The World Bank Group
Integrity Vice Presidency

Democratic Republic of Congo

Emergency Social Action Program

REDACTED REPORT

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Executive Summary

This Report provides the findings of an administrative inquiry (the investigation) by the World Bank Group's Integrity Vice Presidency (INT) into allegations of corruption, collusion, and other irregularities in the procurement and execution associated with the Emergency Social Action Program (ESAP or the Project) in the Democratic Republic of Congo (DRC).

INT's investigation found evidence indicating that a project official improperly demanded money from two contractors as a condition of payment for their work under their respective contracts with the Project. The contractors were forced to pay for the "rental" of a manufacturing machine in order to get paid under their contracts. The official claimed that the payments were for the rental of a Project-purchased manufacturing machine, but the Project never actually bought that machine and, thus, the paying companies never rented or used it.

INT was unable to substantiate the allegations of collusion between two winning bidders for construction contracts, or of misappropriation by the official. However, INT found several instances of procurement procedure violations, weak financial controls and poor project governance.

Background

The Emergency Social Action Program (ESAP or the Project) became effective in mid 2005. The objectives of the Project are to improve access of the poor to social and economic services and to enhance management of development resources at the community level. The Project consists of four parts, namely, Infrastructure, Capacity Building, Education and Project Coordination, Management and Outreach.

The Project is partially funded by over US$50 million International Development Association (IDA) Grant. The Democratic Republic of Congo (DRC or the Borrower) contributed additional funding to the Project. The Project Agreement specifies that procurement under the Project was required to be carried out in accordance with the World Bank's (the Bank's) May 2004 version of the *Guidelines: Procurement under IBRD Loans and IDA Credits* (the *Guidelines*).

Allegations and Methodology

The Bank's Integrity Vice Presidency (INT) received complaints from confidential sources regarding procurement and financial management irregularities within the Project. The complaints involved allegations that: (*i*) a project official misappropriated ESAP funds and diverted these to a senior politician and to the official's personal use; and (*ii*) Project officials demanded kickbacks from contractors as a precondition for payment.

INT conducted an investigative mission to the DRC in which it collected documentary evidence and interviewed the subjects of the allegations, Bank staff, Project officials, and other witnesses. During the mission, which initially focused on allegations of misappropriation of project funds and kickback solicitations, INT investigators also received the following additional allegations: (*i*) payment of kickbacks, required from contractors, under a false manufacturing machine purchase scheme; (*ii*) misappropriation of Project funds on separate occasions; and (*iii*) use of fraudulent invoices for operating expenses. While in the course of investigating the above allegations, INT investigators also found evidence of: (*i*) several instances when procurement procedures were violated; (*ii*) weak financial controls; and (*iii*) several issues related to poor Project governance.

INT also conducted a forensic audit of the ESAP. The audit sought to gather evidence related to the allegations of corruption, collusion, misappropriation of Project funds, and improper procurement and financial management processes and internal controls related to the management of the ESAP.

Findings

1. INT's investigation found evidence indicating that a project official improperly demanded money from two contractors.

Evidence indicates that a project official improperly demanded money from two contractors as a condition of payment for their work under their respective contracts with the Project, under the guise of rental payments for the use of a Project-owned manufacturing machine that the Project never actually purchased and that was never actually rented or used by the two contractors.

One of the Project contractors (Company A) as well as another Project contractor (Company B), told INT investigators that the project official forced their companies to pay for the "rental" of a Project-owned manufacturing machine as a condition for being paid under their companies' Project contracts. However, the manufacturing machine was never purchased, nor was it rented or used by the Project contractors.

Company B claimed that the company was asked to make payments for the brick press machine on four separate occasions. Company B made only two payments of over US$2,000 each. However, Company B never received the manufacturing machine, which obligated the company to make its own equipment.

The project handled the machine payments from Company A somewhat differently by simply deducting 30 percent of each payment made to Company A for costs attributed to the manufacturing machine. The project initially claimed that it was going to buy a manufacturing machine, but later informed Company A that the process was too complicated, so the manufacturing machine was never purchased. However, none of this money was ever returned to Company A.

The project official told INT investigators that the project decided to collect money from the contractors (approximately US$10,000 to US$15,000 per company) to purchase a manufacturing machine, but ultimately decided not to purchase the manufacturing machine because of concerns that it would require maintenance and generate other technical problems. The official indicated that the project used the money to defray project costs, which the official admitted was probably not the right thing to do.

In follow-up correspondence with INT investigators, the project official provided documentation showing that the two firms paid approximately US$15,000 in four separate payments. The project did not return the funds to the respective companies, but rather used the funds to defray part of its operating costs.

2. INT's investigation found evidence indicating irregularities pervading the procurement and implementation of the contracts in Town A and Town B.

Evidence indicates that the project violated a number of provisions in the *Guidelines* in connection with these construction projects, although the evidence does not establish that those failures amounted to fraud or corruption.

a. Evidence indicates that the project violated paragraph 3.4 of the *Guidelines* by inviting specific individual companies to submit bids.

The project violated paragraph 3.4 of the *Guidelines* when it invited selected individual companies to submit bids. Paragraph 3.4 of the *Guidelines* provides that advertising for National Competitive Bidding contracts must be limited to the national press or official gazette, or a free and open access website. Although technically improper, the project officials told INT investigators that the Project resorted to direct solicitations only after regular publication methods failed to attract bidders for the contracts at issue.

A project official told INT investigators that the invitation to tender for the two construction projects was published in the newspapers in City A. Although several City A companies purchased the specification books, only one of those companies submitted a bid.

When this happened, a project official instructed the members of the Technical Department to locate companies in Town A and Town B who would be willing to bid for the projects. Accordingly, an invitation to tender was e-mailed to Company A located in City B and it was asked to disseminate the invitation to other local companies.

Company A, which was awarded the contract in Town B, narrated the events slightly differently. Company A told INT investigators that a friend of the Company informed Company A that a project was being carried out in Town A and Town B, so the Company called one of the project officials, who sent the e-mail inviting Company A to submit a bid.

Company B, which was awarded the contract for Town A, was invited to bid pursuant to an e-mail from the general address of the project. The representative of Company B knew one of the project officials from his university days, but denied having a personal relationship with the official.

Citing practical local realities, a project official defended the decision to dispense with ordinary publication methods. The official explained that City B area does not have newspapers and that the project did not have an office in either of those cities. Accordingly, the official believed that the chosen method of publication was reasonable under the circumstances.

b. There were indicators of collusion and bid manipulation that affected the tender process but the evidence is insufficient to show that Company A and Company B may have colluded and/or received preferential treatment.

INT investigators found some indicators consistent with the presence of collusion and bid manipulation in relation to two tenders, one in Town A and one in Town B, but the evidence is insufficient to establish that the two Project contractors colluded and/or received preferential treatment during the tender process.

Project records show that the bids for the works for the two projects were opened in mid 2004, and that a few companies from City B submitted bids for the work. Company A was awarded the contract for Town B and Company B received the contract for the Town A.

Project records further suggest that the two companies that were awarded the contracts submitted identical bid prices for the Town B project. Company A provided INT with a copy of its actual bidding documents, which show clearly that the company's bid price differed from the amount recorded by the PIU during the bid opening. INT was unable to obtain an explanation for the discrepancy, but it is likely that it was simply a transcription error that occurred at the time of the bid opening.

Furthermore, according to the Bid Evaluation Report, Company B did not submit a bid security for the Town B project, and Company A failed to submit one relating to Town A project. This failure of each company to comply with basic bid requirements in an alternating manner is suggestive of a prearranged collusive agreement between the companies to divide the contracts between them. Company B claimed that it did not present a bid security for the Town B project because it was not particularly interested in that project. Company A told investigators that the company's commercial bank agreed to guarantee only the lower of the company's two bids (the Town B bid) because the company had a relatively low balance in its account at the bank. Consequently, it was unable to submit a bid security for the Town A project.

A Project official conceded that the process was not adequately scrutinized, and hence the specific red flags were not noticed. The official blamed the project staff and suspected that two of the officers were colluding with contractors and their employment was ultimately terminated.

c. Evidence indicates that project officials violated paragraphs 2.11 and 2.16 of the *Guidelines* by inviting companies to submit bids before the project had acquired the land on which the projects would be constructed.

The *Guidelines* provide that bidding documents "shall furnish all information necessary for a prospective bidder to prepare a bid for the goods and works to be provided." The documents "shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, [etc.]."

Despite these requirements, evidence indicates that the project published its invitation to bid on the two projects in Town A and Town B even before the necessary land was purchased in those locations.

A project official told INT investigators that the project issued invitations to tender for the Town A and Town B projects before land was procured for the project in Town B. As a result, it was impossible for prospective bidders to evaluate the construction site and prepare their offers accordingly.

Company A confirmed that it submitted its bid for the Town B project despite the fact that the company did not have an opportunity to evaluate the site before submitting the bid. Company A stated that the project did not provide Company A with plans and the project ultimately chose to carry out the project in a different site than the one that had been initially proposed.

Company B told INT investigators a similar story with respect to the Town A site. Company B said that the land was not procured until after it won the contract, and that the company even helped the project negotiate with the landowners to purchase the necessary plot. However, a project official claimed that the project originally had options on certain tracts of land, but that disputes with other landowners ultimately forced the Project to be built on different sites.

3. INT found evidence indicating weak financial controls and procurement procedures.

Evidence indicates that a project official failed to implement or observe adequate financial controls or procurement procedures. Some of the staff that worked with the official described the official as a poor manager, who rejected the premise of financial controls and failed to adhere to required procurement procedures.

For example, former project officials told INT investigators that the official repeatedly signed blank checks and authorized payments for goods and services without any supporting documentation. The official admitted that it was possible that blank checks had been signed when the said official had to travel and payments needed to be made in the official's absence. The official recognized that this is not a sound practice but maintained—and INT did not discover evidence to the contrary—that the checks were used for proper purposes.

In addition, on at least one occasion the project official paid invoices that apparently were falsified, but the evidence does not suggest that project officials were aware of the falsification. A representative of the vendor at issue confirmed to investigators that the invoices were issued by his company, but demonstrated that the amounts reflected on the invoices at the project offices had been modified from the amounts reflected on the original invoices.

Furthermore, another project official also stated that the project official was not interested in procurement procedures and sought to transform the ESAP into a private company. The project official had instructed the project personnel to dispense with routine procurement and other procedures.

Notwithstanding the above-stated concerns, the overall results of INT's forensic audit were generally acceptable.

4. INT did not find evidence to corroborate the allegations of misappropriation of Project funds.

Although the project advanced approximately US$50,000 to a senior politician's office to renovate and furnish a group of buildings, INT received documentation supporting the position that the Government, in two or three installments, paid back the entirety of the project's expenditures.

As a technical matter, advancing funds to the senior politician was not an appropriate use of the project funds. However, the advances appear to be fully repaid and, as a result, the evidence does not support a finding that there was any misappropriation of the project funds.

5. INT found evidence that the project made ineligible expenditures.

INT reviewed documentation relating to the project expense vouchers and discovered several instances in which disbursements were unsupported by relevant documentation. This conflicted with a claim by a project official that every disbursement was justified by supporting documents. When INT investigators showed the official certain receipts that were not supported by any documentation, the official had no explanation beyond claiming that someone was trying to make the official look bad.

6. INT observed that the project allocated funds without obtaining necessary approvals from its Board of Directors.

As part of implementation of the Project, a Board of Directors responsible for providing overall support and oversight of the Coordination Unit was required to be put in place. A member of the project Board told INT investigators that the Board had met only twice and was unable to make any decisions. In his view, the Board was not operational and, at the time of his interview, he had no idea when it would next meet.

Various project officials also told INT investigators that a project official made all of the decisions relating to the project, and that neither the Board nor any other committee or individual provided input into those decisions. The official initially claimed during the interview with INT that the two projects were presented to and approved by the Board. However, when confronted with audit reports of the project, which identified issues such as the lack of nomination of members to the Board, the project official conceded that the Board was not even appointed until November 2005 and met only sporadically because, according to the official, some of the Ministries had not named their representatives to the Board.

Conclusion

The above evidence indicates that: *(i)* A project official improperly demanded money from two contractors as a condition of payment for their work under their respective contracts, and *(ii)* the project violated procurement procedures, had weak financial controls and poor project governance.