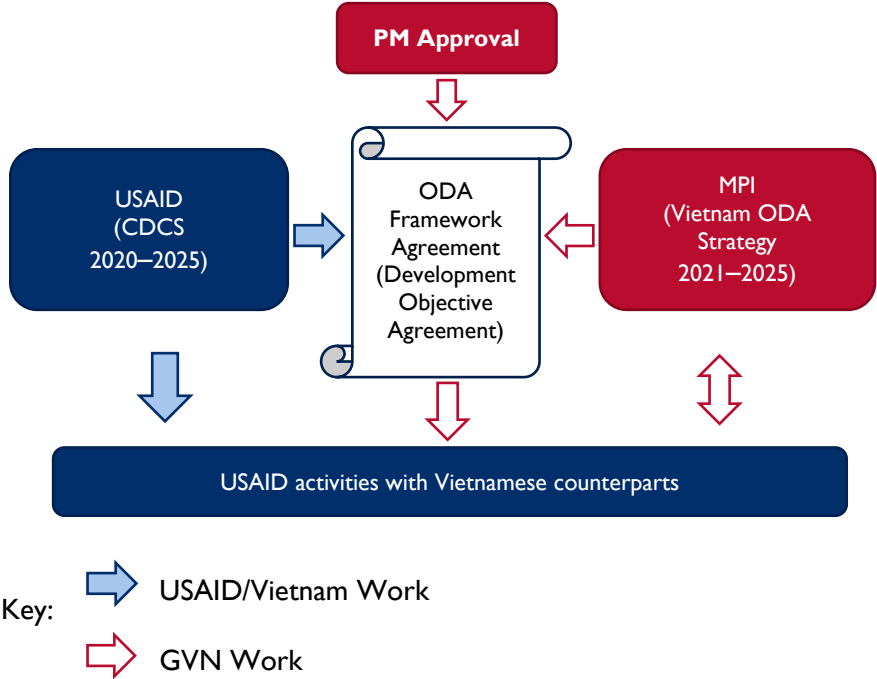
- Establish a reporting mechanism to enable USAID/Vietnam and the GVN to review performance, introduce new activities, and recognize USAID/Vietnam assistance.
- Provide space to accommodate contingent, unexpected USAID/Vietnam activities.

Once the priorities, objectives, and terms of ODA are defined in the OFA approved by the PM and signed by MPI, it will help facilitate project approval down the line, as ministries and agencies will feel that they are “authorized” by the OFA. Negotiating the OFA with MPI will take time and effort. Unless meaningful provisions are in place, the OFA may not serve any purpose. Engagement at the leadership level is important to achieve the intended purposes.

Decree 56 includes a provision on ODA-specific agreements that cover only one activity, such as a limited-scope grant agreement (LSGA). The OFA, which covers multiple activities, can articulate important operational processes not mentioned in Decree 56, such as the establishment of project offices and their ability to obtain project seals to work with counterparts and tax authorities. The OFA can also clarify other grey areas, such as U.S. assistance to non-governmental organizations and how they can follow ODA approval processes, how to handle an activity that does not fit with an appropriate MA, and reporting USAID/Vietnam assistance to the GVN.

As MPI embarks on a new ODA strategy¹⁵ for Vietnam, this is an opportune time for USAID/Vietnam to explore an OFA with MPI’s leadership, especially when USAID/Vietnam expects to further scale its programming in Vietnam after approval of its CDCS. Figure 3 shows how the OFA and other instruments can work together to facilitate project approval and implementation.

FIGURE 3: ODA PROGRAMMING AND PROJECT APPROVAL FRAMEWORK



¹⁵ Unlike Decrees 16 and 132, Decree 56 does not include a provision on Vietnam’s prioritized areas for ODA. The ODA strategy that MPI is leading is likely to fill this gap.

CONCLUSIONS

Decree 56 introduces important changes to the project approval process that should reduce administrative steps, shorten approval timeframes, and give USAID more options for selecting approval strategies. Key changes include (1) the elimination of the project proposal step, (2) more choices of counterparts for USAID/Vietnam activities, including business associations that are tasked with some state administration functions, (3) clarification of the donor-managed mode of delivery of TA grants, and (4) the addition of an OFA for engaging with the GVN on ODA.

QUESTION 3: PROCEDURAL REQUIREMENTS

What types of USAID-funded activities are governed by Decree 56? Does this represent a change from Decree 132?

FINDINGS

Building on Decree 132, Decree 56 classifies ODA into two groups by their nature and uses.

1. **Investment:** Includes grants for investment, concessional loans, and technical assistance in preparation of investment.
2. **Technical Assistance:** Includes assistance from projects based in and out of Vietnam.

Decree 56 provides detailed procedures for both types of ODA. The classification and detailed provisions under Decree 56 provide more clarity into which procedures and rules apply to which kinds of activities, easing project approval and implementation. Apart from projects on Dioxin Remediation of Bien Hoa and Da Nang airports, most USAID/Vietnam activities fall under the TA grant category (either project-based or not project-based).

- **Project-based TA** is defined in Decree 56, Article 3.10, as “projects that support research, policy, institutions, technical and professional capacity by providing local and international consultants, training, lessons, study missions, workshops, equipment, and demonstration models.”
- **Non-project-based TA** is defined in Decree 56, Article 3.16, as “ODA activities that are not associated with a particular project and is provided in separate activities and in the form of provision of cash, goods, and consultants on a specific activity such as workshops, training, study, research.” Non-project-based TA requires approval from the head of the MA after consultation with relevant ministries, following a simplified PD template.¹⁶ Non-project-based activities worth less than US\$200,000 can be approved by the head of the MA without having to consult with other ministries. In practice, non-project-based activities include one-off activities such as a workshop, consultant, or activities that are not associated with a specific project in Vietnam. USAID activities conducted under a regional project, out of Washington, D.C., or USAID/Regional Development Mission for Asia are likely to fall under this category.

¹⁶ The PD template for non-project-based activities can be found in Annex IV of [Decree 56](#).

Because USAID/Vietnam’s TA activities fall under the project-based category, findings will primarily focus on this type of project approval procedure. Annex V provides an overview of the approval procedures for investment grants.

Decree 56 defines ODA as support from foreign donors to the State or the GVN and requires project approval. The determination that an activity supported by USAID/Vietnam is ODA under Decree 56 depends on whether an MA has approved it, as defined in Decree 56.¹⁷ For example, the grant from USAID/Vietnam to Fulbright University would not qualify as ODA in the absence of a qualified MA, as defined under Decree 56.¹⁸ Similarly, USAID Learns—an activity supporting USAID/Vietnam operations in Vietnam—is unlikely to qualify as ODA because there is no MA for the activity. In order for Learns to be recognized as ODA, it would need to be approved by a qualified MA.

In addition to Decree 56, the GVN adopted [Decree No. 80/2020/ND-CP](#) (Decree 80),¹⁹ which governs non-ODA grants from foreign organizations and individuals, including:

“Ministries, agencies and organizations of foreign governments, diplomatic missions of countries in Vietnam which directly provide aid, or authorize foreign legal entities to manage aid which does not require official signing under the International Treaty Law or does not require the Vietnamese party to sign on behalf of the State or Government of the Socialist Republic of Vietnam.”

Decree 80 requires that the MA that authorizes the establishment of the grant recipients approve non-ODA grants. Effectively, Decree 56 and Decree 80 create confusion between donor-managed TA under Decree 56 and non-ODA provided to GVN and other MAs under Decree 80. An activity can be approved as ODA under Decree 56 or as non-ODA under Decree 80. In fact, Decree 80 appears to be easier as it would “not require the Vietnamese party to sign on behalf of the State or Government of Vietnam.” Decree 80 introduces similar approval requirements to ODA grants, including the development of PDs, consultation with MPI and other ministries, and approval by MAs. Decree 80 does not extend the benefits of ODA, such as tax exemptions envisaged under the BILAT. Without a clear agreement between USAID/Vietnam and the GVN, MAs will have the discretion to use either Decree 56 or Decree 80 to approve activities supported by USAID/Vietnam.

Finally, USAID/Vietnam provision of emergency assistance for natural disasters²⁰ is governed under Decree 50/2020/ND-CP. This type of assistance comes in two forms: (1) emergency relief for natural

¹⁷ Decree 56 defines the “managing agency” of a program/project funded by ODA and concessional loans as “the central agency of a political organization, the Supreme People’s Procuracy, the Supreme People’s Court, an agency of the National Assembly, State Audit of Vietnam, Office of the President, a Ministry, ministerial agency, Governmental agency, provincial/municipal People’s Committee of a province/centrally-administered city (hereinafter referred to collectively as ‘provincial people’s committee’), central agency of the Vietnamese Fatherland Front and of a socio-political organization, socio-political-professional organization, social organization or socio-professional organization authorized by a competent state agency or other organizations entrusted with a public investment plan containing a program/project funded by ODA and concessional loans.” Note the word “Central Agency,” i.e., the head offices of these organizations not the branch offices.

¹⁸ For Fulbright to qualify as ODA, it would need to come under an MA, such as Ho Chi Minh City Government or the Ministry of Education and Training, that can approve the PD.

¹⁹ Decree 80/2020/ND-CP is dated July 8, 2020, and entered into force on September 20, 2020.

²⁰ A natural disaster is broadly defined in the Law on Natural Disaster Prevention and Control. COVID-19 assistance, depending on how it is structured, may be interpreted to be “other natural disasters” under this law.

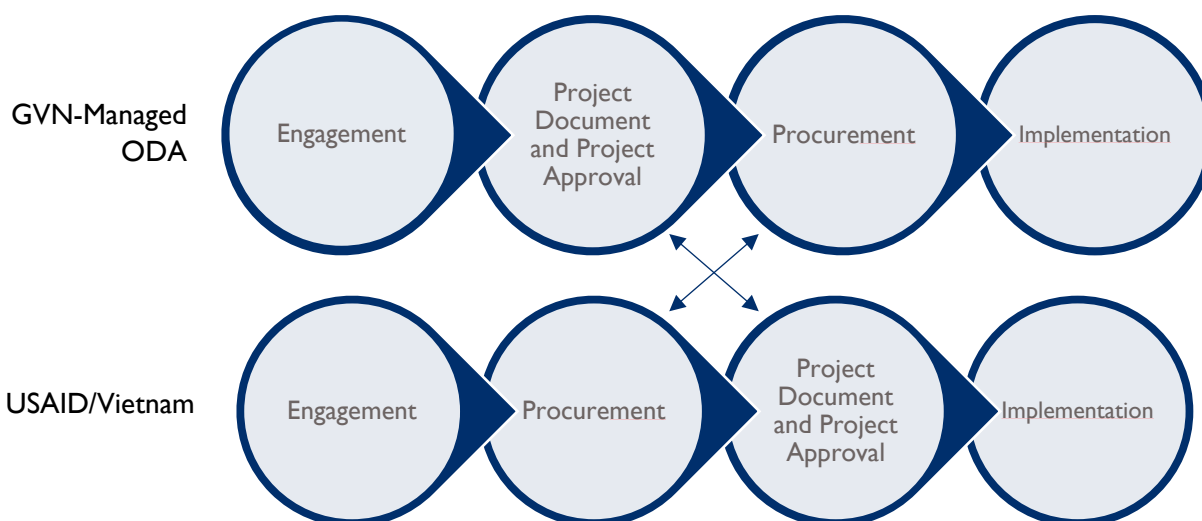
disasters to be provided within 3 months from the occurrence of the disasters, and (2) assistance for disaster recovery to be provided within 9 months from the occurrence of the disasters. Such assistance does not require project approval. As such, emergency assistance for natural disasters is not covered in this report. Annex VI unofficially classifies current USAID/Vietnam activities under their governing decrees.

3.1 What are the procedural requirements for USAID-funded activities to seek GVN approval under Decree 56?

FINDINGS

Decree 56 allows different methods of project management and hence project approvals. Similar to Decrees 16 and 132, Decree 56 is designed on the basis that the GVN will manage TA grants and project approval will take place before procurement. Decree 56 devotes most of its text detailing how government agencies and MAs should manage and implement projects. While Decree 56 allows donors to manage their TA grants and follow procurement procedures of the donor, it does not provide much detail on how donors should manage their activities in Vietnam. Instead, it allows donors and the GVN to use ODA treaties, OFAs, ODA-specific agreements, and PDs to govern the delivery and operations of their ODA TA. Figure 4 shows the different ways of managing TA grants between the GVN and USAID/Vietnam. Whereas USAID/Vietnam begins procurement before project approval, the GVN's TA management approach is to approve projects before procurement. This difference is a key source of project approval challenges.

FIGURE 4: DIFFERENT APPROACHES TO PROJECT DEVELOPMENT



Australia’s Department of Foreign Affairs and Trade (DFAT) follows the GVN approach for some of its activities in Vietnam.²¹ DFAT develops a design document and sends it to an MA that reviews, approves, and prepares the PD for project approval, even though it is a lengthy process. Procurement begins after the MA signs off on the design document. The German Gesellschaft für Internationale Zusammenarbeit (GIZ) develops the “technical project design” with an MA, which is then reviewed and approved by a joint committee with the GVN and German government before it is procured. Both DFAT and GIZ have periodic reviews of their activities with the GVN and troubleshoot challenges. However, too much oversight may have a negative impact on performance, innovations, and effectiveness.

The decision to procure an activity before or after project approval depends on several factors, and each approach has its own costs and benefits. Conducting project approval before procurement would eliminate later project approval delays but may complicate and delay procurement. Because of procurement sensitivity, USAID likely cannot share project design documents prior to procurement and then cannot follow the GVN’s approach of having project approval prior to procurement.

The project document remains central to project approval. Like in previous Decrees, the core emphasis of TA grant approval under Decree 56 remains on the development and approval of a PD. The PD is akin to a contract between the MA and USAID/Vietnam on the outcomes and activities under a project. It reflects the priorities of the GVN and USAID/Vietnam in the activity implemented by the IP. The template for PDs has changed slightly under Decree 56. Annex IV provides a comparison between the two forms.

²¹ DFAT also employs other ways to deliver projects in Vietnam, such as working with multilateral donors or providing grants to GVN counterparts.

The development of a PD follows three steps, as outlined in Figure 5 below. In the first step, the IP and a division within the MA²² develop the PD, which other MA divisions review internally before sending it to the head of the MA for review and approval. USAID/Vietnam usually reviews and provides its agreement with the draft PD at this stage. In the second step, the MA sends the draft PD to the MPI, MOF, and other organizations.²³ Based on the comments by MPI, MOF, and the other agencies, the MA and IP revise the PD for submission to the head of MA and USAID/Vietnam for approval. Once the MA approves the final PD, MPI communicates the project approval decision to USAID/Vietnam. Though project approval is a GVN process, USAID/Vietnam endorsement is needed at key decision-making points, as Figure 5 shows.

FIGURE 5: PROJECT DOCUMENT DEVELOPMENT PROCESS

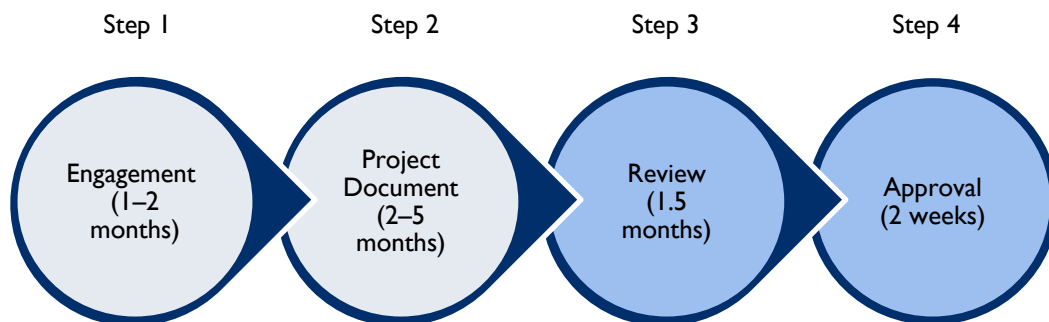


Decree 56 project approval procedures include engaging with the MA, PD development, PD review, and PD approval. The four key steps for project approval are presented below in Figure 6. Steps 1 and 2 are not subject to any time limits under Decree 56 (estimates are provided by the research team), but the duration of Steps 3 and 4 in blue are regulated under Decree 56 with specified time limits. Prior engagement and agreement between USAID/Vietnam and the MA before the award will help shorten the time needed for engagement and development of the PD later.

²² The selection of the MA is critical. A ministry can authorize works at both national and local levels, including works with other ministries where necessary. A province can only authorize works in that province. As such, if an activity implements in more than one province, there are two options: (1) select a ministry as the MA; or (2) work with different provincial governments as the MAs on multiple project approvals. If the activity does not work at the central level, it may be challenging to convince a ministry to be the MA, as it may not have an incentive to manage the activity because of the added time, resources, and potential risk.

²³ The selection of other organizations depends on the nature of the activity and which agency is involved in the sector. For example, for an activity in the energy sector, the other organization is likely the Ministry of Industry and Trade, which has jurisdiction over this sector. The Ministries of Foreign Affairs and Public Security may also be consulted.

FIGURE 6: TECHNICAL ASSISTANCE GRANT APPROVAL PROCEDURE



The first step is to engage with the MA on developing the PD (see Annex IV for the latest Project Document Template and comparisons to the Decree 56 and Decree 16 templates). USAID/Vietnam should engage with the MA during the design of the activity. USAID/Vietnam and IP need to engage the MA again after the award. The MA usually assigns a department within the organization to work with the IP on the PD. The PD is then subject to peer review by other departments within the MA before the head of the MA and USAID/Vietnam review it for approval. Steps 1 and 2 may take three to seven months (or more), depending on how fast and effectively the IP and MA can develop and agree on the PD.

Step 3 will start when the head of the MA sends the PD to MPI, MOF, and other relevant agencies for review. As per Decree 56, MPI, MOF, and relevant agencies shall respond within 10 days from the day of receipt. The head of the MA will then complete the review process within 20 days from the day of receipt of the comments from MPI, MOF, and relevant agencies. The project approval decision by the head of the MA must take place within two weeks from the completion of the review process. MPI will then notify the donor of the decision and the request for support. For TA grants worth less than US\$200,000, the head of the MA can approve the PD without having to seek review from MPI and MOF.

3.2 For projects that have already started the approval process, what are the procedures?

FINDINGS

Decree 56 became effective on May 25, 2020, and immediately applied to all project approvals occurring on and after May 25, 2020. This includes activities that had started the process under Decrees 16 and 132 but had not yet obtained project approval. These activities will need to follow the procedures, forms, and steps provided under Decree 56. For activities that received approval prior to May 25, 2020, under previous decrees but need to be modified (e.g., amending the scope or extending the implementation period), the modification will follow the project approval procedure under Decree 56.

CONCLUSIONS

The procedures for project approval have been simplified into four primary steps, two of which are governed by time limits. In principle, the time needed for TA grant approval should become shorter, likely

ranging from five to nine months, as compared to 12 months or more under the previous decrees. Ongoing activities that have not been approved need to follow the procedures under Decree 56.

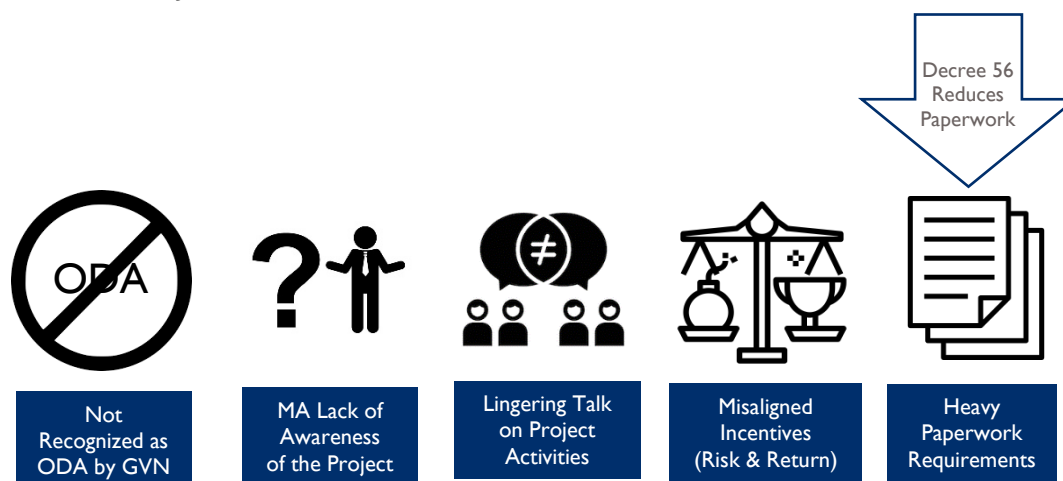
QUESTION 4: LESSONS LEARNED

In what ways can USAID-funded activities increase the likelihood and/or the speed of approval?

PROJECT APPROVAL CHALLENGES

Generally, seeking project approval is not easy and can take substantial time. Based on KIIs, the primary challenges are presented in Figure 7 and discussed below.

FIGURE 7: PROJECT APPROVAL CHALLENGES



An activity may not qualify as ODA. The first challenge to ODA project approval is to qualify as ODA under the ODA rule. Decree 56 defines bilateral ODA as assistance from foreign governments to the state and the GVN. Across all USAID/Vietnam activities, IPs—not MAs—manage USAID resources. Because of this, some GVN agencies view themselves as beneficiaries and not hosts or MAs. In these cases, they still work with and benefit from the activities but do not want to burden themselves with project approval and oversight responsibilities. Because the activities would not be approved by MAs in accordance with an ODA decree, they are not regarded as ODA. This may happen when an activity was designed without the knowledge and involvement of the MA or when an activity works with multiple organizations at different levels and no one wants to be the MA. The rule on non-ODA grants compounds this further, as these activities would fit perfectly well as non-ODA grants under the Vietnamese rule on non-ODA.

Similarly, when an activity is designed to work with NGOs who may or may not work with the GVN on delivering the program, it may not be considered ODA. Not all NGOs can qualify as MAs and hence cannot approve or manage ODA. For example, the Vietnam Chamber of Commerce and Industry (VCCI) qualifies as an MA under ODA decrees and can host or “manage” activities with USAID because it is tasked with several jobs by the GVN and receives an annual budget from the GVN. Many other local NGOs do not qualify because they are not tasked with state administration functions. The only way for them to seek project approval is to ask their parent organizations to be the MA and assign them to be the

implementers.²⁴ Sometimes, this is possible; in other cases, it is not. Some local NGOs reported that the MOF reasons that NGOs are not part of the GVN and cannot be ODA recipients. Some local NGOs ran into this problem and could not resolve it.

At the core of the problem is the interpretation and application of different rules on ODA and non-ODA grants in Vietnam and the recognition of the BILAT in Vietnam. Under the BILAT, USAID/Vietnam can work with the GVN and IPs (NGOs, private companies, and others), as it has been doing. Decree 56 recognizes that donors can manage their TA grants in Vietnam. However, the ODA rule in Vietnam does not distinguish or define IPs, MAs, ODA recipients, and beneficiaries clearly. This problem, together with the overlapping jurisdictions of the rules on ODA and non-ODA grants, results in different interpretations and treatments of USAID/Vietnam assistance in practice.

The intended MA does not know about the project in advance and does not want to host it or work to seek project approval. This is often because the donor does not identify or consult the MA at the design stage. IPs will find it hard to convince the MA to host and work on project approval for an activity the MA does not know about. Serving as the MA takes time and resources. The MA will need to weigh the benefit that the activity can bring to the organization against the administrative burden. Unless explicitly agreed upon during the design stage, an activity may not find a receptive MA.

It takes a lot of time to agree on the project objectives, components, beneficiaries, and activities in the PD. This was the most common challenge cited by KIs. Developing the PD requires translating the requirements of contracts and requests for proposal into binding documents with the GVN. The PD will be shared and commented on by a wide range of departments with their own priorities and needs. The MA may propose changes, in some instances conflicting with the scope of the IP's contract. Unless and until this is resolved, the parties cannot move on with the PD. Some activities had to be adjusted to accommodate new requests. Sometimes, personnel changes and functional departments precipitate changes to the PD to better fit revised agendas, even though their predecessors may have previously agreed with USAID/Vietnam on key activity parameters.

USAID/Vietnam may work with MAs and stakeholders to co-create designs to ensure commitment and agreement from the MAs, their technical departments, and relevant stakeholders on key parameters of the activity. This would build broad support for the design and minimize the chance of significant changes after the award.²⁵

The MA does not have a strong incentive to take on the administrative burden of project approval and management. As noted above, being an MA imposes transactional and opportunity costs. The MA will need to consider the costs and benefits before deciding whether to support an activity. When an activity does not work directly with or support the agenda of the agency, the agency will not have an incentive to be the MA. Some GVN agencies are willing to give the green light for project implementation but refuse to play the role of the MA to avoid cumbersome paperwork for project approval, as noted

²⁴ In the language of Decree 56, this is called the “project owner.”

²⁵ A description of co-creation approach to project design is available at <https://www.usaid.gov/sites/default/files/documents/1868/Co-Creation-Discussion-Note-Final-External-May-31-2017.pdf>

under the first challenge above. Identifying the right MA, engaging it, and securing its support and commitment to be the MA during activity design will help minimize this risk.

Project approval requires significant paperwork, especially when the PM must approve the activity. Of the five challenges outlined above, this is the only one addressed by Decree 56. As noted in questions 1, 2, and 3, Decree 56 removes the requirement for PM approval for most projects and eliminates the project proposal step. KIs indicated that seeking PM approval on project proposals required substantial paperwork and review by multiple parties before the proposal reached the PM for approval. One key informant reported that, for one project, the implementer had to prepare eight sets of documents and convince eight ministries to agree to the proposal. Each ministry had to be consulted internally before it gave its opinion. Getting a consensus from so many parties has never been easy. With the removal of the project proposal step and the US\$3 million threshold, project approval should be more efficient.

PROJECT APPROVAL STRATEGIES

Key informants shared their lessons and recommendations to overcome the above challenges. These strategies can be grouped into two stages: pre-award and post-award. USAID/Vietnam takes the lead in laying the groundwork for project approval in pre-award activities, while IPs take primary responsibility for completing project approval under the guidance of USAID/Vietnam during post-award activities. Most importantly, seeking project approval is all about building trust and partnership with the MA.

“If the MA trusts you and wants to work with you, it will find a way to overcome everything, including the project approval.”

—COP respondent

BEST PRACTICE PRE-AWARD ACTIVITIES (USAID-LED)

Project approval should start before USAID makes an award, with pre-award activities focusing on identifying, informing, preparing, and engaging the MA during the development of the activity. Where possible, USAID/Vietnam and the MA should agree to the main parameters of the activities in an LSGA, letter of intent, or other written documents.

Where possible, USAID/Vietnam should:

- Identify the most potentially appropriate MA for the activity. This can be done as part of an institutional mapping exercise and would benefit from discussion with sectoral experts.
- Engage with leadership and technical staff from the targeted MA to seek support and understand their needs for the activity. USAID/Vietnam may want to invite a representative of the MA to participate in the procurement evaluation if desirable and feasible.
- Secure an LSGA with the MA that sets aside funding for the program and specifies key activity parameters. Where this agreement is not possible, a memorandum of understanding (MOU) or written confirmation from MA leadership would be helpful.

- Include a startup/inception phase²⁶ in the contract, where the IP mobilizes a small team to work on project approval, a work plan, and other preparatory work in close coordination with the MA. Key deliverables for this period would be completion of the PD and project approval.

These actions will identify the most suitable MA for the activity, help inform the MA of the upcoming project, and ensure the MA's engagement and commitment to host and participate in the activity, with the main parameters of the activities defined in an LSGA or written documents.

BEST PRACTICE POST-AWARD ACTIVITIES (IP-LED)

IPs should lead post-award activities on project approval in close cooperation with the MA and USAID/Vietnam. These activities aim to build partnerships between the MA, IP, and USAID/Vietnam. The IP chief of party (COP) and deputy chief of party (DCOP) should lead these efforts and build relationships with the MA while developing the PD. Some IPs have hired consultants who understand and have experience in project approval to support the process. However, consultants are no substitute for the personal involvement of the COP and DCOP. Translating the request for proposal, proposal, and contract into the PD will require negotiation and compromise. The key to doing this effectively is to understand the needs, agenda, and operating principles of the MA. The IP and USAID/Vietnam should use this knowledge to manage expectations, building common ground and lasting partnerships.

Where possible, the IP should:

- Develop the PD as soon as possible and work with the MA on fleshing it out. The PD should include the name of the IP, the project office, full-time expatriates, and a reference to the BILAT to facilitate future VAT refund requests.
- Develop a financial and procurement guide and share the document with the MA. Some MAs will ask to review the financial and procurement guide as part of its project approval process.
- Maintain a transparent flow of communications with the MA and USAID/Vietnam to ensure consistent messaging and information flow.

USAID/Vietnam should facilitate this process and participate in meetings between the IP and MA as often as possible (e.g., introducing and supporting the IP in working with the MA, providing letters of introduction and confirmation of the status of IPs as main contractors of USAID/Vietnam, supporting negotiation, etc.).

CONCLUSIONS

Decree 56 helps reduce the amount of paperwork in obtaining project approval, but deep engagement with the MA before award by USAID/Vietnam and after award together by the IP and USAID/Vietnam remains critical to project approval. Project approval starts before the award, where USAID/Vietnam plays a key role in identifying the MA and laying the ground for follow-up project approval after the award. IPs are responsible for completing project approval after the award. However, IPs need time, guidance, and support from USAID/Vietnam to work effectively with MAs during the approval process. Effective

²⁶ Several other donors use this practice, including the United Kingdom Department for International Development, the Canadian International Development Agency, and the Australian Department of Foreign Affairs and Trade.

communication and partnership development by COPs and DCOPs are key success factors for this process.

QUESTION 5: VAT REIMBURSEMENT

In what ways can USAID-funded activities increase the likelihood and/or the speed of VAT reimbursement?

FINDINGS

Securing VAT reimbursement is not easy but can be accomplished in certain circumstances.

VAT refunds have always been challenging for USAID/Vietnam activities. Only a few activities have been able to obtain VAT refunds. IPs have used diverse approaches to obtain VAT refunds, and the activities that succeeded were (1) approved ODA projects with local NGOs (VCCI, PHAD) that could use their current seals and tax codes for VAT reimbursement; (2) approved ODA projects that managed to obtain project seals and tax codes; or (3) approved ODA projects that could seek an exception to the normal rule (STAR). Most USAID/Vietnam activities have not been able to obtain VAT refunds because they were either not approved as ODA, did not know the procedures, or could not comply with the procedures because of differing interpretations of the rules by different tax authorities.²⁷

Table 2 below describes the successful approaches to VAT refund by a sample of activities, including those interviewed and previous experience of the research team.

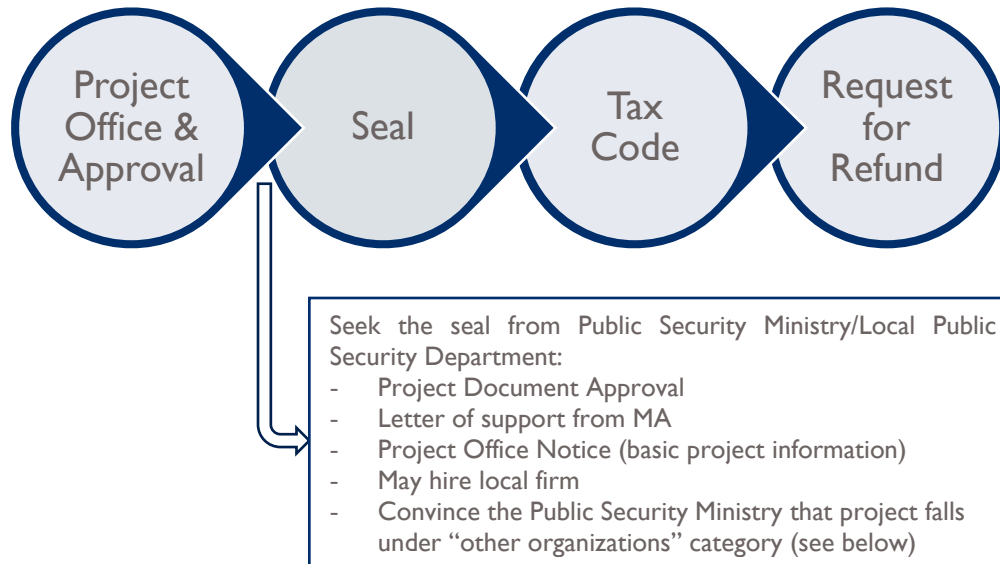
²⁷ Hanoi Tax Authority requires that project offices are both approved and given a seal to obtain tax codes according to the tax rule. Danang Tax Authority, however, advised that IPs could use the representative office tax code for VAT reimbursement. Hanoi Tax Authority has refunded VAT for several USAID activities, but Danang has not had experience with VAT refunds for USAID activities.

TABLE 2: ILLUSTRATIVE PROJECTS ABLE TO OBTAIN VAT REFUNDS

USAID Activity	Successful VAT Refund Procedures	IP Type
Provincial Competitiveness Index (PCI) implemented by VCCI	Used VCCI seal and followed normal VAT refund procedure after the project was approved.	Local NGO
Local Works for Environmental Health implemented by PHAD	Used PHAD seal and followed normal VAT refund procedure after the project was approved.	Local NGO
Governance for Inclusive Growth implemented by Chemonics	Partial refund: Applied for project seal and used the seal for VAT refund. However, the local tax office refused to refund the last request.	U.S. Company
Vietnam Forests & Deltas Program implemented by Winrock	Partial refund: Used Project/NGO seal and followed VAT refund procedure.	U.S. NGO
STAR (1, 2, and plus) implemented by DAI	Used COP signature to apply for tax code and sign all VAT refund requests. This case is an exception to the rule.	U.S. Company

Some INGOs (IPs) could obtain ODA project approval and acquire project seals and tax codes for VAT refunds. Other INGOs that did not obtain project approval and operated as non-ODA projects under Decree No. 93/2009/ND-CP on non-ODA grants could not obtain VAT refunds, as VAT refunds are only for ODA projects. The VAT refund procedure looks simple on paper but is hard to implement in practice. Figure 8 illustrates the procedure for VAT refunds for TA grants.

FIGURE 8: VAT REIMBURSEMENT PROCEDURE FOR TA GRANTS



The process for seeking VAT refunds is to secure project approval, apply for a project office seal, apply for a tax code, and file the VAT refund request using the assigned tax code and seal.²⁸ Having a project seal, which is difficult for foreign IPs, is a prerequisite for receipt of tax codes, which are in turn required to request VAT refunds. The application for a tax code requires a seal, as stipulated in Circular 95.

An INGO implementing an approved ODA project can apply for an operating license with PACCOM under VUFO and obtain a seal under [Decree 99/2016/ND-CP](#) (Decree 99) on Seal Management. After obtaining the seal, the INGO can apply for a tax code and start refunding VAT.

IPs that are U.S. companies will find it harder to obtain project seals, as there is no definition of “Project Office of a Donor”²⁹ as an organization in Vietnam. Decree 56 uses the term “Project Management Unit” to manage ODA projects, but this refers to a GVN organization under the MA. Fortunately, Decree 99 allows “other organizations legally established in Vietnam or by legal decision of Vietnamese competent authorities” to obtain seals. After project approval, some U.S. companies have been able to obtain seals using this provision with the following steps/documentation:

- Name of the IP included in the approved PD (otherwise, the IP will need to prove its relationship to the project; the PD should also mention the establishment of the project office);

²⁸ The MOF requires that ODA projects have to apply for ODA certificates for tax exemptions after project approval. However, this certificate is not a required document for VAT refund. ODA certificates are usually used to qualify for the exemption of import duties and VAT on imported goods.

²⁹ Under ODA, the Ministry of Construction issues a regulation allowing international construction companies to obtain their operating licenses in Vietnam and register their site offices, which can apply for site office seals and tax codes. However, this only applies to construction companies and investment ODA projects, not TA ODA projects.

- Project office notice³⁰ to document the existence of the project and its place of business (similar to company establishment notice);
- Letter of support from the MA confirming the existence of the project and its office;
- Parent company confirmation that the project office is established to enable the IP to implement the project in Vietnam; and
- Approved PD and written decision to this effect from the MA.

In one case, an IP hired a local law firm to complete these procedures. In other cases, the project office staff successfully worked with the Ministry of Public Securities to obtain the seals. Once the seals were issued, the IPs applied for the tax codes without any problems. In 2020, a U.S. company completed the above procedures, but the local tax authority did not accept the case and required a power of attorney of the home office to the project office and other documentation. This will be a test case to see whether an IP can pursue this path to VAT refunds. The case shows that the PD should authorize the project office to conduct all procurement and VAT refunds in Vietnam to mitigate this problem.

Decree 56 introduces a new challenge for VAT reimbursement, but it is not clear whether or how the GVN will apply this in practice. As a decree on ODA, Decree 56 does not detail VAT refund procedures. Decree 56 does, however, designate two instances where VAT refunds can be made. The first instance is when ODA is received in cash by the MA, which would follow Vietnamese public financial management to spend the ODA and obtain VAT refunds using the GVN budgetary process and tax code of the MA. The other instance is when the MA receives the ODA as in-kind goods or services, such as when USAID/Vietnam activities procure goods and services and deliver them as part of technical assistance in Vietnam. In addition to the usual documents under tax rules, Decree 56, Article 80, requires “a written request for certification of eligible recurrent expenditures” to be included in the submission. This request is to be prepared by the MA and certified by the GVN treasury. IPs are unlikely to obtain this from the MAs because MAs do not directly procure goods and services and, as such, are unable to verify the costs and invoices. A translation of this form is provided in Annex VII.

The research team was unable to obtain an affirmative answer during meetings with the GVN as to whether or how the new provision in Decree 56 would be applied. Some said that the new requirement would not apply to donor-managed TA grants, as the required form is for internal GVN procedures.³¹ Some said it would apply to donor-managed TA grants, based on the wording of the decree. The research team presented the challenges for USAID/Vietnam activities to obtain VAT refunds to the GDT. The team proposed that instead of having to obtain a project seal, IPs could use the signature of the COPs certified by USAID/Vietnam to apply for a tax code and sign all VAT refund requests. The GDT requested a written explanation, and the team provided the analysis and recommendations in writing. If accepted, VAT refunds would be significantly easier. Working with GDT and MOF on this is an opportunity for USAID/Vietnam to resolve the VAT refund challenge.

³⁰ There is no standard form. The project must create its own form to meet the requirements of the authorities.

³¹ See Annex IV – it demonstrates that this is an internal GVN document.

VAT REFUND BEST PRACTICE

Interviews with KIIIs reveal the following good practices and facts about VAT refunds:

- IPs should reference the BILAT in the PD as far as tax treatment and exemptions are concerned, and the PD should clarify that the project office is fully authorized by the parent company, USAID/Vietnam, and the MA to conduct procurements in Vietnam and complete all VAT refund procedures.
- IPs should obtain a ruling from the local tax office on the treatment of tax exemptions for ODA under the Law of Vietnam and the BILAT.
- VAT refunds for costs incurred before project approval are unlikely.
- The local tax office will send a team to check the tax documentation upon receipt of the first VAT refund request and will send a team to verify all invoices at the last request—as a result, it is necessary to keep the original invoices in Vietnam and not send them to home offices.
- Tax rules need to be fully complied with in order to qualify for refunds, i.e., the tax code, name, addresses have to be stated correctly on the invoices. The VAT refunds are based on the issuance of VAT invoices by taxpayers in Vietnam, regardless of whether the payment is made from overseas or within Vietnam.
- USAID/Vietnam and the MA need to send a letter to the local tax authority that they do not pay for VAT.

CONCLUSIONS

VAT refunds are not easy to obtain. Only a few USAID/Vietnam activities have succeeded in obtaining VAT refunds. Most activities could not obtain VAT refunds because the rules are not clear, giving rise to inconsistent interpretation and implementation at the local levels. According to the current rules on VAT refunds (Law on VAT, Law on Tax Administration, and their implementing regulations) and best practices, the process for seeking VAT refunds is to secure project approval, apply for a project office seal, apply for a tax code, and request the VAT refund. Decree 56 does not simplify the procedures and may add complications. The research team proposed using COP signatures certified by USAID/Vietnam to apply for tax codes as a solution for easier VAT refunds. Working with GDT and MOF on this is an opportunity for USAID/Vietnam to resolve this issue.

Project approval will help reduce the risk of not complying with Vietnamese tax rules for IPs. An activity is not considered ODA unless and until it is approved. Contractors on unapproved activities, which are not considered ODA in Vietnam, are liable for (1) personal income tax and work permits for international consultants/staff, (2) corporate income tax or contractor withholding tax, (3) VAT, and (4) administrative sanctions by GVN authorities.

RECOMMENDATIONS

Navigating the requirements and rules on ODA approval by the GVN is not easy. The body of this report and its annexes provide practical analysis and actions that USAID/Vietnam and IPs can take in pursuing project approval and VAT refunds. This section attempts to generalize these lessons and actions into broader recommendations.

RECOMMENDATIONS FOR USAID/VIETNAM

1. **Develop a guide to project approval for USAID and IPs.** Based on the findings of this report, USAID should provide guidelines on project approval for different activity types and institutionalize steps to engage MAs on project design and implementation. Such guides are provided in annexes X through XII for further adaptation.
2. **Identify and engage targeted MAs based on institutional mapping and consultation during activity design.** Selection of the MA should, at minimum, involve the following key criteria: (1) MA interest in hosting the activity, (2) the amount of support or benefit that the MA will receive from the activity to motivate the MA to host the activity, and (3) the jurisdiction and expertise of the MA over the activity subject matter. There may be more than one possible MA for a given activity, and selecting the right MA is important.
3. **Provide guidance and support to the IP to enable them to complete project approval and VAT refunds.** Though the IP is responsible for project approval, USAID/Vietnam should support IP efforts to work effectively with the MA in seeking project approval. From the perspective of the MA, USAID/Vietnam is the donor who funds the project, and the PD reflects the agreement between the donor and the MA. IPs are the agents of USAID/Vietnam. Regarding VAT refund status, IPs do not have the full knowledge of BILAT, and high-level discussion between GVN and USAID/Vietnam on this issue would be beneficial. USAID/Vietnam should introduce the IP to the MA and confirm its support to the IP and MA during the project approval process.
4. **Integrate project approval into IP awards and allow an inception phase for IPs to work on project approval.** Project approval responsibility should be included in RFPs and awards. USAID should guide IPs regarding this obligation. An inception phase can enable IPs to focus on and complete project approval. Deliverables during the project startup and inception phase should be reasonable, as the activity will not be able to conduct programming without project approval.³²
5. **Explore the possibility of entering into an OFA with the GVN to ease project approval.** An OFA is not an ODA treaty and does not replace BILAT. An OFA will establish a joint agreement between the GVN and USAID on key ODA priorities and objectives over a period of time.³³ USAID/Vietnam activities vary in mechanism, scope, and funding sources. Some fit neatly within the

³² The IP can still conduct programming prior to project approval, but the programming may not be recognized by the MA.

³³ Decree 56 allows donors to manage their technical assistance in Vietnam but does not prescribe how this should be done given the varied approaches of donors. Elements such as the status of project offices, roles of IPs, and GVN oversight are not included in Decree 56 for donor-managed technical assistance. Decree 56 refers to OFAs and PDs for these details.

GVN ODA rules, while others do not, even though they are official U.S. government assistance to support Vietnam's development under the BILAT. The reasons for non-recognition from the GVN often include (1) the assistance is provided to an entity that does not qualify to act as an MA or ODA recipient; (2) no qualified MA can be found; or (3) activities are not approved. It is, therefore, important to have a high-level agreement with the GVN on objectives, priorities, and conditions for USAID/Vietnam activities. This agreement would guide the development, startup, and implementation of USAID/Vietnam activities and accelerate project approval.

RECOMMENDATIONS FOR IMPLEMENTING PARTNERS

1. **Build a partnership with the MA at the leadership and operational levels in developing the PD.** Development of the PD is an opportunity for both the MA and the IP to understand the needs, motivations, and abilities of both sides in addressing the challenges that the activity seeks to address. It is important that the IP seek the support and endorsement of MA leadership, and the PD is the first step in a longer-term relationship. At the same time, the IP needs to develop a good working relationship at the operational level, as department staff will be the ones that work most directly with the IP on the PD.
2. **Be flexible and ready to accommodate sensible changes.** The IP is under contractual obligations to deliver certain outcomes based on the approved scope of work and program description in the award. The award is the agreement between USAID/Vietnam and the IP. The MA often has its own views on challenges, needs, and possible solutions, and, as such, the MA often requests changes during the development of the PD. In some cases, the IP and USAID/Vietnam will need to accommodate sensible changes to help achieve the overall goals and objectives. In other cases, when the MA requires major changes to the project components or objectives, the IP may need to modify its award with USAID/Vietnam. Therefore, it is important to keep USAID/Vietnam abreast of the progress of project approval, as it has contractual bearing. The chance of such major changes is minimized when USAID/Vietnam has the agreement of the MA in writing during the design phase.
3. **The COP and DCOP need to be personally involved in project approval.** Working on project approval should be a high priority of the COP and DCOP. The MA will ask important questions regarding activities, counterpart roles in activity implementation, and use of resources. They want answers to these questions from the leaders of the activity. The COP and DCOP, therefore, need to work with the MA to manage their expectations and provide correct answers to these questions.

STUDY UTILIZATION

This study's findings, conclusions, and recommendations will contribute to making ongoing and future project approval for USAID/Vietnam activities more effective and efficient. The report helps IPs understand the procedures and requirements for seeking approval and VAT refunds, as well as the risks and consequences of not seeking project approval. At the validation event, USAID Learns gathered a variety of USAID agreement and contracting officer's representatives and IPs to share high-level implications of the new approval process under Decree 56 and best practices to increase the likelihood and speed of approval for projects and VAT reimbursement. Participants then jointly developed recommendations. See Annex VIII for detailed information on key considerations following the validation event.

The feedback provided during the validation event will shape several utilization products to support application of the study findings. While this report provides a detailed rationale and advice on how to obtain project approval and VAT refunds, the utilization products will distill this information in practical, easy-to-digest formats.

- The brief position paper on VAT refunds in Annex IX can be used by USAID/Vietnam to discuss with the MOF a workable solution to VAT refunds for USAID/Vietnam activities. The MOF is in the process of finalizing related circulars, so USAID/Vietnam can use this opportunity to engage with the GDT to mitigate VAT refund challenges. It may be useful to engage a local tax consultant to support this process.
- The “How to Seek Project Approval” guides in Annex X-XII provide a simple overview of the key steps and best practices to increase the likelihood and speed of project approval.
- A brief narrated and animated video will make the main findings of the report widely accessible.

USAID Learns will facilitate a utilization event that disseminates these products widely among USAID/Vietnam, IPs, and potential GVN partners to support the operationalization of recommendations and improve relationships toward more effective implementation.

ANNEX I: FULL LISTING OF REFERENCES AND REPORTS UTILIZED

GVN. ODA Decree 16/2016/ND-CP, dated March 16, 2016, on Management and Use of Official Development Assistance and Concessional Loans granted by Foreign Sponsors.

GVN. ODA Decree 132/2018/ND-CP, dated October 1, 2018, amendment to Decree 16/2016/ND-CP.

GVN. ODA Decree 56/2020/ND-CP, dated May 25, 2020, on Management and Use of Official Development Assistance (ODA) and Concessional Loans granted by Foreign Donors.

GVN. Non-ODA Decree 80/2020/ND-CP, dated July 8, 2020, on Management and Use of Grant Aid not in the form of Official Development Assistance of Foreign Agencies, Organizations, and Individuals for Vietnam.

MOF. Circular 95/2016/TT-BTC, dated June 28, 2020, on Guidelines for Tax Registration.

MOF. Circular 156/2013/TT-BTC, dated November 06, 2013, on Tax Refund for ODA Projects.

GVN. Decree 99/2016/ND-CP, dated July 1, 2016, on Management and Use of Seals.

NA. Value-Added Tax Law 13/2008/QH12, dated June 3, 2008.

NA. Law on Treaties 108/2016/QH13, dated April 9, 2016.

MOFA. Agreement 83/2005/LPQT, dated August 4, 2005, on Technical and Economic Cooperation between the U.S. and Vietnam.

ANNEX II: FULL LISTING OF PERSONS INTERVIEWED

The full listing of persons interviewed was submitted separately in line with data de-identification policies. Please contact Carla Trippe, ctrippe@socialimpact.com, to request the data.

ANNEX III: DATA COLLECTION TOOLS

IMPLEMENTING PARTNER KII GUIDE

- Can you share your experiences in obtaining project approval?
- What are the main challenges you have encountered in obtaining project approval and to what extent have you been able to resolve them?
- What strategies have you used to increase the likelihood or the speed of project approval?
- What actions could USAID take prior to the award of the contract to ease project approval down the line?
- The new ODA Decree 56 (<https://tinyurl.com/y47l8hvo>) includes new provisions where the head of a managing agency can approve technical assistance projects and most technical assistance projects can skip the stage of developing project proposals. What do you think will be the implications of these changes on seeking project approval?
- The new Decree continues to allow the donor to manage technical assistance grants in whole or in part. In your view, how can this mode of technical assistance be facilitated in practice (possibly with a formal, legal recognition of the project office similar to the field office in ODA construction projects)?
 - Does the rule need to be clarified? (How?)
- Can you share your experiences in obtaining VAT refund so far?
- ODA Decree 56 includes new provisions that require submission of written request for recurrent expenditure as attached for VAT refund (form 14 at <https://tinyurl.com/y34otcjl>). To what extent do you think this would be feasible?
- How do you think the current rules can be clarified to assist in project approval and VAT refund?

DONOR KII GUIDE

- How do you implement your projects in Vietnam? E.g. by engaging Prime Contractors, providing funding to local organizations or International development multilateral?
- Can you share your experiences in obtaining project approval?
- What are the main challenges you have encountered and to what extent have you been able to resolve them?
- What strategies have you used to increase the likelihood or the speed of project approval?
- What actions could USAID take prior to the contract awarding procedure to ease project approval down the line?
- How do you think the new Decree on ODA will affect project approval?
- Can you share your experiences in obtaining VAT refund so far?
- Do you need to obtain project approval and VAT refunds for any of your projects and what is your experience so far? What are the major opportunities and challenges?
- How do you think the new Decree on ODA will affect VAT refund?
- Do you think the donors should cooperate to clarify the gaps in the new Decree with possibly some documents providing guidance or Circulars?

MOF KII GUIDE

- Can you share your experiences in obtaining project approval with USAID project? Is it the same as or different from the procedures with other donors?
- What are the main challenges you have observed in the project approval process?
- What are some strategies that USAID can use to avoid these challenges?
- What strategies have you seen used to increase the likelihood or the speed of project approval?
- What do you think of the activities that USAID can do prior to the award of the contract to ease project approval down the line?
- What do you think will be the impact of the new provisions in the new ODA Decree which empower the head of your Ministry/Province to approve technical grants and eliminate for step for developing project proposals for these technical assistance projects?
- The new Decree continues to allow the donor to manage technical assistance grant in whole or in part. In your view, how can this mode of technical assistance be facilitated possibly with a formal, legal recognition of the project office similar to the field office in ODA construction projects? How can the rule be clarified to facilitate this?
- Do you think the new requirement for VAT refunds which includes the submission of written request for recurrent expenditure as attached would be feasible for VAT refund? Would you be willing to sign and certify them when you did not undertake the procurement or aware of how the invoices were issued and they are not in your name?
- How do you think the current rules can be clarified to assist in project approval and VAT refund?
- We notice that Decree 56 allows the donor to manage their technical assistance grants, the financial oversight for technical assistance follows the financial management procedures for public expenditures. Can you clarify how Donor-managed ODA projects will be managed financially consistent with the rules of the donors and the rules of the GVN?
- Do you think the circular will clarify some of the gaps in the decree e.g. can a donor managed project open an office in Vietnam to run the project and how do they register under Vietnamese law and get a tax ID and can pay personal income tax for the local staff as well as get VAT refund?
- In the past MOF would issue ODA certificate to projects which then use them in getting VAT refund. Under new decree this has been removed but now the counterparts will need to sign off on cost verification forms that is only used for GVN-managed ODA projects. How would this be done for donor-managed projects where the GVN counterpart does not spend the money and hence would be impossible to sign off on the form? Can you clarify how this can be resolved?
- Do you think some of these issues on VAT refunds can be clarified in the draft circulars that the MOF/GDT are working on?
- When these circulars will be issued and how best USAID can participate in the rule making process?

ANNEX IV: PROJECT DOCUMENT TEMPLATE COMPARISON

The following table compares the templates for technical assistance Project Documents under Decrees 56 and 16. Changes are denoted in red and italics. The template under Decree 56 is simpler and more relevant for technical assistance grants. Decree 56 no longer requires that a description of activities conducted prior to the approval be included in the Project Document. It removes the section on domestic financial management and moves it to Section IX.

PROJECT DOCUMENT TEMPLATE FOR PROJECT-BASED TECHNICAL ASSISTANCE

SECTION	DECREE NO. 16/2016/ND-CP	
I.	<p>BASIC INFORMATION ABOUT THE PROJECT</p> <ol style="list-style-type: none"> 1. Name of project. 2. Foreign donor and co-donor. 3. Names and addresses of the governing body and project owner. 4. Intended <i>commencement time</i>. 5. Project location. 	<p>BASIC INFORMATION ABOUT THE PROJECT</p> <ol style="list-style-type: none"> 1. Name of project (<i>in Vietnamese and English</i>). 2. Managing agency, <i>proposing agency</i> and project owner (tentative): Name, address and <i>other relevant information</i>. 3. Intended foreign donor and co-donor (if any). 4. <i>Expected duration</i>. 5. Project location.

SECTION	DECREE NO. 16/2016/ND-CP	
II.	<p>CONTEXT AND NECESSITY OF THE PROJECT</p> <p>1. Suitability with and contributions of the project to national socio-economic development strategies and plans, sectoral and local development plans.</p> <p>2. Relation with other programs and projects serving assistance in solving relevant issues of the program/project.</p> <p>3. Necessity of the project (specify the issues to be solved within the framework of the project).</p> <p><i>4. The need for ODA or concessional loan.</i></p>	<p>CONTEXT AND NECESSITY OF THE PROJECT</p> <p>1. Suitability with and contributions of the project to national socio-economic development strategies and plans, sectoral and local development master plans.</p> <p>2. Relation with other programs and projects which contribute to solving relevant issues of the program/project.</p> <p>3. Necessity of the project (specify the issues to be solved within the framework of the project).</p> <p><i>4. The need for technical assistance funded by ODA grants.</i></p>
III.	<p>BASIS FOR SUGGESTION OF FOREIGN DONOR</p> <p>Specify the suitability of the project with the foreign donor’s orientation and priorities; conditions for providing ODA or concessional loan, and Vietnam’s ability to meet such conditions.</p>	<p>BASIS FOR SUGGESTION OF FOREIGN DONOR</p> <p>Specify the suitability of the project with the foreign donor’s orientation and priorities; foreign donors’ conditions for providing ODA grants, and Vietnam’s ability to meet such conditions.</p>
IV.	<p>TARGETS OF THE PROJECT</p> <p>Overall and specific targets of the project.</p>	<p>OBJECTIVES OF THE PROJECT</p> <p>Overall and specific targets of the project.</p>

SECTION	DECREE NO. 16/2016/ND-CP	
V.	<p>PROJECT DESCRIPTION</p> <p>Components, activities, and results of technical assistance; assessment of practicality of technical assistance.</p>	<p>PROJECT DESCRIPTION</p> <p>Components, activities, and results of technical assistance; assessment of practicality of technical assistance.</p>
VI.	<p>BENEFICIARIES</p> <p>Direct and indirect beneficiaries of the project.</p>	<p>BENEFICIARIES</p> <p>Direct and indirect beneficiaries of the project.</p>
VII.	<p>TARGETS OF THE PROJECT EXECUTION, SUPERVISION, AND ASSESSMENT PLAN</p> <p>1. Plan for carrying out prior activities (if any).</p> <p>2. Overall plan and detailed plan for the first year.</p> <p>3. Project supervision and assessment plan.</p>	<p>PROJECT IMPLEMENTATION, MONITORING AND EVALUATION PLAN</p> <p>1. Plan for carrying out prior activities (if any).</p> <p>2. Master plan and detailed work plan for the first year.</p> <p>3. Project monitoring and evaluation plan.</p>
VIII.	<p>ORGANIZATION OF PROJECT MANAGEMENT</p> <p>Method for project management; mechanism for cooperation between the participants in the project execution and project management; capacity for project execution and project management of the project owner.</p>	<p>ARRANGEMENTS FOR PROJECT MANAGEMENT AND IMPLEMENTATION</p> <p>It is necessary to specify arrangements for project management and implementation; coordination mechanism among the stakeholders in the project <i>preparation</i>, implementation and management; the project owner’s capacity for project implementation and management.</p>

SECTION	DECREE NO. 16/2016/ND-CP	
IX.	<p>TOTAL CAPITAL</p> <p>1. ODA and concessional loan (in original currency and USD).</p> <p>2. Reciprocal capital (in VND and USD). Specify the sources of reciprocal capital (central, local government budget), value of contribution in kind. Providers of reciprocal capital, participants, and beneficiaries of the project (if any).</p>	<p>TOTAL CAPITAL</p> <p><i>Detailed breakdown by each component, item and budget line - capital or recurrent expenditures, including:</i></p> <p>1. ODA grants (in original currency and USD equivalent).</p> <p>2. Counterpart fund (in VND and USD equivalent). Specify the sources of counterpart fund (central, local government budget), value of contribution in kind. Responsibilities to provide counterpart fund of different budget levels, implementers and beneficiaries of the project (if applicable).</p> <p><i>3. Financial mechanism.</i></p>
X.	<p>CONDITIONS FOR USE OF ODA OR CONCESSIONAL LOAN IMPOSED BY THE FOREIGN DONOR</p> <p>Explanation for the contents specified in Clause 4 Article 6 of this Decree (in case of conditional ODA or concessional loan).</p>	<p>CONDITIONS FOR USE OF ODA OR CONCESSIONAL LOAN IMPOSED BY THE FOREIGN DONOR</p> <p>Explanation on binding conditions for use of ODA grants imposed by the foreign donor (if applicable).</p>

SECTION	DECREE NO. 16/2016/ND-CP	
XI.	<p data-bbox="380 281 868 386">DOMESTIC FINANCIAL MECHANISM APPLIED TO THE PROJECT</p> <p data-bbox="380 426 868 531">1. Full disbursement, full on-lending, partial on-lending; terms and conditions for on-lending; repayment plan;</p> <p data-bbox="380 571 868 718">2. Method for provision of aid or disbursement via state budget; method for on-lending from a commercial bank or state budget;</p> <p data-bbox="380 751 868 1045">3. Fulfillment of conditions for on-lending of the project owner according to the Law on Public debt management (for on-lent program/project); the basis for calculation of revenue, expenditures, feasibility of the project under the conditions of the foreign loan; repayment loan, collateral plan.</p>	<p data-bbox="894 281 1031 310"><Removed></p>
XII.	<p data-bbox="380 1085 659 1115">PRIOR ACTIVITIES</p> <p data-bbox="380 1155 868 1297">Prior activities shall comply with Article 19 of this Decree on the basis of prior activities in the decision on investment guidelines./.</p>	<p data-bbox="894 1085 1031 1115"><Removed></p>

PROJECT DOCUMENT TEMPLATE FOR NON-PROJECT-BASED TECHNICAL ASSISTANCE

DECREE NO. 16/2016/ND-CP	DECREE NO. 56/2020/ND-CP
<p>I. NAME OF THE NON-PROJECT GRANT AID</p> <p>II. FOREIGN DONOR AND CO-DONOR</p> <p>III. NAMES AND ADDRESSES OF THE GOVERNING BODY AND PROPOSING UNIT</p> <p>IV. DURATION OF THE NON-PROJECT GRANT AID</p> <p>V. DEMANDS OF THE NON-PROJECT GRANT AID</p> <p>1. Necessity and the need for aid of the non-project grant aid.</p> <p>2. The basis for suggestion of the foreign donor</p> <p>VI. TARGETS AND CONTENTS OF THE NON-PROJECT GRANT AID</p> <p>Specify the overall and specific targets of the non-project grant aid</p> <p>VII. ORGANIZATION OF NON-PROJECT GRANT AID MANAGEMENT</p> <p>Specify the mechanism for cooperation between the participants in the non-project grant aid execution and management; capacity for non-project grant aid execution and management of the project owner.</p>	<p>I. BASIC INFORMATION ABOUT THE PROJECT</p> <p>1. Name of project <i>(in Vietnamese and English)</i>.</p> <p>2. Managing agency, proposing agency and <i>project owner</i> (tentative): Name, address and other relevant information.</p> <p>3. Intended foreign donor and co-donor (if any).</p> <p>4. Expected duration.</p> <p><i>5. Project location.</i></p> <p>II. DEMANDS FOR THE NON-PROJECT ASSISTANCE</p> <p>1. Specify the necessity and need for non-project assistance.</p> <p>2. The rationale for proposing the foreign donor.</p> <p>III. OBJECTIVES AND CONTENTS OF NON-PROJECT ASSISTANCE</p> <p>Specify the overall and specific objectives of the non-project assistance.</p> <p>IV. ARRANGEMENTS FOR NON-PROJECT ASSISTANCE MANAGEMENT AND IMPLEMENTATION</p> <p>Specify the mechanism for cooperation among the stakeholders in the non-project assistance implementation and management; the project owner's capacity for non-project assistance implementation and management.</p>

VIII. TOTAL CAPITAL OF THE NON-PROJECT GRANT AID

1. ODA, concessional loan (in original currency, VND and USD).
2. Reciprocal capital and sources thereof (in VND and converted into USD).

IX. CONDITIONS FOR USE OF ODA GRANT IMPOSED BY THE FOREIGN DONOR

Explanation for the contents specified in *Clause 4 Article 6* of this Decree (in case of conditional ODA grant).

X. DOMESTIC FINANCIAL MECHANISM APPLIED TO THE NON-PROJECT GRANT AID

1. Full disbursement, full on-lending, partial on-lending; terms and conditions for on-lending; repayment plan;
2. Method for provision of aid or disbursement via state budget; method for on-lending from a commercial bank or state budget;
3. Fulfillment of conditions for on-lending prescribed by the Law on Public debt management.

V. TOTAL CAPITAL OF NON-PROJECT ASSISTANCE

1. ODA and concessional loan (in original currency and in VND and USD equivalents).
2. Counterpart fund and sources thereof (in VND and in USD equivalent).

3. Financial mechanism.

VI. CONDITIONS FOR USE OF ODA GRANT IMPOSED BY THE FOREIGN DONOR

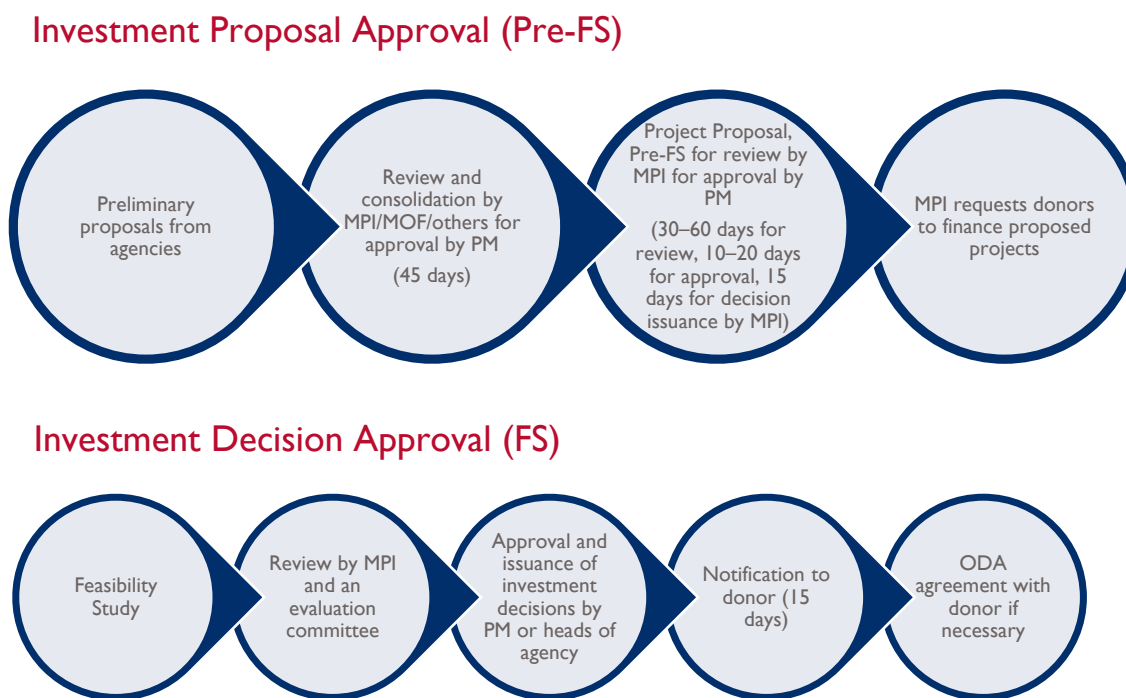
Explanation on binding conditions for use of ODA grants imposed by the foreign donor (if applicable).

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ANNEX V: INVESTMENT GRANT APPROVAL PROCEDURES

Following the Law on Public Investment, Decree 56 prescribes in detail the procedures for starting and approving an ODA investment grant. There are two stages of approval of an investment project: Pre-feasibility Study (Pre-FS) and Feasibility Study (FS). Depending on the scale and specific nature of a certain project, the Prime Minister (PM) or the head of the managing agency (MA) shall approve these projects. The PM will approve Category A and B projects and sensitive projects as listed under the Law on Investment. Heads of MAs shall approve Category C projects. USAID currently has one investment grant in defense, which is the project on Dioxin Remediation in Bien Hoa airport. This project requires PM approval. Figure 9 presents the approval process and procedures for investment grants under Decree 56.

FIGURE 9: INVESTMENT GRANT APPROVAL PROCEDURE



The first stage of approval is investment proposal approval. The purpose of this is to validate that it is a good idea to invest in the project based on a Pre-FS. This is used to screen projects and drop projects that do not make sense without having to conduct a FS, which is more time consuming and expensive (the FS consists of five steps that can be very lengthy). The center of the investment proposal approval stage is the development of a Pre-FS and approval of it by the PM for an investment grant. The final result of the first stage is notification that the GVN would like to finance the project.

The second stage of approval is the investment decision approval. This is to present and approve the detailed parameters of the project based on the FS, which is more detailed than the Pre-FS. The FS consists of five steps and results in the financing agreement with the donor.

ANNEX VI: INFORMAL USAID ACTIVITY CLASSIFICATION

The table below classifies current USAID/Vietnam activities under their governing decrees. This represents the best knowledge and assessment of the research team based on the information provided. It does not replace the official opinions of the organizations in charge of ODA and non-ODA grants in Vietnam.

INFORMAL USAID ACTIVITY CLASSIFICATION			
USAID OFFICE	ACTIVITY NAME	PARTNER	POTENTIAL GOVERNING DECREE
Economic Growth and Governance Office	Enhancing Worker Rights	SOLIDARITY CENTER	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Economic Growth and Governance Office	Provincial Competitiveness Index (II)	VCCI	Decree 56 (ODA)
Economic Growth and Governance Office	Strengthening Provincial Capacity (SPC)	CHEMONICS	Decree 56 (ODA)
Economic Growth and Governance Office	Trade Facilitation Program	NATHAN ASSOCIATES INC.	Decree 56 (ODA)
Economic Growth and Governance Office	Linkages for Small and Medium Enterprises	IESC	Decree 56 (ODA)
Economic Growth and Governance Office	Vietnam Leads	INDIANA UNIVERSITY	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Economic Growth and Governance Office	Governance For Inclusive Growth (GIG)	CHEMONICS	Project closed – N/A
Economic Growth and Governance Office	Race to The Top Alliance	STICHTING IDH SUSTAINABLE TRADE INITIATIVE	Project closed – N/A
Environment and Social Development Office	Access For All	DISABILITY RESEARCH AND CAPACITY DEVELOPMENT	Decree 56 (ODA)
Environment and Social Development Office	Advancing Medical Care and Rehabilitation Education	HANDICAP INTERNATIONAL INC. A/K/A HANDICAP INTERNATIONAL	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Building University-Industry Learning and Development Through Innovation and Technology	ORSPA	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	CCIHP-Inclusion	CENTER FOR CREATIVE INITIATIVES IN HEALTH AND POPULATION	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.

INFORMAL USAID ACTIVITY CLASSIFICATION

USAID OFFICE	ACTIVITY NAME	PARTNER	POTENTIAL GOVERNING DECREE
Environment and Social Development Office	CCRD-Inclusion	CENTER FOR COMMUNITY HEALTH RESEARCH AND DEVELOPMENT	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	CSIP-Inclusion	CENTRE FOR SOCIAL INITIATIVES PROMOTION	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Disabilities Integration of Services and Therapies Network For Capacity And Treatment	VIETHEALTH	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Disability Rights Enforcement, Coordination, And Therapies	VNAH	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Hold My Hand	PHAD	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	I-Thrive	CENTER FOR CREATIVE INITIATIVES IN HEALTH AND POPULATION	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Identification of Human Remains	INTERNATIONAL COMMISSION ON MISSING PERSONS	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Moving without Limits	INTERNATIONAL CENTER, THE	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Raising Voices, Creating Opportunities	ACTION TO THE COMMUNITY DEVELOPMENT INSTITUTE	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	First Interim Measures for Dioxin Remediation at Bien Hoa Airbase Area	TETRA TECH, INC.	Decree 56 (ODA)
Environment and Social Development Office	Green Annamites	ECODIT LLC	Decree 56 (ODA)
Environment and Social Development Office	Saving Species	TETRA TECH DPK	Decree 56 (ODA)
Environment and Social Development Office	Sustainable Forest Management	DAI	Decree 56 (ODA)
Environment and Social Development Office	Vietnam Urban Energy Security Activity	DAI	Decree 56 (ODA)
Environment and Social Development Office	Architect–Engineer Services for Dioxin Remediation at Bien Hoa Airbase Area	TRIGON ASSOCIATES LLC	Decree 56 (ODA)

INFORMAL USAID ACTIVITY CLASSIFICATION

USAID OFFICE	ACTIVITY NAME	PARTNER	POTENTIAL GOVERNING DECREE
Environment and Social Development Office	Vietnam Forests and Deltas Project	WINROCK INTERNATIONAL	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Environment and Social Development Office	Vietnam Low Emission Energy Program	DELOITTE	Decree 56 (ODA)
Environment and Social Development Office	Foundation for Social Change (iSEE)	ISEE	Project closed – N/A
Office of Health	Collective Action for Water Conservation	CECR	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	Healthy Markets	PATH	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	Infectious Disease Detection and Surveillance (IDDS)	ICF	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	Local Solutions for Plastic Pollution	GREENHUB	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	SI System Strengthening Activity	GIMASYS CO LTD	Decree 56 (ODA)
Office of Health	Sustainable HIV Response to Technical Assistance	FHI 360	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	USAID Clean Air Green Cities	CLEC	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	USAID Enhanced Community HIV Link - Northern (CCRD-COHED follow-on)	CENTER FOR COMMUNITY HEALTH RESEARCH AND DEVELOPMENT	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	USAID Enhanced Community HIV Link – Southern (LIFE) follow-on	CENTRE FOR PROMOTION OF QUALITY OF LIFE	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	USAID Support to End Tuberculosis	FHI 360	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.
Office of Health	USAID Sustainable Financing of HIV Activity	ABT ASSOCIATES INC.	Decree 56 (ODA)
Office of Health	USAID/Vietnam Local Works for Environmental Health	PHAD	Either Decree 80 (Non-ODA) or Decree 56 (ODA) can apply here. Approval of PD required in both cases. No tax exemption under Decree 80.

INFORMAL USAID ACTIVITY CLASSIFICATION

USAID OFFICE	ACTIVITY NAME	PARTNER	POTENTIAL GOVERNING DECREE
Program Development Office	Fulbright University Vietnam	FULBRIGHT UNIVERSITY VIETNAM	Decree 80 (Non-ODA)
Program Development Office	IMPACT MED Alliance	BRIGHAM AND WOMEN'S HOSPITAL, INC., THE	Decree 80 (Non-ODA)
Program Development Office	USAID Learns	SOCIAL IMPACT, INC.	Representative Office (All contracts signed by HQ)

ANNEX VII: RECURRENT EXPENDITURE CERTIFICATE

Managing Agency:.....
No.:.....

SOCIAL REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

REQUEST FORMS FOR CERTIFICATION OF LEGITIMATE COSTS COVERED BY RECURRENT EXPENDITURE

For the attention of: State Treasury

Project name:
.....

Project owner/Project Management board:..... State budget user code:.....

Project owner's account No.: Domestic capital.....at:.....

Foreign capital..... at:.....

Pursuant to Contract No.:..... dated.... Annex Contract No.:..... dated.....

Pursuant to Acceptance Certificate No.:...dated... (enclose Acceptance Certificate of completed volume)

Accumulated value of accepted work item volume requested for payment:..... VND.

Advance balance of work item requested for payment:..... VND.

Proposed
amount:

Advances	Payments
----------	----------

As in the following chart (cross out if not used)

Sourced from: (Administrative fund from the State budget; National target program, ODA, Concessional Loan):.....

In capital plan:..... Year.....

Unit: VND

Content	Approved estimates/ Winning value/ Contract price	Accumulated value of capital paid from commencement day to the end of the last period (including advance payment)		Proposed advance payment amount in this fiscal period (including Recovered advances)	
		Private capital	State capital	Private capital	State capital
Work, work item or contracts requested for payment or advance payment					
Total					

(Note: Currency confirmation required in accordance with the contract...)

The total amount of advances, payments requested in figures:

In words:.....

(Specify: Concessional Loan...../ non-refundable ODA)

Therein:

- Payment for recovered advances (in figures):.....

+ Domestic Capital

+ Foreign Capital

- VAT

- Warranty money transferred (in figures)

- Beneficiary paid amount (in figures)

+ Domestic capital

+ Foreign capital

Beneficiary name.....

Beneficiary account No..... at

Chief accountant
(Signature, full name)

Date:
Project owner
(Signature, full name, title and stamp)

THE STATE TREASURY'S SECTION

Dossiers reception date

The State Treasury approved Advances Payments as follows:

(Cross out if not used)

Unit: VND/USD

Content	Total	Domestic capital	Foreign capital
Approved capital amount			
- Section..., Subsection....			
- Section..., Subsection....			
- Section..., Subsection....			
- Section..., Subsection....			
Therein:			
- Recovered advances amount:			
<i>Previous fiscal years</i>			
<i>This fiscal year</i>			
- VAT			
- Beneficiary paid amount:			
.....			
<i>In words:</i>			
Declined amount:.....			
<i>Reasons:.....</i>			

Note:

**Payable audit
Specialist/Teller**
(Signature, full name)

Head of Department
(Signature, full name)

**General Director of State
Treasury**
*(Signature, full name, title and
stamp)*

ANNEX VIII: VALIDATION WORKSHOP REFLECTIONS

DATA VALIDATION EVENT FOR GVN PROJECT APPROVAL PROCESS STUDY: SUMMARY BRIEF

Overview

This brief summarizes outputs and feedback from a data validation workshop held on August 26, 2020. The event had the following objectives related to the GVN Approval Process Study requested by USAID and implemented by USAID Learns.

1. Present findings on how to increase the likelihood and speed of GVN project approval and VAT reimbursement under the new Decree 56;
2. Validate findings with interviewed stakeholders and discuss implications of the new approval process; and
3. Develop recommendations based on best practices with stakeholders.

A total of 37 participants from USAID and implementing partners (IPs) met on Zoom for the presentation and group work session.

Presentation of Findings

The presentation began with an analysis of changes to the government's project approval process under Decree 56 and their implications for USAID and IPs. The presentation went on to cover best practices identified by KIIs that would increase the likelihood and speed of approval for projects and VAT reimbursement.

At the end of the presentation, participants reflected on the question, “*What stands out to you as the most important thing you can do to support project approval?*” Half of the responses pointed to building trust and strong relationships with GVN counterparts. The second area of consensus was to engage early with the right MA.

Group Work: How can USAID and IPs work together to apply best practices?

Organizers divided the participants into five groups, each with representatives from USAID and IPs. The groups collaborated to answer the question above, identifying several broad themes:

Measures that USAID can take to support project approval and VAT reimbursement:

- Maintain/continue high-level meetings with GVN counterparts.
- Engage the right MA as early as possible and introduce them to IPs during the approval process.
- Provide guidelines to IPs and MAs concerning these processes, ensuring everyone has the same understanding of roles and responsibilities.
- Support IPs throughout these approval processes with both counterpart engagement and the procedures themselves.
- Raise USAID's profile with government agencies at both central and provincial levels, which will make it easier for USAID projects to be approved.

Measures that IPs can take to increase the likelihood and speed of GVN approval:

- Establish strong relationships with both MA and GVN counterparts at both the leadership and working levels.
- Create an IP support network to exchange lessons learned, share best practices, and jointly problem solve on common challenges.
- Develop a good understanding of the law, the processes, and the key players.
- Consider external expert support to navigate the processes.
- Plan ahead, ensuring the necessary coordination points are in place.

Overall, these measures call for:

- regular communication among donors, IPs, and counterparts in a more open and collaborative manner (in addition to keeping USAID in the loop throughout the process, IPs could invite USAID to participate in meetings with GVN counterparts and MAs where appropriate);
- clear roles and responsibilities, with USAID acting as key support for both IPs and MAs; and
- a good understanding of GVN government priorities, perspectives, and processes by IPs and USAID.

Input for Practical Guide in Development

Apart from the final study report, the research team is also developing a practical guide to help IPs navigate the approval processes. The team asked participants what would be useful to include in the guide. The responses were:

- flowcharts or decision trees to facilitate understanding of the approval processes in terms of steps and documents required;
- procedure for setting up the project office as a part of the formal procedure for project management under the new decree;
- the project management process, including tentative timeframes, steps, and related legislation; and
- best practices.

Participant Feedback

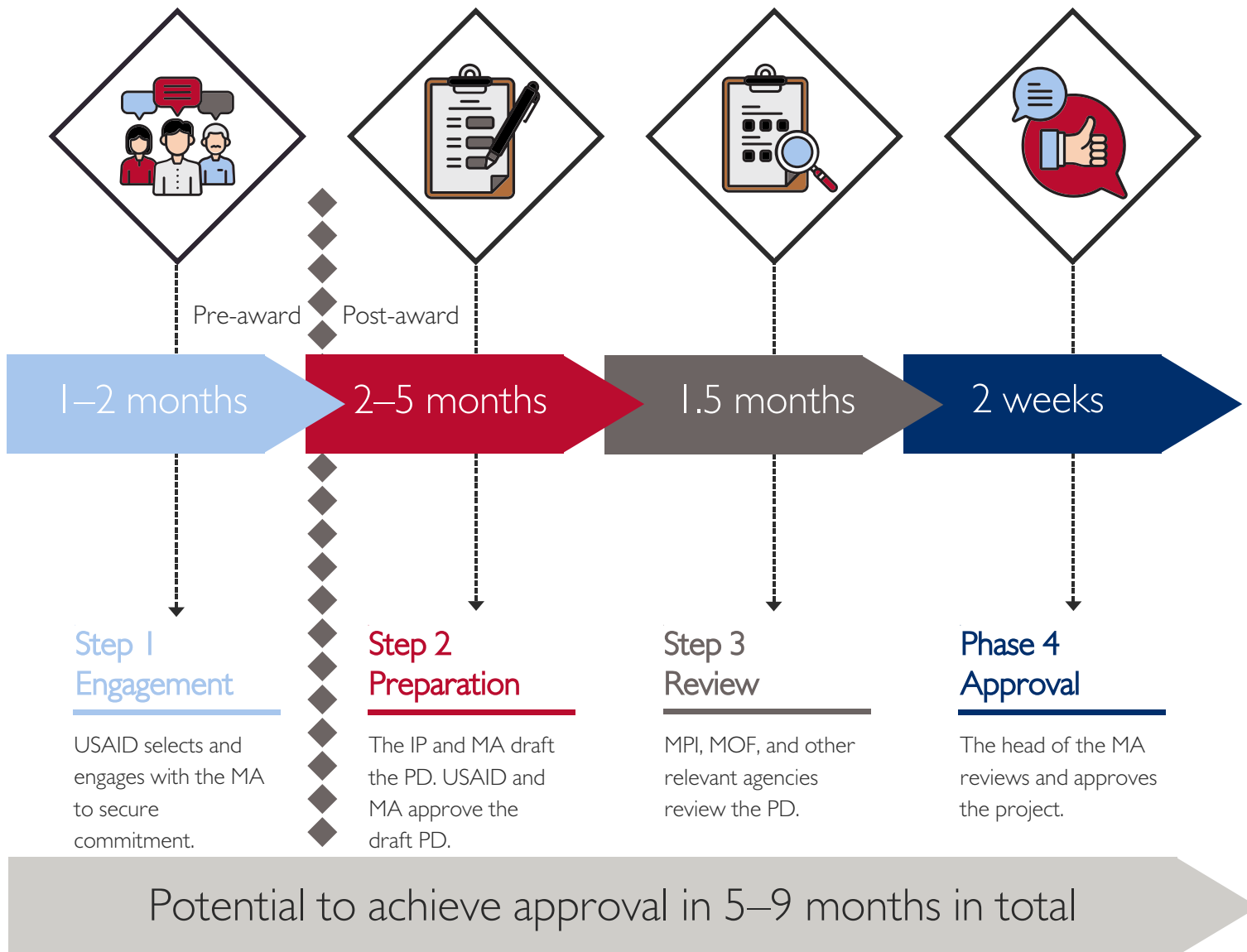
For this event, 23 out of 37 workshop participants completed the survey, and 100 percent of the respondents chose “strongly agree” or “agree” with the statement, “I benefited from being involved in this session.” In addition, 83 percent of the respondents chose “strongly agree” or “agree” with the statement, “It would have been difficult for any individual organization to accomplish on its own what was accomplished today.”

ANNEX X: HOW TO SEEK PROJECT APPROVAL AND VAT REFUND: STEPS AND BEST PRACTICES

See insert on following pages.

PROJECT APPROVAL IN VIETNAM

The Government of Vietnam (GVN) issued Decree 56 on Official Development Assistance in May 2020, introducing important changes that make project approval more efficient. These steps apply to most USAID/Vietnam activities because they fall under the technical assistance grant category. Ongoing activities that have not yet been approved need to follow the procedures under Decree 56. For more details on activity categories and governing decrees, see the full GVN Project Approval Process report.



ACRONYMS

BILAT	Agreement for Economic and Technical Cooperation between the United States and Vietnam
COP	Chief of Party
DCOP	Deputy Chief of Party
GVN	Government of Vietnam
IP	Implementing Partner
LSGA	Limited Scope Grant Agreement
MA	Managing Agency
MOF	Ministry of Finance
MOU	Memorandum of Understanding
MPI	Ministry of Planning and Investment
PD	Project Document
POC	Point of Contact

Step 1



Engagement

USAID selects and engages with the MA. The MA usually assigns a department within the organization to work with the IP on the PD.



Best Practices: USAID

- During the design, USAID should conduct institutional mapping and consult with possible agencies to decide which one should be the MA for the Activity.
- USAID should secure commitment from the MA to host the Activity through an MOU, LSGA, or other written form.
- USAID should include the approval process in the inception phase of the award to allow the IP sufficient time to obtain project approval.

Step 2



Preparation

The IP and MA draft the PD. Other departments within the MA may review the PD. Then the PD is submitted to the head of the MA and USAID for approval.



Best Practices: IPs

- The IP should establish its presence in Vietnam through a representative Project Office. Mobilize a small team (COP, DCOP, accountant, and translator) to lead project approval and startup.
- The IP and USAID should engage the MA at the leadership and operational levels to seek their commitment and collaboration in developing the PD. Set a deadline for completion of the draft PD with the head of the MA.
- The IP should prepare the PD following the template provided in Decree 56. Include the name of the IP, expatriates working on the project, and a reference to the BILAT on tax exemptions. Describe the project office, its status, and its ability to obtain a project seal.
- The IP should manage expectations and build trust with the MA throughout the process. If certain requests cannot be accommodated, explain why and build consensus to overcome these. Involve USAID when dealing with tough issues, and keep USAID informed throughout the process.

Step 3



Review

The head of the MA sends the draft PD to MPI, MOF, and other relevant agencies for review. As per Decree 56, MPI, MOF, and other agencies shall respond within 10 days. The head of the MA will complete the review process within 20 days from receiving comments from MPI, MOF, and other agencies. Based on the comments, the MA and IP revise the PD and submit to the head of MA and USAID/Vietnam for approval.



Best Practices: IPs

- The IP should be prepared to share its Finance and Procurement Policy on how USAID resources will be managed in a compliant and transparent way. Some MAs need this before they approve the PD.
- The IP and USAID should work with the MA POC and relevant division in pushing the PD through the system as optimally as possible.

Step 4



Approval

The head of the MA decides whether to approve the project. Decree 56 requires this decision to be made within two weeks after the completion of the review process. The MA will need to send a full set of the PD and decision to approve the project to MPI, MOF, and other relevant agencies. MPI will then notify the donor of the decision and the request for support.

HOW TO SEEK VAT REFUND STATUS IN VIETNAM

December 16, 2020

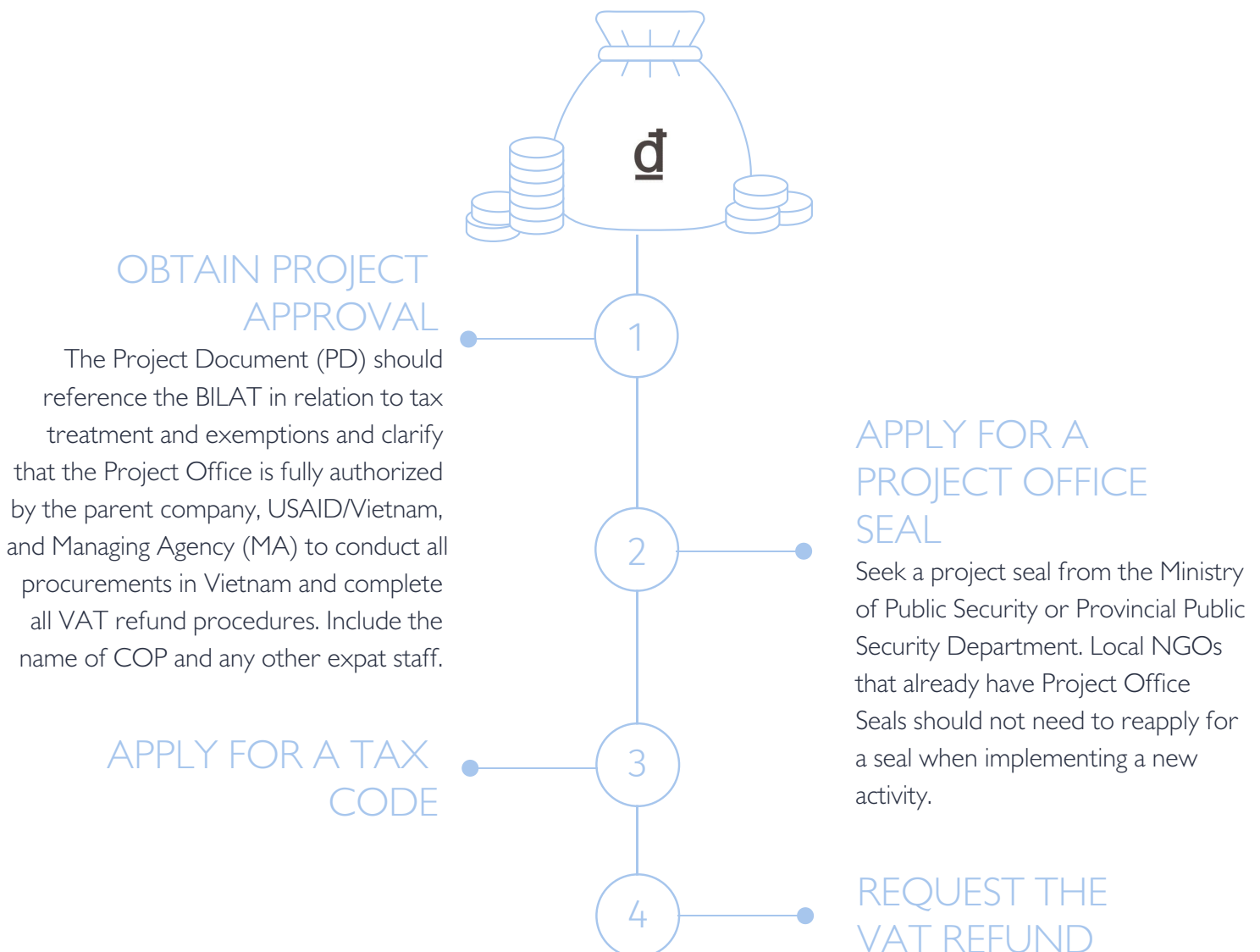
Value-added tax (VAT) refunds have always been challenging for USAID/Vietnam activities but can be accomplished in certain circumstances. Activities that succeeded were approved Official Development Assistance (ODA) projects that:

- (1) were implemented by local NGOs that could use their current seals and tax codes for VAT reimbursement;
- (2) managed to obtain project seals and tax codes; or
- (3) were able to seek an exception to the rule by using the signature of the Chief of Party instead of the seal.

Most USAID/Vietnam activities have typically failed to obtain VAT refunds because they were either not approved as ODA, did not know the procedures, or could not comply with the procedures due to different interpretations by tax authorities of the rules. For more details, view the full GVN Project Approval Process Report.

OBTAINING VAT REFUND

Once project approval is received, the IP can follow this process to seek VAT refund status:





A NOTE ON PROJECT OFFICE SEALS

INGOs implementing an approved ODA project can apply for an operating license with the People's Aid Coordinating Committee under the Vietnam Union of Friendship Organizations and obtain a seal under [Decree 99/2016/ND-CP](#) (Decree 99) on Seal Management. IPs that are U.S. companies will find it harder to obtain project seals, as there is no definition of "Project Office of a Donor" as an organization in Vietnam. Fortunately, Decree 99 allows "other organizations legally established in Vietnam or by legal decision of Vietnamese competent authorities" to obtain seals. After project approval, some U.S. companies have been able to obtain seals from the Ministry of Public Securities using this provision with the following documentation:



APPROVED PD WITH WRITTEN DECISION FROM THE MA

The PD must have the name of the IP; otherwise, the IP will need to prove its relationship to the project. The PD should also mention the establishment of the Project Office.



PROJECT OFFICE NOTICE

Document the existence of the project and its place of business. This is similar to a company establishment notice. There is no standard form.



LETTER OF SUPPORT FROM THE MA

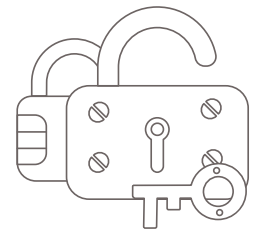
The letter should confirm the existence of the project and its office.



PARENT COMPANY CONFIRMATION

This serves to document that the Project Office is established to enable the IP to implement the project in Vietnam.

TIPS AND BEST PRACTICES



- Hire a capable accountant that knows the VAT rules and follows all the rules on VAT refunds.
- IPs should obtain a ruling from the local tax office on the treatment of tax exemptions for ODA under the Law of Vietnam and the BILAT and guidance on VAT refund procedures.
- Do not ship original VAT invoices to the home offices, as the Tax Authority will audit all the VAT invoices for which VAT has been refunded.
- Be ready to show the tax authority the accounting and bookkeeping practices of the Project Office, as they will examine this upon the first request for VAT refunds.
- Tax rules need to be fully complied with in order to qualify for refunds. The tax code, name, and addresses have to be stated correctly on the invoices. The VAT refunds are based on the issuance of VAT invoices by taxpayers in Vietnam, regardless of whether the payment is made from overseas or within Vietnam.

ANNEX XI: TIPS ON GVN PROJECT APPROVAL DURING DESIGN, SOLICITATION, AND UPON AWARD

See insert on following pages.

TIPS ON GOVERNMENT OF VIETNAM PROJECT APPROVAL

December 16, 2020

This toolkit provides three guidance notes designed to help the United States Agency for International Development (USAID) improve the speed and success of Government of Vietnam (GVN) project approval relating to Official Development Assistance (ODA).

1 How to Support Project Approval during **Design**



2 How to Support Project Approval during **Solicitation and Contracting**



3 How to Support Project Approval after **Award**



Various USAID offices play important roles throughout the Program Cycle to steward the project approval process in partnership with the GVN. This toolkit aligns the process with Decree 56 on ODA (May 2020) and shows how to develop strong relationships with the GVN Managing Agency (MA) along the way. This will create the foundation for implementation and partnerships that support Vietnam's Journey to Self-Reliance.

This is a compendium guidance note to a more detailed report: GVN Project Approval Process Study 2020.

Which types of activities require GVN project approval?

Decree 56 classifies ODA into two groups by their nature and uses.

1. **Investment:** Includes grants for investment, concessional loans, and technical assistance in preparation of investment.
2. **Technical Assistance (TA):** Includes assistance from activities based in and out of Vietnam.

Apart from projects on Dioxin Remediation of Bien Hoa and Da Nang airports, most USAID/Vietnam activities fall under the TA grant category. Decree 56 defines two distinct types of TA:

Project-based TA is defined in Article 3.10 as "projects that support research, policy, institutions, technical and professional capacity by providing local and international consultants, training, lessons, study missions, workshops, equipment, and demonstration models." These are activities designed and implemented by USAID/Vietnam.

Non-project-based TA is defined in Article 3.16 as "ODA activities that are not associated with a particular project and is provided in separate activities in the form of provision of cash, goods, and consultants on a specific activity such as workshops, training, study, research." These are activities conducted under a regional project or out of Washington, D.C.

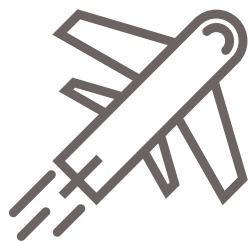
The approval procedures for these two types are similar under Decree 56, but the template for the Project Document (PD) of non-project-based TA is simpler. Because USAID/Vietnam's TA activities fall under the former category, this guidance note focuses on project approval procedures for project-based TA. See full report, Annex V for an overview of the approval procedures for investment grants and Annex VI for a PD template for project-based TA and non-project-based TA.

HOW TO SUPPORT PROJECT APPROVAL DURING DESIGN

This guidance note shares how United States Agency for International Development (USAID) Design Teams can support project approval during the design process. These best practices are grounded in the Government of Vietnam (GVN) Decree 56 on Official Development Assistance (ODA) (May 2020) and USAID's Automated Directives System (ADS) 201 (October 2020). It may be revised to reflect USAID/Vietnam's Mission Order on Design once available.

PHASE 1

ACTIVITY DESIGN PLANNING



Activity Design Plan (ADP) Preparation and Review (2-3 weeks)



FORM THE DESIGN TEAM

When defining roles and responsibilities, identify the team member best placed to champion the project approval process with the GVN. This will likely be a senior National staff with strong understanding of the subject matter and institutional environment in the sector.



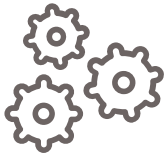
DRAFT THE ADP

Plan an institution and stakeholder mapping to identify different interest groups and who could be potential Managing Agencies (MAs). This will identify several MAs to target during the design process.



CONSIDER CO-CREATION

USAID/Vietnam may work with MAs and stakeholders to co-create designs to ensure commitment and agreement from the MAs, their technical departments, and relevant stakeholders on key parameters of the activity. This would build broad support for the design and minimize the chance of significant changes after the award. For guidance on a wide range of approaches, see the [Co-Creation Discussion Note](#).



ACTIVITY DESIGN

PHASE 2



ANALYSIS

Conduct an **institution and stakeholder mapping** to identify different interest groups and potential MAs.

- Identify if the activity will work primarily with the GVN, private sector, and/or civil society.
- Identify the potential beneficiaries and supporters of the activity.
- Identify several MAs to target during the activity design process.

For more guidance and templates, take a look at the [Collaboration Mapping toolkit](#).



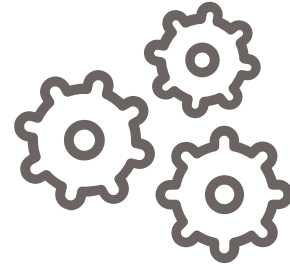
Keep this in mind for the institution and stakeholder mapping. To qualify as an MA, the agency has to be a central or provincial government agency, headquarters of mass organizations, or NGOs or associations tasked with some state administration functions and provided with state budget to conduct these functions.

Potential MA Selection Criteria

1. MA interest in hosting the activity
2. The amount of support or benefit that the MA will receive from the activity
3. The jurisdiction or expertise of the MA over the activity subject matter

activity. USAID identifies the best fitting MA based on the criteria and should try to secure commitment from the MA to host the activity through a Memorandum of Understanding (MOU), Limited Scope Grant Agreement (LSGA), or other written form. A signed document may be an effective tool to solidify commitment, though not required. These are usually signed by the head of the MA or authorized Deputy. USAID/Vietnam will need to work with the international relation and technical departments on preparing these documents.

The commitment should include program funding and key parameters such as activity objectives, priorities, and components. Where possible, these agreements should also include a section on the mode of delivery via a contractor who will manage the financial resources of USAID/Vietnam in accordance with United States Government (USG) rules. At this stage, it is important to identify the department within the MA that will work with USAID/Vietnam on co-creating the activity and work on the project approval after the award. This department is called Project Owner in the ODA Decree.



Activity Design Preparation and Review (3-6 months)



ENGAGEMENT

Engage with leadership and technical staff from the targeted MA to **seek support and inputs on the activity design**.

Stakeholder consultations or co-creation events with the MA during design are critical to **establish joint priorities and shared understanding**.

The design team initiates the first engagement step by consulting with possible agencies to decide which one should be the best fitting MA for the

2. HOW TO SUPPORT PROJECT APPROVAL DURING SOLICITATION AND CONTRACTING

This guidance note shares how the United States Agency for International Development (USAID) Office of Acquisition and Assistance (OAA) can support project approval during the solicitation and contracting process. These best practices help USAID align with the Government of Vietnam (GVN) Decree 56 on Official Development Assistance (ODA) (May 2020).

PROCUREMENT

- Identify the Managing Agency (MA) in the solicitation document and ask bidders how they plan on engaging as part of the technical proposal. Explain what roles/responsibilities USAID will hold in this process.
- To continue securing commitment from the MA, USAID may want to invite a representative of the MA to participate in the procurement evaluation if appropriate and feasible. If there is a prohibition for any reason, consider allowing the MA to have a non-voting role where they are allowed to make comments and ask clarifying questions about proposals.
- Agree with the MA on how to respond to meeting requests and requests for information from potential bidders. Consider requesting all questions in advance and conducting a pre-bid conference with the MA and potential bidders. Individual meetings may be perceived as creating advantages for some. Agree with the MA on measures to deal with procurement sensitivities.
- Given the importance of senior Implementing Partner (IP) engagement, consider mandating mobilization of key personnel within a short period of time after the award to work on project approval.
- Include a clause in solicitations stating, "In order to fully implement the activity, the Recipient is required to comply with Decree No. 56/2020 ND-CP and obtain project approval from the GVN. A report, which outlines the implications of the new GVN Decree No. 56/2020/ND-CP on the Management and Use of Official Development Assistance and Concessional Loans from Foreign Donors on USAID programming will be shared with the Recipient upon award. Project approval is expected to take approximately six (06) months, as such the Recipient is requested to initiate the process immediately following award. While seeking project approval, in close consultation with the AOR/COR, the Recipient shall consider staffing and related consequence impacting implementation to ensure an efficient use of resources."

CONTRACTING/AWARD

- The responsibility of IPs to secure project approval should be included in awards. Include a startup/inception phase in the award, where the IP mobilizes a small team to work on project approval, a work plan, and other preparatory work in close coordination with the MA and Project Owner (PO). Key deliverables for this period would be completion of the Project Document (PD) and project approval. Deliverables during the project startup and inception phase should be reasonable, as the activity will not be able to conduct much programming work without project approval.
- Given the importance of senior IP engagement in this process, it would be ideal to confirm Chief of Party/ Deputy Chief of Party availability.
- Provide guidance on a preliminary phase that builds out the administrative infrastructure for successful operations in full implementation phase. In addition to mobilization of key personnel and achievement of project approval, this could also include development of internal reporting processes and policies, so when programming starts, this early pause will be less detrimental to the overall workplan.

3. HOW TO SUPPORT PROJECT APPROVAL AFTER **AWARD**

This guidance note shares how the United States Agency for International Development (USAID) and Implementing Partners (IPs) can increase the likelihood and efficiency of project approval once an activity has been awarded. These best practices align with the Government of Vietnam (GVN) Decree 56 on Official Development Assistance (ODA) (May 2020).



USAID RESPONSIBILITIES

The actions taken by USAID in toolkits 1 and 2 will identify the most suitable Managing Agency (MA) for the activity, help inform the MA of the upcoming activity, and ensure the MA's engagement and commitment to host and participate in the activity, with the main parameters of the activities defined in a Limited Scope Grant Agreement (LSGA) or other written document.

Introduce the IP to the MA. USAID should provide guidance and support to the IP to enable project approval and to build a lasting partnership with the MA and its Project Owner (PO). Though the IP is responsible for project approval, USAID needs to support IP efforts to work effectively with the MA and PO in seeking approval.

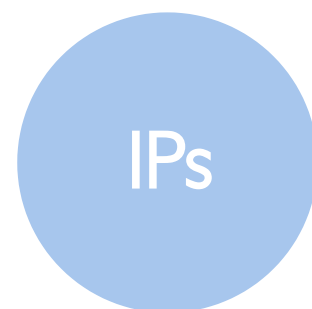
From the perspective of the MA, USAID is the donor funding the project, and the PD reflects the agreement between the donor and the MA.

The most common challenge in seeking project approval is the time it takes to build consensus with the MA on the project objectives, components, beneficiaries, and activities in the Project Document (PD). Developing the PD requires translating the requirements of contracts and requests for proposal into a PD that can be approved by the MA.

IP RESPONSIBILITIES

Project approval is not only important to comply with GVN regulation but also to minimize the risk of tax liability on corporate income tax for the IP and expatriate personal income tax. These taxes are exempted for approved ODA activities. IPs should lead post-award activities on project approval in close cooperation with USAID. The IP chief of party (COP) and deputy chief of party (DCOP) should lead these efforts and build relationships with the MA while developing the PD.

Translating the request for proposal, proposal, and contract into the PD will require negotiation and compromise. The key to doing this effectively is to understand the needs, agenda, and operating principles of the MA. The IP and USAID should use this knowledge to manage expectations, building common ground, and lasting partnerships. The IP should maintain a transparent flow of communications with the MA and USAID to ensure consistent messaging and information flow. Though project approval is a GVN process, USAID endorsement is needed at key decision points.



Hiring consultants with prior experience and connections may be useful but is no substitute for IP leadership.



PD PREPARATION

(3-5 months)

The IP and MA draft the PD. Other departments within the MA may review the PD. Then the PD is submitted to the head of the MA and USAID for approval.



The IP should establish its presence in Vietnam through a representative office. Mobilize a small team (COP, DCOP, accountant, and translator) to lead project approval and startup.



The IP should engage the MA at the leadership and operational levels to seek their commitment and collaboration in developing and completing the PD. Set a deadline for completion of the draft PD with the head of the MA.



The IP should prepare the PD following the template provided in Decree 56. Include the name of the IP, expatriates working on the project, and a reference to the Agreement for Economic and Technical Cooperation between the United States and Vietnam (BILAT) on tax exemptions. Describe the project office, its status, and the ability to obtain a project seal.



Manage expectations and build trust with the MA throughout the process. If certain requests cannot be accommodated, explain why and build consensus to overcome these. Involve USAID when dealing with tough issues.

PD REVIEW

(1-5 months)



BEST PRACTICE

★ The IP should be prepared to share its Finance and Procurement Policy on how USAID resources will be managed in a compliant and transparent way. Some MAs need this before they approve the PD.

★ The IP should work with the MA, PO, and relevant divisions in pushing the PD through the system as optimally as possible.

The head of the MA sends the draft PD to the Ministry of Planning and Investment (MPI), Ministry of Finance (MOF), and other relevant agencies for review. As per Decree 56, MPI, MOF, and relevant agencies shall respond within 10 days. The head of the MA will complete the review process within 20 days from receiving comments from MPI, MOF, and other agencies. Based on the comments, the MA and IP revise the PD and submit to the head of MA and USAID/Vietnam for approval.



PD APPROVAL

(2 weeks)

The head of the MA decides whether to approve the project. Decree 56 requires this decision to be made within two weeks after the completion of the review process. The MA will need to send a full set of the PD and decision to approve the project to MPI, MOF, and other relevant agencies. MPI will then notify the donor of the decision and the request for support.

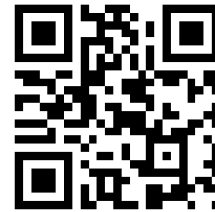
ANNEX XII: FREQUENTLY ASKED QUESTIONS: GVN PROJECT APPROVAL AND VAT REFUND PROCESS

See insert on following pages.

FREQUENTLY ASKED QUESTIONS: GVN PROJECT APPROVAL AND VAT REFUND PROCESS

December 16, 2020

PROJECT APPROVAL



Scan the QR
code to ask
additional
questions!

1

What are the benefits of project approval?

Project approval serves not only to comply with the Official Development Assistance (ODA) rule of Vietnam. It eliminates significant tax liabilities and provides benefits including (i) entitlement to tax exemptions such as personal income tax for expatriates, corporate income tax, or contractor withholding tax; (ii) no need for a work permit for expatriates; (iii) perception as legitimate operations, which help build partnership and programs with Vietnamese counterparts; and (iv) no risk of administrative fines for unlawful (unapproved) operations in Vietnam.

2

What is most important in seeking project approval?

Developing a good working relationship and partnership with the counterpart that hosts the Activity – also known as the Managing Agency (MA) – is the key to speedy and successful project approval. This will require (i) understanding the MA, its incentives, challenges, and personalities; (ii) a constructive and developmental approach to overcoming problems and differences; and (iii) transparency, mutual trust, and respect.

3

How should I start the project approval process and connect with the MA?

After the award, you should begin thinking about project approval. The first step is to contact your Agreement or Contract Officer's Representative at USAID, obtain his/her advice, and arrange a meeting between USAID, you, and the MA. In the meantime, you should research the MA, its mandates, leadership, and key challenges.

4

What should I ask during the introductory meeting with the MA?

USAID will introduce you to the MA and lead the meeting. You and USAID may want to (i) request a technical person and department that will work with you on the Project Document (PD); (ii) set a timeline for the development of the PD; (iii) clarify work procedures between MA, USAID, and you; (iv) establish what you plan to achieve in the Activity; and (v) agree on USAID's way of implementing the activity and any constraints you want the MA to know. You should be prepared to introduce the DCOP who should work closely with the person assigned by the MA on the PD. You may want to consult with USAID on what USAID will say and what information will be communicated by you.

5

How should I develop the PD?

The PD is the core document needed for project approval. It represents the agreement between the donor (USAID) and the Government of Vietnam (GVN) on a project. A template for the PD is available in the GVN Project Approval Process Report and Decree 56. You should work with the department and person assigned by the MA to develop this. Often, they will need to consult with other departments and agencies in developing the PD.

6

What if the MA wants something that is not included in the contract with USAID?

You should work with USAID to address any requests that were not envisaged during activity design and award. Implementation is often different from the design, and sensible requests should be accepted. If for some reason, you cannot do a certain thing, this should be communicated clearly and constructively to the MA.



Should I consult and meet with agencies and parties that are not part of the MA?

You should, but you should do it transparently and constructively in an effort to enhance the effectiveness and efficiency of the activity. You may want to have the MA point person joining you where appropriate. You should not commit anything unless and until USAID and the MA agree.



Who should take the lead in working on the PD with the MA?

The COP is the one that is responsible, but the DCOP (a Vietnamese staff member) should be the technical lead in working with the point person at the MA on developing the PD. The DCOP should be the senior relationship manager with the Vietnamese counterparts of the activity. He or she should build a good working relationship with the MA.

VALUE-ADDED TAX (VAT) REFUND



Where and how should I start the VAT refund process?

You should study the process during project approval. The PD needs to include the language that (i) the US-Vietnam Bilateral Agreement for Technical and Economic Assistance (BILAT) will be followed; (ii) the project is eligible for VAT refunds per the Law on VAT of Vietnam; and (iii) the MA and other agencies will assist the project in obtaining VAT refunds.



What should I do after the project has been approved?

You should contact your local tax office and send them a request for guidance with all the approved documents, including (i) approved PD; (ii) BILAT; (iii) request for treatment of taxes including VAT, personal income tax, contractor withholding tax, etc. In the meantime, begin the seal-making process with the local Public Security Department if the MA is provincial or with the Ministry of Public Security if the MA is a central agency.



How do I register a tax code?

You should fill out the application form 01-ĐK-TCT for a tax code and follow the normal procedures. Once you have a tax code, all invoices must include the tax code, your full name (Project Office name), and address.



What should I do after I obtain a tax code?

You should fill out the first request for a VAT refund. The tax office will send a team to review everything before they start refunding the VAT. The COP and DCOP need to meet with the tax team and reiterate your effort to comply with all the tax rules, no interest in hiding any tax, and no tolerance for corruption. You may explain the nature of the project, who will benefit from it, and that any refunded VAT will go toward programs in Vietnam instead of back to USAID.



What should I do if the local tax office asks for a paper that is not required by law?

You should see if the requirement is reasonable or not. If it is not and is not required by law, you may want to check if it is legal for the local tax office to require that. You may want to check the rulings in similar cases and see if the same document is needed. If not, you can check with the General Department of Taxation at the MOF which will provide an answer to your written request.



What happens to VAT prior to the issuance of the tax code?

VAT incurred prior to the issuance of the tax code is very hard to claim and usually not refundable.

ANNEX XIII: STUDY STATEMENT OF WORK

41.07. GVN Approval Process—Lessons Learned & Recommendations

Background

USAID/Vietnam Activities have been seeking Government of Vietnam (GVN) approvals with various degrees of success, in some cases resulting in many months of implementation delays, as well as increased financial risks associated with VAT reimbursements and potential liability on personal income tax and contractor's withholding tax. Depending on government counterparts, degree of political engagement, visibility, technical areas of implementation and perhaps other factors, the approval process has remained unpredictable and lacking in a shared understanding of effective practices. A new decree was issued on May 25, 2020, which modifies official requirements and procedures to obtain government approval and decentralizes decision-making authority to the line ministry and provincial level.

Study Purpose

In light of this context, USAID/Vietnam wishes to conduct a study with the following objectives:

- Conduct an **analysis of the new Official Development Assistance (ODA) decree** identifying key changes and their context within a succession of past government decrees;
- Develop a clear and detailed outline of the **procedural implications** for USAID-funded Activities seeking future government approval processes (including during the transition period);
- Compile practical recommendations for effectively and efficiently seeking government approval from recent **lessons learned**, which remain relevant under the new decree.

If identified within the above scope/LoE:

- Compile practical recommendations for effectively and efficiently securing VAT reimbursement following GVN approval.

RESEARCH QUESTIONS

The study will be designed to answer the following questions:

1. **HISTORICAL CONTEXT:** What have been the key trends in the succession of GVN ODA Decrees from 2016, 2018 and 2020?
2. **CHANGES IN THE 2020 DECREE:** In what ways does the 2020 GVN ODA Decree change the processes and requirements for project approval (relative to the previous decree)?
 - a. What are the likely implications of the 2020 Decree on USAID programming?
3. **PROCEDURAL REQUIREMENTS:** What are the procedural requirements for USAID-funded Activities to seek GVN approval under the 2020 Decree?
 - a. What types of USAID-funded Activities are governed by the ODA Decree? Does this represent a change from the previous Decree?
 - b. For projects that have already started the approval process, what are the procedures?

4. **LESSONS LEARNED:** In what ways can USAID-funded Activities increase the likelihood and/or the speed of approval?
5. (Optional) **VAT REIMBURSEMENT:** In what ways can USAID-funded Activities increase the likelihood and/or the speed of VAT reimbursement?

METHODS

Evaluation questions will be answered through two primary methodological approaches:

Document Review

- Legal analysis of new GVN Decree, comparing to previous decrees related to ODA project approvals
- Review of project approval documents and other supporting documents
- Any other relevant background documents

Key Informant Interviews (KIIs)

- KIIs with selected USAID A/CORs
- KIIs with selected IPs
- KIIs with selected government representatives
- KIIs with donor representatives, e.g., EU, CIDA

Key informants will be selected in coordination with USAID based on the following factors: type of awards and complexity of technical areas, such as multiple partners, level of GVN engagement, design process (with/without co-creation/consultations with local stakeholders), etc. The target number of KIIs will be confirmed in consultation with USAID at the start of the assignment (Inbrief in mid/late June) based on a variety of factors including some of the following factors.

DELIVERABLES & TIMELINE

This study will be conducted in two phases with distinct timelines to allow designated team members to work concurrently and independently as needed. This approach will make the results of the first phase (Decree Analysis) available to USAID at an earlier stage (July), while the second phase (Lessons Learned) will build on findings from the first phase and conduct interviews with a wider variety of informants.

Research Question	Phase I	Phase II
Historical Context	X	
Changes in the 2020 Decree	X	X
Procedural Requirements	X	X
Lessons Learned		X
VAT Reimbursement		X

PHASE I: DECREE ANALYSIS

Deliverable	Audience	Purpose	Tentative Timeframe
ODA Decree Translation to English	USAID	<ul style="list-style-type: none"> Resource document for USAID and IPs 	Early June
Kickoff Meeting	USAID PDO	<ul style="list-style-type: none"> Clarify research questions Discuss methods and sampling to inform research design Agree on communication protocol Confirm expected deliverables and timeline 	Mid-June
Inbrief Presentation	USAID FO and PDO	<ul style="list-style-type: none"> Present Phase I and Phase II research design to keep PDO and FO informed and provide feedback 	Mid-June
Inbrief Presentation	MPI	<ul style="list-style-type: none"> Develop buy-in with MPI to foster use of study results and recommendations 	Mid/late June
Out-Brief Presentation	USAID FO and PDO	<ul style="list-style-type: none"> Present decree analysis in easy-to-understand slide deck FO and PDO provide guidance to inform Decree Analysis drafting 	Early July
Draft Decree Analysis	USAID and MPI	<ul style="list-style-type: none"> USAID and MPI provide comments to guide analysis finalization 	Late July
Final Decree Analysis	USAID and MPI	<ul style="list-style-type: none"> Resource document for USAID, MPI, and IPs 	Mid-August

PHASE II: LESSONS LEARNED AND RECOMMENDATIONS

Deliverable	Audience	Purpose	Tentative Timeframe
Validation Event	USAID, MPI, and IPs	<ul style="list-style-type: none"> Ensure analysis & recommendations are validated by actors with experience navigating GVN systems and achieved results Inform user-driven report drafting 	Late August
Overall Draft Report	USAID and MPI	<ul style="list-style-type: none"> USAID and MPI provide comments to guide report finalization 	Mid-September
Out-Brief and Utilization Event	USAID FO and PDO	<ul style="list-style-type: none"> Present findings and recommendations Develop action plan for operationalizing recommendations FO and PDO provide guidance on report finalization 	Late September

PHASE II: LESSONS LEARNED AND RECOMMENDATIONS

Deliverable	Audience	Purpose	Tentative Timeframe
Overall Final Report	USAID and MPI	<ul style="list-style-type: none"> • Resource document for USAID, MPI, and IPs, including <ul style="list-style-type: none"> ○ Decree analysis ○ English translation of the new decree • Provide utilization products for wider sharing such as: <ul style="list-style-type: none"> ○ “What you should know about the new decree” ○ “What you should know when seeking project approval” 	Early October

REQUIRED QUALIFICATIONS

Team Leader & GVN ODA Approval Expert

- Demonstrated familiarity with the regulations of the GVN in general is required;
- Demonstrated familiarity with GVN project approval of donor-funded Technical Assistance (non-refundable) projects in particular is highly desirable;
- Familiarity with current draft ODA decree is desired;
- Experience coordinating initiatives across multiple GVN ministries and achieving sustainable results through the coordination between various ministries;
- Experience designing qualitative research for international donors or implementors is required;
- Experience writing research or evaluation reports for international donors;
- Understanding of USAID procurement and reporting rules and regulations desired;
- Very strong analytical skills and English-writing skills;
- Fluency in English and Vietnamese and in-depth knowledge of the operating environment in Vietnam is required.

Legal Expert

- An associate or bachelor’s degree in law is preferred;
- Familiarity with the regulations of the GVN in general is required;
- Demonstrated familiarity with GVN project approval of donor-funded Technical Assistance (non-refundable) projects in particular is desirable;
- Familiarity with current draft ODA decree is desired;
- Experience coordinating initiatives across multiple GVN ministries and achieving sustainable results through the coordination between various ministries;
- Fluency in Vietnamese and in-depth knowledge of the operating environment in Vietnam is required.

United States Agency for International Development
Hanoi, Vietnam