

THE PRESIDENT

No. 09/2023/L-CTN

THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, July 03, 2023

ORDER

On the promulgation of law

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to Articles 88 and 91 of the Constitution of the Socialist Republic of Vietnam;

Pursuant to Article 80 of the Law on Promulgation of Legal Documents,

PROMULGATES:

The Law on Bidding,

which was passed on June 24, 2023, by the XVth National Assembly of the Socialist Republic of Vietnam at its 5th session.

President of the Socialist Republic of Vietnam

VO VAN THUONG

LAW ON BIDDING¹

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly promulgates the Law on Bidding.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Law provides the state management of bidding activities; competence and responsibility of agencies, organizations and individuals in bidding activities; and selection of contractors to implement bidding packages and selection of investors to implement business investment projects.

Article 2. Subjects of application

This Law applies to agencies, organizations and individuals participating in or related to bidding activities, including:

1. The selection of contractors using state budget funds in accordance with the Law on the State Budget and funds from lawful revenue sources in accordance with law by state agencies and public non-business units to:

a/ Implement investment projects or procurement estimates of state agencies, political organizations, socio-political organizations, socio-political-professional organizations, socio-professional organizations, social organizations, people's armed forces units, public non-business units and other organizations and individuals;

b/ Provide public products and services; purchase medicines, chemicals and supplies for medical tests and medical equipment; purchase national reserve goods or outsource the preservation of national reserve goods, except public direct purchase by any subjects specified by the law on national reserves;

¹ Công Báo Nos 869-870 (31/7/2023)

c/ Perform other jobs for which bidding must be organized in accordance with relevant regulations;

2. Selection of contractors to implement:

a/ Bidding packages under investment projects of state enterprises in accordance with the Enterprise Law and enterprises with 100% of charter capital held by state enterprises;

b/ Bidding packages for building of physical and technical facilities and procurement of machinery and equipment to facilitate science and technology development which are funded by the science and technology development funds of state enterprises;

3. Selection of investors to implement business investment projects, including:

a/ Land-using investment projects falling into cases subject to organization of bidding in accordance with the land law;

b/ Investment projects falling into cases subject to organization of bidding to select investors in accordance with the relevant specialized laws;

4. Organizations and individuals whose bidding activities do not fall into the cases specified in Clauses 1, 2 and 3 of this Article may choose to apply all or some specific articles, clauses and points of this Law.

Article 3. Application of the Bidding Law, relevant laws and treaties and international agreements on official development assistance capital and concessional loans of foreign donors

1. Bidding activities governed by this Law must comply with the provisions of this Law and other relevant regulations. In case this Law's provisions on bidding differ from those of another law promulgated before the effective date of this Law, the provisions of this Law prevail, except for the cases specified in Clauses 2 thru 7 of this Article.

2. The selection of contractors to conclude oil and gas contracts must comply with the law on oil and gas.

3. The selection of investors to implement investment projects in the form of public-private partnership (PPP) and the selection of contractors to implement bidding packages under PPP investment projects must comply with the law on investment in the PPP form.

4. The selection of overseas contractors to implement overseas bidding packages of Vietnamese overseas representative missions must comply with the law on overseas representative missions of the Socialist Republic of Vietnam.

5. The selection of contractors for projects funded by official development assistance (ODA) capital or concessional loans of foreign donors under treaties to which the Socialist Republic of Vietnam is a contracting party (below referred to as treaties) or foreign loan agreements must comply with the provisions of these treaties or loan agreements. In case a treaty or loan agreement does not provide or provides that Vietnam's law must apply, this Law's provisions shall apply.

Before negotiating or deciding to sign a loan agreement other than a treaty which contains bidding provisions different from those of, or not yet contained in, this Law, the Government shall report thereon to the National Assembly Standing Committee for opinion.

6. For a bidding package covering both procurements governed by this Law and procurements governed by a treaty, a competent person may decide to apply the treaty to the contractor selection for procurements governed by this Law.

7. Agencies, organizations and enterprises may themselves decide on contractor selection in the following cases, provided they ensure publicity, transparency, economic efficiency and accountability:

a/ Selection of contractors to implement bidding packages funded by domestic organizations and individuals, in case donors request not to apply this Law to contractor selection; bidding packages of public non-business units using loans, except state investment credit amounts and amounts on-lent from ODA capital and concessional loans of foreign donors;

b/ Selection of overseas contractors by state agencies, public non-business units, state enterprises and enterprises with 100% of charter capital held by state enterprises, except the cases specified in Clause 4 of this Article;

c/ Lease, purchase or lease-purchase of land-attached houses, offices and assets;

d/ Selection of contractors for provision of goods, consultancy services or non-consultancy services in order to ensure continuity of production and business activities and for procurement to maintain regular operation using production and business capital by state enterprises and enterprises with 100% of charter capital held by state enterprises; selection of contractors to implement bidding packages under business investment projects specified in Clause 3, Article 2 of this Law; selection of contractors to provide consultancy services, raw materials, fuels,

materials, supplies and non-consultancy services to directly serve bidding packages won by public non-business units;

dd/ Identification of mediators and members of dispute resolution boards or arbitration councils to settle disputes arising from the contract performance as decided by the involved parties under contracts;

e/ Procurement of goods and services with their selling prices fixed by the State in accordance with the law on price;

g/ Selection of contractors to provide oil and gas services and goods serving oil and gas activities under oil and gas contracts as approved by competent authorities in accordance with the Law on Oil and Gas.

Article 4. Interpretation of terms

In this Law, the terms below are construed as follows:

1. *Bid solicitor* means an agency or organization that carries out bidding activities. Bid solicitors include:

a/ Project owners or organizations established or selected by project owners;

b/ Agencies competent to approve the investment policy or agencies competent to decide to organize bidding to select investors; units assigned by competent agencies to organize the selection of investors.

2. *Project owner* means an agency or organization that owns capital, borrows capital or is assigned to directly manage and use capital and manage the project implementation; a budget-using unit; a budget-estimating unit directly executing procurement estimates without using state budget funds; or a centralized procurement unit.

3. *Shortlist* means a list of contractors that have passed prequalification in case of open bidding with prequalification; a list of contractors and investors invited to participate in bidding, in case of restricted bidding; or a list of contractors whose dossiers of expression of interest meet requirements of the dossier of invitation for expression of interest.

4. *Consultancy service* means one or several of the following service activities: formulation and assessment of planning report, overall development diagram and architectural plan; survey and formulation of pre-feasibility study report, investment policy proposal report, dossier of request for approval of investment policy, feasibility study report, economic-technical report, and environmental impact assessment report; survey, engineering and cost estimation; provision of bidding consultancy; verification and appraisal consultancy;

supervision consultancy; project management consultancy; financing arrangement consultancy; and auditing and other consultancy services.

5. *Non-consultancy service* means one or several of the following service activities: logistics, insurance, advertising, pre-acceptance testing and test operation, satellite imagery; printing; sanitation; communications; repair and maintenance, and other service activities other than the consultancy services specified in Clause 4 of this Article.

6. *Investment projects* (below referred to as projects) include: new construction investment programs and projects; asset procurement projects; renovation, upgrading and expansion projects; planning projects, tasks and schemes; technical assistance; and other programs and projects specified by law.

7. *Procurement estimate* means the estimation of funding sources for procurement within the scope of the state budget estimate approved by a competent authority, for state agencies, political organizations, socio-political organizations, socio-political-professional organizations, socio-professional organizations, social organizations, people's armed forces units, public non-business units and other organizations and individuals; or estimate of funding sources for procurement within lawful financial sources of state agencies and public non-business units.

8. *Bidding* means the process of selection of contractors to conclude and perform contracts on provision of consultancy services or non-consultancy services, procurement of goods or construction, or to conclude and perform business investment project contracts on the basis of ensuring competition, fairness, transparency, economic efficiency and accountability.

9. *Online bidding* means the implementation of bidding activities on the Vietnam National E-Procurement System.

10. *International bidding* means bidding activities that both domestic and foreign contractors and investors may participate in.

11. *Domestic bidding* means bidding activities that only domestic contractors and investors may participate in.

12. *Bid price* means a price offered by a contractor in its/his/her bid application form, inclusive of all costs for implementation of the bidding package according to requirements of the bidding dossier or dossier of requirements.

13. *Proposed bid-winning price* means a bid price of a contractor who is proposed to win the bid after errors have been corrected and discrepancies have

been adjusted according to requirements of the bidding dossier or dossier of requirements, minus the discount value (if any).

14. *Contract price* means a value stated in a contract between a project owner and a contractor.

15. *Bidding package* means part or the whole of a project or procurement estimate, which may include similar procurements of many projects, or a one-off procurement volume or procurement volume for a given period, for procurement estimates and centralized procurements.

16. *Mixed bidding package* means a bidding package falling in the following cases: engineering and procurement (EP); engineering and construction (EC); procurement (PC); engineering, procurement and construction (EPC); planning, and engineering, procurement and construction (turnkey).

17. *Goods* include machinery, equipment, raw materials, fuels, materials, supplies and spare parts; products; vehicles; consumer goods; medicines, chemicals, and medical lab supplies for medical tests, medical equipment; and commercial software.

18. *National E-Procurement System* means an information technology system built and managed by the state management agency in charge of bidding activities for the purposes of performing the unified management of bidding information and carrying out online bidding.

19. *Dossier of invitation for expression of interest, dossier of invitation to prequalification* means all documents to be used for open bidding with the stage of invitation for expression of interest or prequalification, including requirements on capacity and experience of contractors which may be used as a basis for the bid solicitor to draw up a list of prequalified contractors or a list of contractors whose dossiers of expression of interest are assessed as meeting the requirements of the dossier of invitation for expression of interest. In case of investor selection, the dossier of invitation for expression of interest contains all documents to be used for the project for which the number of investors expressing interest must be determined in accordance with the land law and relevant specialized laws, covering preliminary requirements on capacity and experience of investors.

20. *Dossier of expression of interest, dossier for participation in prequalification* means all documents to be prepared and submitted by a contractor to the bid solicitor according to requirements of the dossier of invitation for expression of interest and dossier of invitation to prequalification. In case of investor selection, dossier of registration for project implementation contains all

documents to be prepared and submitted by an investor according to the requirements of the dossier of invitation for expression of interest.

21. *Bidding dossier* means all documents to be used for open bidding, restricted bidding or and competitive offer, including requirements for a project, bidding package or business investment project which shall serve as a basis for contractors or investors to prepare bid dossiers and for the bid solicitor to evaluate bid dossiers.

22. *Dossier of requirements* means all documents to be used for contractor appointment, direct procurement or price negotiation, including requirements for a bidding package which serve as a basis for contractors to prepare dossiers of proposals and for the bid solicitor to evaluate dossiers of proposals.

23. *Bid dossier, dossier of proposals* means all documents to be prepared and submitted to the bid solicitor by a contractor or an investor according to the requirements of the bidding dossier or dossier of requirements.

24. *Competent person* means a person who may decide on the investment policy or procurement in accordance with law. In case of investor selection, the competent person is the head of the agency competent to approve the investment policy in accordance with the investment law or the agency competent to decide to organize bidding for investor selection.

25. *Investor* means an organization or individual that participates in the bidding, undersigns the bid dossier and directly concludes and performs the contract if selected. Investors may be independent investors or investor consortiums.

26. *Contractor* means an organization or individual or a consortium of organizations or individuals formed on the basis of a consortium agreement that participates in the bidding, undersigns the bid dossier and directly concludes and performs the contract if selected. In case of establishing a consortium, the consortium agreement must clearly define responsibilities of the leading member of the consortium and common and particular responsibilities of each member of the consortium with regard to the entire bidding package.

27. *Subcontractor* means an organization or individual that signs a contract with a contractor to perform construction job(s) or provide consultancy services, non-consultancy services or related services of a procurement bidding package; or to perform job(s) under a mixed bidding package.

28. *Special subcontractor* means a subcontractor performing important job(s) of a bidding package that is proposed by the contractor in its/his/her bid dossier or

dossier of proposals on the basis of capacity and experience requirements stated in the bidding dossier or dossier of requirements.

29. *Foreign contractor, foreign investor* means an organization established under a foreign law or an individual holding foreign citizenship that participates in bidding.

30. *Domestic contractor, domestic investor* means an organization established under Vietnam's law or an individual holding Vietnamese citizenship that participates in bidding.

31. *Bid closing time* means the deadline for receiving dossiers of expression of interest, dossiers of participation in prequalification, bid dossiers and dossiers of proposals.

32. *Validity duration of a bid dossier or dossier of proposals* means the number of days specified in the bidding dossier or dossier of requirements and counted from the bid closing date to the last effective date stated in the bidding dossier or dossier of requirements. The duration from the bid closing time till 24:00 hrs of the bid closing date is counted as 1 day.

33. *Construction* includes jobs in the process of building and installing works and work items.

Article 5. Eligibility of contractors and investors

1. An institutional contractor or investor is considered eligible when fully meeting the following conditions:

a/ For domestic contractors or investors: Being an enterprise, a cooperative, union of cooperatives, cooperative group, public non-business unit or foreign-invested economic organization registered for establishment and operation under Vietnam's law.

For foreign contractors or investors: Having made registration for establishment and operation under a foreign law;

b/ Performing independent financial accounting;

c/ Neither undergoing dissolution procedures nor having its enterprise registration certificate, cooperative registration certificate or certificate of registration of union of cooperatives or cooperative group revoked; not falling into a case of insolvency specified by the bankruptcy law;

d/ Have its name listed on the Vietnam National E-Procurement System before contractor or investor selection results are approved;

dd/ Ensuring competition in bidding under Article 6 of this Law;

e/ Not being banned from participating in bidding under decisions of competent persons, ministers, heads of ministerial-level agencies, government-attached agencies and other central agencies or chairpersons of provincial-level People's Committees as specified in Clause 3, Article 87 of this Law;

g/ Not being examined for penal liability;

h/ Being on a shortlist in case such a shortlist has been drawn up;

i/ For foreign contractors: Having joined a consortium with domestic contractors or using domestic subcontractors, except cases where domestic contractors are not qualified to participate in any jobs of the bidding package.

2. A contractor being a business household is considered eligible when fully meeting the following conditions:

a/ Having a business household registration certificate in accordance with law;

b/ Neither being in the process of operation termination nor having its business household registration certificate revoked; ensuring that its head is not being examined for penal liability;

c/ Meeting the conditions specified at Points d, dd, e and h, Clause 1 of this Article.

3. An individual contractor or investor is considered eligible when fully meeting the following conditions:

a/ Having the full civil act capacity in accordance with the law of the country of which he/she is a citizen;

b/ Having appropriate professional certificates as required by law;

c/ Meeting the conditions specified at Points e and g, Clause 1 of this Article.

4. Eligible contractors and investors specified in Clauses 1, 2 and 3 of this Article may participate in bidding independently or join a consortium.

Article 6. Assurance of competition in bidding

1. Contractors that submit dossiers of expression of interest and dossiers of participation in prequalification must be legally and financially independent from the following parties:

a/ Contractors providing consultancy for formulation of dossiers of invitation for expression of interest and dossiers of invitation to prequalification, contractors providing project management and supervision consultancy; contractors providing consultancy for preparation, verification and evaluation of engineering and cost

estimation dossiers; and contractors providing consultancy for formulation and evaluation of survey and engineering tasks;

b/ Contractors providing consultancy for evaluation of dossiers of expression of interest and dossiers for participation in prequalification;

c/ Contractors providing consultancy for appraisal of results of the invitation for expression of interest or prequalification results;

d/ The project owner and bid solicitor, except where contractors are public non-business units of state management agencies with their assigned functions and tasks conforming with the nature of bidding packages of such state management agencies or contractors are member companies or subsidiaries of state groups or corporations with their main production and business lines conforming with the nature of bidding packages of such state groups or corporations.

2. Contractors that participate in bidding must be legally and financially independent under Point d, Clause 1 of this Article and from the following parties:

a/ Contractors providing consultancy for project management and supervision; contractors providing consultancy for formulation, verification and evaluation of engineering and cost estimation dossiers; contractors providing consultancy for formulation and appraisal of survey and engineering tasks; contractors providing consultancy for formulation and evaluation of the bidding dossier or dossier of requirements; contractors providing consultancy for evaluation of bid dossiers or dossiers of proposals; contractors providing consultancy for evaluation of results of the contractor selection for the bidding package;

b/ Other contractors participating in the bidding for the same bidding package, for restricted bidding.

3. Contractor providing consultancy for contract performance supervision and contractors performing contracts under bidding packages, and contractors providing consultancy for inspection of such bidding packages must be legally and financially independent from one another.

4. Contractors specified in Clauses 1, 2 and 3 of this Article shall be considered legally and financially independent when fully meeting the following conditions:

a/ Not belonging to the same managing agency or organization, for public non-business units;

b/ Not holding over 30% of shares of, or capital contributions to, each of others, for contractors and project owners or bid solicitors;

c/ Not holding over 20% of shares of, or capital contributions to, each of others, for contractors participating in the same bidding package, in case of restricted bidding;

d/ Holding no shares of, or capital contributions to, each of others; not holding over 20% shares of, or capital contributions to, the same organization or individual, for contractors participating in the bidding for a bidding package and the contractor providing consultancy for such bidding package

5. Investors that participate in bidding for a bidding package must be legally and financially independent from the following parties:

a/ The competent agency and bid solicitor;

b/ Contractors providing consultancy for the formulation and evaluation of the bidding dossier; contractors providing consultancy for the evaluation of bid dossiers; contractors providing consultancy for the appraisal of investor selection results until the date of conclusion of the business investment project contract.

6. The Government shall detail this Article.

Article 7. Bidding information

1. Information on contractor selection includes:

a/ Information on the project and contractor selection plan;

b/ Notice of invitation for expression of interest, notice of invitation to prequalification;

c/ Notice of invitation for bids;

d/ Shortlist;

dd/ Dossier of invitation for expression of interest, dossier of invitation to pre-qualification, bidding dossiers and their amendments and clarifications (if any);

e/ Bid opening results, for online bidding;

g/ Contractor selection results;

h/ Principal information of the contract;

i/ Information on the handling of violations of the bidding law;

k/ Information on the contractor's contract performance results;

l/ Other relevant information.

2. Information on investor selection includes:

a/ Information on the business investment project specified in Clause 2, Article 47 of this Law;

b/ Notice of invitation for expression of interest, dossier of invitation to expression of interest; results of the invitation of expression of interest;

c/ Notice of invitation for bids, bidding dossier and their amendments and clarifications (if any);

d/ Investor selection results;

dd/ Principal information of the contract;

e/ Information on handling of violations of the bidding law;

g/ Other relevant information.

3. The information specified in Clauses 1 and 2 of this Article shall be posted on the Vietnam National E-Procurement System, except for projects, business investment projects and bidding packages containing information classified as state secrets.

Article 8. Provision and posting of bidding information

1. The responsibility for posting information on contractor selection is as follows:

a/ Project owners shall post the information specified at Points a, g, h, i and k, Clause 1, Article 7 of this Law;

b/ Bid solicitors shall post the information specified at Points b, c, d and dd, Clause 1, Article 7 of this Law. For bidding packages opened for international bidding, bid solicitors shall post the information specified at Points b, c and d, Clause 1, Article 7 of this Law in Vietnamese and English. Bid solicitors shall post the information specified at Point dd, Clause 1, Article 7 of this Law in English or in Vietnamese and English;

c/ Contractors shall update and post information on their capacity and experience onto the contractor database, including the information specified at Point k, Clause 1, Article 7 of this Law.

2. The responsibility for posting information on investor selection is as follows:

a/ Competent agencies shall post the information specified at Points a, b and e, Clause 2, Article 7 of this Law;

b/ Bid solicitors shall post the information specified at Points c, d and dd, Clause 2, Article 7 of this Law. For business investment projects opened for

international bidding, bid solicitors shall post information in Vietnamese and English.

3. Organizations and individuals providing and posting information specified in Clauses 1 and 2 of this Article shall bear responsibility before law for the accuracy and truthfulness of the information they register and post on the Vietnam National E-Procurement System and the consistency between posted documents and approved documents.

4. The information specified at Points a, d, g, h and i, Clause 1 and Points a, d, dd and e, Clause 2, Article 7 of this Law shall be posted on the Vietnam National E-Procurement System within 5 working days after the relevant document is issued or the contract comes into force.

Article 9. Processing and retention of dossiers during the contractor and investor selection

1. Dossiers of financial proposals of contractors that do not pass the technical evaluation step shall be returned in *status quo* to such contractors:

a/ For consultancy service bidding packages: Within 10 days from the date of signing the contract with the selected contractor;

b/ For non-consultancy service, procurement or construction bidding packages or mixed bidding packages applying the single-stage two-envelope method: When the bid security of contractors that are not selected is returned or released or when contractor selection results are posted.

2. Dossiers of financial proposals of investors that do not pass the technical evaluation step shall be returned in *status quo* to such investors when the bid security of investors that are not selected is returned or released or when investor selection results are posted.

3. Past the time limit specified in Clause 1 or 2 of this Article, if a contractor or investor does not receive back its/his/her dossier of financial proposals, the bid solicitor shall consider and decide to destroy the dossier and ensure that relevant information is not disclosed.

4. In case of bid cancellation, relevant dossiers shall be retained for 5 years from the date the bid cancellation decision is issued.

5. Account finalization documents, as-built documents and documents relevant to bid-winning contractors of bidding packages shall be retained in accordance with the law on archives.

6. All dossiers relevant to the contractor or investor selection process shall be retained for at least 5 years from the date of contract account finalization or the date of termination of the business investment project contract, except for dossiers specified in Clauses 1, 2, 4 and 5 of this Article.

Article 10. Incentives in contractor and investor selection

1. Subjects eligible for incentives in contractor selection include:

a/ Goods of Vietnamese origin;

b/ Environmentally friendly products and services specified by the law on environmental protection;

c/ Domestic contractors producing goods of Vietnamese origin in conformity with bidding dossiers;

d/ Foreign contractors joining a consortium with domestic contractors in which the domestic contractors undertake 25% or more of the work value of the bidding package;

dd/ Domestic contractors participating in bidding as independent contractors or joining a consortium with other domestic contractors when participating in international bidding;

e/ Contractors being micro-enterprises or small-sized enterprises specified by the law on support for small- and medium-sized enterprises;

g/ Contractors being innovative start-up businesses specified by law;

h/ Contractors with female workers accounting for 25% or more of their total employees; war invalids and people with disabilities accounting for 25% or more of their total employees; or ethnic minority people accounting for 25% or more of their total employees.

2. Incentives in contractor selection include:

a/ Ranking contractors eligible for incentives at higher positions, in case contractors eligible for incentives and contractors ineligible for incentives are evaluated equal;

b/ Adding points to evaluation scores of contractors eligible for incentives, in case contractors are compared and ranked by the fixed-price method or based on technical criteria or combined technical and price criteria;

c/ Adding an amount of money to the bid price or evaluated price of contractors ineligible for incentives in case of applying the lowest price method or evaluated price method to compare and rank contractors;

d/ Giving priority to contractors in the evaluation of their capacity and experience and other criteria during the bid evaluation;

dd/ Reserving construction bidding packages with a price not exceeding VND 5 billion for micro-enterprises and small-sized enterprises participating in bidding. In case the bidding has been organized and no micro-enterprise or small-sized enterprise meets the requirements, the bidding may be organized again with the participation of other enterprises.

3. The application of incentives in contractor selection is as follows:

a/ The subjects specified at Points a, b, c and g, Clause 1 of this Article are eligible for the incentives specified at Point b or c, Clause 2 of this Article when participating in bidding for procurement bidding packages and mixed bidding packages;

b/ The subjects specified in Points d and dd, Clause 1 of this Article are eligible for the incentives specified at Point b or c, Clause 2 of this Article when participating in bidding for consultancy service, non-consultancy service or construction bidding packages or mixed bidding packages opened for international bidding;

c/ The subjects specified at Point h, Clause 1 of this Article are eligible for the incentives specified at Point a, Clause 2 of this Article when participating in bidding for consultancy service, non-consultancy service or construction bidding packages or mixed bidding packages opened for domestic bidding;

d/ The subjects specified at Point e, Clause 1 of this Article are eligible for the incentives specified at Points a and dd, Clause 2 of this Article when participating in bidding for construction bidding packages opened for domestic bidding;

d/ In addition to the incentives specified at Points b and c, Clause 2 of this Article, the contractors specified at Points c and g, Clause 1 of this Article are also eligible for the incentives specified at Point d, Clause 2 of this Article when participating in bidding for consultancy service, non-consultancy service, procurement or construction bidding packages or mixed bidding packages opened for domestic bidding;

e/ For procurement bidding packages opened for domestic bidding, if there are at least 3 manufacturers for 1 goods item of domestic origin meeting technical, and quality and price requirements, project owners shall decide to request contractors to offer goods of domestic origin for such item.

4. Subjects eligible for incentives in investor selection include:

a/ Investors that have technology application solutions to mitigate environmental pollution for projects in the group of projects that are highly likely to exert adverse environmental impacts in accordance with the law on environmental protection;

b/ Investors that commit to transferring technologies on the list of technologies prioritized for investment and development in accordance with the law on high technologies or on the list of technologies encouraged for transfer in accordance with the law on technology transfer.

5. Incentives in investor selection include:

a/ Ranking investors eligible for incentives at higher positions in case investors eligible for incentives and investors ineligible for incentives are evaluated equal;

b/ Adding points to the total score for comparison and ranking.

6. The Government shall detail this Article.

Article 11. International bidding

1. The organization of international bidding to select contractors shall be carried out when one of the following conditions is satisfied:

a/ The organization of international bidding is required by sponsors of projects or bidding packages in relevant treaties or loan agreements;

b/ For consultancy service, non-consultancy service or construction bidding packages or mixed bidding packages: There is no domestic contractors satisfying requirements for implementation of bidding packages or bidding packages have been opened for prequalification, expression of interest or domestic open bidding but there are no contractors registering for participation.

c/ For consultancy service bidding packages: Competent persons find the participation of foreign contractors necessary to improve the quality of bidding packages or projects. In this case competent persons shall decide to organize international bidding and be held responsible for their decision;

d/ For procurement bidding packages: The to-be-procured goods cannot be domestically manufactured or can be domestically manufactured but fail to satisfy one of technical, quality and price requirements. For normal goods that have been imported and offered for sale in Vietnam, international bidding is not required.

2. The organization of international bidding to select investors shall be carried out for the business investment projects specified in Clause 3, Article 2 of this Law, except the following projects:

a/ Projects in the list of sectors and business lines in which market access is not yet permitted for foreign investors in accordance with the investment law;

b/ Projects subject to domestic bidding due to national defense, national security or social order and safety requirements;

c/ Projects implemented in areas where the use of land or maritime zones by foreign investors and foreign-invested economic organizations is restricted in accordance with the land law and relevant laws;

d/ Projects with total investment capital of under VND 800 billion each;

dd/ Projects not falling into the cases specified at Points a, b, c and d of this Clause and for which the invitation for expression of interest for participation in international bidding has been announced or notified but there are no investors registering for participation.

Article 12. Language used in bidding

1. The language used in domestic bidding is Vietnamese.

2. The language(s) used in international bidding is/are English or Vietnamese and English. In case the languages used in dossiers of invitation for expression of interest, dossiers of invitation for participation in prequalification, bidding dossiers and dossiers of requirements are Vietnamese and English, contractors and investors may choose Vietnamese or English for use when participating in bidding.

Article 13. Bid currency

1. For domestic bidding, contractors and investors may only place their bids in Vietnam dong.

2. For international bidding:

a/ Bidding dossiers and dossiers of requirements must specify currencies for placing their bids in bid dossiers or dossiers of proposals; the number of bid currencies must not exceed 3;

b/ In case bidding dossiers provide that contractors and investors can place bids in 2 or 3 currencies, upon the evaluation of bid dossiers, all bids shall be converted into 1 currency; in case one of the bid currencies is Vietnam dong, all bids shall be converted into Vietnam dong. Bidding dossiers must specify the currency of conversion and time and basis for determination of the exchange rate;

c/ For domestic costs related to the implementation of bidding packages, projects, or business investment projects, contractors and investors shall place their bids in Vietnam dong;

d/ For overseas costs related to the implementation of bidding packages, projects, or business investment projects, contractors and investors may place bids in foreign currencies or Vietnam dong.

Article 14. Bid security

1. Contractors and investors shall take one of the following measures to secure their responsibility to participate in the bidding within the specified time limit stated in bidding dossiers:

a/ Making deposits;

b/ Submitting letters of guarantee issued by domestic credit institutions or foreign bank branches established under Vietnam's law;

c/ Submitting certificates of guarantee insurance issued by domestic non-life insurance enterprises or foreign non-life insurance enterprises' branches established under Vietnam's law.

2. Bid security shall be applied in the following cases:

a/ Open bidding, restricted bidding and competitive offer for non-consultancy service, procurement or construction bidding packages and mixed bidding packages;

b/ Open bidding and restricted bidding for investor selection.

3. Contractors and investors shall take bid security measures before the bid closing time specified by bidding dossiers. In case the two-stage bidding method is applied, contractors and investors shall take bid security measures in the second stage.

4. Based on the scale and nature of each specific project, business investment project or bidding package, the bid security level stated in the bidding dossier is as follows:

a/ Between 1% and 1.5% of the bidding package price, for construction bidding packages and mixed bidding packages with a price not exceeding VND 20 billion, procurement and non-consultancy service bidding packages with a price not exceeding VND 10 billion;

b/ Between 1.5% and 3% of the bidding package price, for bidding packages other than those specified at Point a of this Clause;

c/ Between 0.5% and 1.5% of the total investment capital of the business investment project, for investor selection.

5. The validity duration of the bid security shall be specified in bidding dossiers as equal to that of bid dossiers plus 30 days

6. In case of extension of the validity duration of bid dossiers after the bid closing time, the bid solicitor shall request contractors or investors to correspondingly extend the validity duration of their bid security. In this case, contractors and investors shall correspondingly extend the validity duration of their bid security and may not change contents of their submitted bid dossiers. In case a contractor or investor refuses to extend the validity duration of the bid security, its/his/her bid dossier will no longer be valid and will be rejected; and the bid solicitor shall refund or release the bid security to the contractor or investor within 14 days from the date the bid solicitor receives the latter's written refusal to extend the validity duration of the bid security.

7. For a consortium of contractors participating in bidding, each member may make a separate bid security or all members may reach agreement to let one member make bid security for itself/himself/herself and other members of the consortium. The total value of the bid security must not be lower than the value required in the bidding dossier. In case any member of the consortium violates Clause 9 of this Article, the bid security of all members of the consortium will not be refunded.

8. The bid solicitor shall refund or release the bid security to contractors and investors that are not selected within the time limit specified in the bidding dossier, which, however, must not exceed 14 days after contractor or investor selection results are approved. The bid security of the selected contractor or investor shall be refunded or released when the contract comes into force.

9. Bid security may not be refunded in the following cases:

a/ After the bid closing time and during the validity duration of bid dossiers, a contractor or investor withdraws its/his/her bid dossier or refuses in writing to perform one or all of jobs it/he/she proposes in the bid dossier according to the requirements of the bidding dossier;

b/ The contractor or investor violates Article 16 of this Law or violates the bidding law, leading to bid cancellation under Points d and dd, Clause 1, and Points d and dd, Clause 2, Article 17 of this Law;

c/ The contractor or investor does not take contract performance security measures specified in Articles 68 and 75 of this Law;

d/ The contractor fails or refuses to negotiate the contract (if any) within 5 working days, for domestic bidding, or 10 days, for international bidding, from the date of receiving the notice of invitation for contract negotiation, or has negotiated

the contract but refuse to finalize and sign the contract negotiation minutes, except *force majeure* cases;

dd/ The contractor fails or refuses to finalize the contract or framework agreement within 10 days, for domestic bidding, or 20 days, for international bidding, from the date of receiving the bid solicitor's notice of contract award, except *force majeure* cases;

e/ The contractor fails or refuses to conclude the contract or framework agreement within 10 days, for domestic bidding, or 20 days, for international bidding, from the date of finalization of the contract or framework agreement, except *force majeure* cases;

g/ The investor fails or refuses to finalize the contract within 15 days, domestic bidding, or 30 days, for international bidding, from the date of receipt of the bid solicitor's notice of contract award, except *force majeure* cases;

h/ The investor fails or refuses to conclude the contract within 15 days, for domestic bidding, or 30 days, for international bidding, from the date the contract is finalized, except *force majeure* cases.

10. In case a contractor or an investor violates the bidding law, thus becoming ineligible for refund of the bid security or contract performance security specified in Clause 9 of this Article, Clause 6 of Article 68, and Clause 4, Article 75 of this Law, the management and use of non-refundable bid security and contract performance security shall be carried out as follows:

a/ For projects and bidding packages funded by the state budget, this security shall be remitted into the state budget in accordance with the law on the state budget;

b/ For projects and bidding packages not funded by the state budget and business investment projects, this security shall be used under financial regulations of project owners and competent agencies;

c/ In case the bid solicitor is a unit providing bidding consultancy selected by the project owner, this security shall be remitted to the project owner. The project owner shall manage and use this security under Points a and b of this Clause.

Article 15. Costs of contractor and investor selection

1. Costs of contractor selection are as follows:

a/ Dossiers of requirements and bidding dossiers for domestic bidding, dossiers of invitation for expression of interest and dossier of invitation to

prequalification shall be published free of charge on the Vietnam National E-Procurement System;

b/ Bidding dossiers for international bidding shall be published on the Vietnam National E-Procurement System; contractors shall pay for electronic copies of bidding dossiers when submitting their bid dossiers;

c/ Project owners and bid solicitors shall bear costs of the posting of bidding information and costs of the organization of contractor selection;

d/ Contractors shall bear costs of the preparation of dossiers of expression of interest, dossiers for participation in prequalification, bid dossiers and dossiers of proposals, costs of the bidding participation, and costs of the settlement of complaints (if any).

2. Costs of investor selection are as follows:

a/ Dossiers of invitation for expression of interest and bidding dossiers for domestic bidding shall be issued free of charge on the Vietnam National E-Procurement System;

b/ Bidding dossiers for international bidding shall be issued on the Vietnam National E-Procurement System; investors shall pay for electronic copies of bidding dossiers when submitting bid dossiers;

c/ Bid solicitors shall bear costs of the posting of information on investor selection and costs of the organization of investor selection;

d/ Investors shall bear costs of the preparation of dossiers of registration for project implementation and bidding dossiers, costs of the bidding participation, and costs of the resolution of petitions (if any).

3. The Government shall detail this Article.

Article 16. Prohibited acts in bidding activities

1. Giving, receiving or brokering bribes.

2. Taking advantage of one's position and powers to illegally influence or interfere with bidding activities in any form.

3. Collusive bidding, including the following acts/cases:

a/ Making an arrangement or entering into an agreement for, or forcing, one or more than one party to prepare bid dossiers or withdraw bid dossiers so that one party will win the bid;

b/ Making an arrangement or entering into agreement to refuse to provide goods or services or not to sign subcontractor agreements or to make other forms of agreement in order to suppress competition so that one party will win the bid;

c/ Capable and experienced contractors and investors have participated in the bidding and satisfied requirements of bidding dossiers but intentionally refused to provide documents to prove their capacity and experience when requested by the bid solicitor to clarify their bid dossiers or when requested to compare documents in order to create conditions for one party to win the bid.

4. Committing frauds, including the following acts:

a/ Forging or falsifying information, dossiers and documents in bidding;

b/ Intentionally providing truthful or non-objective information and documents in dossiers of expression of interest, dossiers of participation in prequalification, dossiers of registration for implementation of business investment projects, bid dossiers or dossiers of proposals in order to falsify contractor or investor selection results.

5. Obstructing bidding-related activities, including the following acts:

a/ Destroying, deceiving, altering or concealing evidences or making false reports; threatening or giving suggestions to any party in order to prevent the clarification of acts of giving, receiving or brokering bribes, cheating or colluding with competent supervision, examination, inspection and audit agencies;

b/ Obstructing the contractor or investor selection by competent persons, project owners, bid solicitors, contractors and investors;

c/ Obstructing the supervision, examination, inspection and audit of bidding activities by competent agencies;

d/ Intentionally making false complaints, denunciations or petitions to obstruct bidding activities;

dd/ Committing violations of the law on cyber safety and security to interfere with or obstruct online bidding.

6. Failing to ensure fairness and transparency, including the following cases:

a/ One participates in bidding as a contractor or an investor for the bidding package or business investment project for which it/he/she acts as the bid solicitor or project owner or performs tasks of the bid solicitor or project owner not in accordance with this Law;

b/ One participates concurrently in the formulation and appraisal of the dossier of invitation for expression of interest, dossier of invitation to

prequalification, bidding dossier and dossier of requirements for the same bidding package or business investment project;

c/ One participates concurrently in the evaluation of bid dossiers and dossiers of proposals and the appraisal of contractor or investor selection results for the same bidding package or business investment project;

d/ An employee of the bid solicitor or project owner directly participates in the contractor or investor selection or joins the expert group or team for appraisal of contractor or investor selection result appraisal group or acts as the competent person or head of the project owner or bid solicitor for the bidding package or business investment project for which a person with whom he/she has family relations as specified by the Law on Enterprises participates in the bidding or acts as the legal representative of a contractor or an investor participating in the bidding;

dd/ A contractor participates in the bidding for the procurement, construction or non-consultancy service bidding package for which it/he/she acts as a consultant in the formulation, verification or appraisal of cost estimates, technical design, construction drawing design, and front-end engineering design (FEED); the formulation and appraisal of the dossier of invitation to prequalification and bidding dossier; the evaluation of dossiers of participation in prequalification and bid dossiers; the inspection of goods; the appraisal of contractor selection results; or the supervision of the contract implementation;

e/ One participates in the bidding for a bidding package under a project or business investment project whose project owner or bid solicitor is an agency or organization where he/she has worked as a leader or manager within the period of 12 months from the date he/she stopped working at that agency or organization;

g/ A contractor provides inspection consultancy services for the bidding package for which it/he/she act as the supervision consultant;

h/ A form of contractor or investor selection other than open bidding is applied while the conditions specified in this Law are not fully satisfied;

i/ Specific requirements on trademark and origin of goods are set in bidding dossiers for procurement or construction bidding packages or mixed bidding packages when open bidding, restricted bidding or competitive offer is applied, except the cases specified at Point e, Clause 3, Article 10; Clause 2, Article 44; and Clause 1, Article 56 of this Law;

k/ Conditions are set in bidding dossiers to limit the participation of contractors or investors or to create advantages for one or more than one

contractor or investor, leading to unfair competition or violating Clause 3, Article 44 and Clause 2, Article 48 of this Law;

1/ A project or procurement estimate is split up into several bidding packages for the purpose of contractor appointment; a project or procurement estimate is split up to limit the participation of contractors.

7. Disclosing documents and information on the contractor or investor selection, except the provision of information under Point b, Clause 8 and Point g, Clause 9, Article 77; Clause 11, Article 78; Point h, Clause 1, Article 79; Clause 4, Article 80; Clause 4, Article 81; Clause 2, Article 82; and Point b, Clause 4, Article 93 of this Law, including:

a/ Contents of dossiers of invitation for expression of interest, dossiers of invitation for prequalification, bidding dossiers or dossiers of requirements before the time of issuance;

b/ Contents of dossiers of expression of interest, dossiers for participation in prequalification, dossiers of registration for implementation of business investment projects, bid dossiers and dossiers of proposals; contents of bid solicitors' requests for clarification of dossiers of expression of interest, dossiers for participation in prequalification, dossiers of registration for implementation of business investment projects, bid dossiers and dossiers of proposals and responses of contractors or investors in the evaluation of dossiers of expression of interest, dossiers for participation in prequalification, dossiers of registration for implementation of business investment projects, bid dossiers and dossiers of proposals; reports of bid solicitors, reports of expert groups, appraisal reports, reports of consultancy contractors and reports of related specialized agencies during the contractor or investor selection; records and minutes of bid review meetings, comments on and evaluations of each dossier of expression of interest, dossier for participation in prequalification, dossier of registration for implementation of business investment projects, bid dossier and dossier of proposals before they are made public under regulations;

c/ Contractor or investor selection results before such results are made public under regulations;

d/ Other documents in the contractor or investor selection that are believed to contain state secrets in accordance with law.

8. Assigning contracts in the following cases:

a/ A contractor assigns to another contractor part of the work under the bidding package in excess of the maximum value of work for subcontractors and the volume of work for special subcontractors stated in the contract;

b/ A contractor assigns to another contractor part of the work of the bidding package that does not exceed the maximum value of work for subcontractors stated in the contract but falls beyond the scope of work for subcontractors proposed in its/his/her bid dossier or dossier of proposals without approval of the project owner or supervision consultant;

c/ The project owner or supervision consultant approves the contractor's assignment of work specified at Point a of this Clause;

d/ The project owner or supervision consultant approves the contractor's assignment of work specified at Point b of this Clause in case the assigned work exceeds the maximum value of work for subcontractors stated in the contract.

9. Organizing the contractor selection when the funding source has not yet been determined under Clause 3, Article 39 of this Law.

Article 17. Bid cancellation

1. Cases of bid cancellation for contractor selection:

a/ All dossiers of expression of interest, dossiers for participation in prequalification, bid dossiers and dossiers of proposals fail to satisfy requirements of the dossier of invitation for expression of interest, dossier of invitation to prequalification, bidding dossier and dossier of requirements;

b/ Investment objectives and scope stated in the approved investment decision change, leading to a change in the work volume or evaluation standards stated in the dossier of invitation for expression of interest, dossier of invitation to prequalification, bidding dossier and dossier of requirements;

c/ The dossier of invitation for expression of interest, dossiers of invitation to prequalification, bidding dossier and dossier of requirements fail to comply with this Law and other relevant laws, leading to the fact that the selected contractor does not satisfy requirements on implementation of the bidding package;

d/ The bid-winning contractor commits one of the prohibited acts specified in Article 16 of this Law;

dd/ An organization or individual other than the bid-winning contractor commits one of the prohibited acts specified in Article 16 of this Law, leading to falsification of contractor selection results.

2. Cases of bid cancellation for investor selection:

a/ All bid dossiers fail to satisfy requirements of the bidding dossier;

b/ Objectives, scale, location, investment capital and implementation duration of the business investment project change due to *force majeure* reasons, leading to a change in evaluation standards stated in the issued bidding dossier;

c/ One or more than one provision of the bidding dossier does/do not comply with this Law and other relevant laws, leading to falsification of investor selection results or leading to the fact the selected investor no longer satisfies requirements on implementation of the business investment project;

d/ The bid-winning investor commits one of the prohibited acts specified in Article 16 of this Law;

dd/ An organization or individual other than the bid-winning investor commits one of the prohibited acts specified in Article 16 of this Law, leading to falsification of investor selection results.

3. Bid cancellation shall be carried out in the period from date of issuance of the dossier of invitation for expression of interest, dossier of invitation to prequalification, bidding dossier and dossier of requirements to the date prior to the conclusion of the contract or framework agreement, for centralized procurement.

4. Organizations and individuals that commit violations of law, leading to bid cancellation under Points c, d and dd, Clause 1, and Points c, d and dd, Clause 2 of this Article shall pay damages to related parties.

Article 18. Bidding suspension, non-recognition of contractor or investor selection results

1. When there is evidence that an organization or individual participating in bidding activities commit one of the acts specified in Article 16 of this Law or commits a violation of relevant regulations, leading to failure to ensure competition, fairness, transparency and economic efficiency or falsification of contractor or investor selection results, the competent person shall take one or some of the following measures:

a/ Suspending the bidding to stop contractor and investor selection activities in order to immediately remedy violations. The bidding suspension shall be effected during the contractor or investor selection process until contractor or investor selection results are approved;

b/ Not recognizing contractor or investor selection results; this measure may be taken during the contractor and investor selection process and contract performance process;

c/ Handling violations in bidding under Article 87 of this Law.

2. A document on bidding suspension or non-recognition of contractor or investor selection results must clearly state reason, contents, measures and time for remediation of violations of the bidding law.

Article 19. Expert groups and appraisal groups

1. An expert group, composed of qualified and experienced individuals, shall be formed or assigned by the project owner or bidding consultancy unit, for the contractor selection, or by the bid solicitor, for investor selection, to perform one or all of the following tasks: formulation of the dossier of invitation for expression of interest, dossier of invitation to prequalification, bidding dossier or dossier of requirements; evaluation of dossiers of expression of interest, dossiers for participation in prequalification, bid dossiers, dossiers of proposals and dossiers of registration for implementation of the business investment project; and performance of other tasks during the contractor or investor selection process.

2. An appraisal team, composed of qualified and experienced individuals, shall be formed or assigned by a competent person, project owner or bidding consultancy unit to check the law compliance of one or all of the following documents: general contractor selection plan, contractor selection plan; dossier of invitation for expression of interest, dossier of invitation to pre-qualification, bidding dossier and dossier of requirements and results of the invitation for expression of interest, pre-qualification results, and contractor or investor selection results.

3. Each of members of an expert group or appraisal group must have at least 3 years of experience in one of the fields related to legal, technical and financial aspects of the bidding package or business investment project.

4. The Government shall provide in detail capacity and experience of members of expert groups and appraisal groups.

Chapter II

FORMS AND METHODS OF CONTRACTOR OR INVESTOR SELECTION

Section 1

FORMS OF CONTRACTOR SELECTION

Article 20. Forms of contractor selection

1. Forms of contractor selection include:

a/ Open bidding;

- b/ Restricted bidding;
- c/ Contractor appointment;
- d/ Competitive offer;
- dd/ Direct procurement;
- e/ Self-execution;
- g/ Community participation in execution;
- h/ Price negotiation;
- i/ Contractor selection in special cases.

2. When arising forms of contractor selection other than the forms specified in Clause 1 of this Article, which possess superior features and use advanced and modern electronic means, the Government shall specify bidding forms, processes and objects in conformity with new features of the Vietnam National E-Procurement System, ensuring the competitiveness, fairness, transparency and economic efficiency in bidding activities.

Article 21. Open bidding

1. Open bidding is a form of contractor selection in which the number of participating contractors is not limited.

2. Open bidding shall apply to all bidding packages, except the cases specified in Articles 22 thru 29 of this Law. For a bidding package for which open bidding is not applied, the report for approval of the contractor selection plan must clearly state the reason for non-application of open bidding; the competent person shall decide on, and take responsibility for, non-application of open bidding.

Article 22. Restricted bidding

1. Restricted bidding is a form of contractor selection in which only some contractors satisfying the bidding package's requirements are invited to participate in the bidding. Restricted bidding shall apply to:

1. Bidding packages with high technical requirements or involving special techniques which can be satisfied by certain contractors.

2. The projects' or bidding packages' donors require organization of restricted bidding in treaties or foreign loan agreements.

Article 23. Contractor appointment

1. Contractor appointment shall apply to:

a/ Emergency bidding packages that need to be executed in order to defend the national sovereignty and security; bidding packages that need to be executed to immediately remedy or promptly handle consequences of natural disasters, fires, accidents, incidents, calamities or other *force majeure* events;

b/ Consultancy service, non-consultancy service, goods procurement, and construction bidding packages that need to be immediately executed in order to prevent harms to the life and property of local communities or serious impacts on adjacent works;

c/ Consultancy service and non-consultancy service bidding packages, bidding packages for procurement of medicines, chemicals and supplies for medical tests, medical equipment, components, spare parts or means, and construction bidding packages that need to be immediately executed to serve epidemic prevention and control work or maintain the operation of medical examination and treatment establishments in case of emergency, preventing harms to the people's life and health; bidding packages for procurement of medicines, chemicals and supplies for medical tests, medical equipment, components and spare parts for giving first aid to patients in emergency situations in accordance with the Law on Medical Examination and Treatment in case medical examination and treatment establishments do not have adequate medicines, chemicals and supplies for medical tests, medical equipment, components and spare parts; and bidding packages for procurement of medicines and medical equipment with one manufacturer available in the market;

d/ Bidding packages that need to be executed to protect state secrets;

dd/ Bidding packages for provision of consultancy services that cannot be procured from other contractors but the contractors that have previously provided such services in order to ensure technological compatibility or copyright; bidding packages for procurement of goods or provision of non-consultancy services that cannot be procured from other contractors or manufacturers but the contractors that have previously provided such goods or services or the manufacturers of existing equipment, devices, machinery, software and services or their agents in order to ensure technological compatibility and copyright or due to the warranty conditions of such contractors or manufacturers;

e/ Bidding packages for research or testing purposes or for procurement of intellectual property licenses or copyrighted broadcasts; and bidding packages for transportation of national reserve goods for relief and aid purposes in case immediate delivery is required;

g/ Bidding packages for provision of consultancy services for the formulation of feasibility study reports or construction designs that are designated to authors of selected architecture designs, provided the authors are fully capable as prescribed by the construction law; bidding packages for construction and restoration of monuments, bas-reliefs, grand murals and artistic works subject to copyright protection from the stage of creation to the stage of construction; bidding packages for provision of consultancy services for the formulation of construction master plans that are designated to authors of construction planning initiatives or plans selected through contests;

h/ Bidding packages for provision consultancy services for, and implementation of, relocation of technical infrastructure facilities to serve the ground clearance; bidding packages for provision of consultancy for, and implementation of, bomb, land mine and explosive sweeping to prepare construction grounds;

i/ Bidding packages for which there is only one contractor in the market capable of execution due to technological solution requirements;

k/ Bidding packages under projects of national importance that are eligible for contractor appointment under the National Assembly's resolutions when making investment policy decision;

l/ Bidding packages for lease of warehouse facilities for detained goods; bidding packages for hiring the services of transporting and loading detained goods at seaports or concentrated goods inspection places in case there is only one service provider available at these ports; bidding packages for import of sporting weapons to serve training and annual competition activities at sports clubs, schools and training centers;

m/ Bidding packages under procurement estimates with a price of between over VND 50 million and VND 100 million; bidding packages under investment projects of state-owned enterprises, enterprises with 100% of charter capital held by state-owned enterprises and investment projects specified in the Law on Public Investment, including consultancy service bidding packages with a price not exceeding VND 500 million, and non-consultancy service, goods procurement and construction bidding packages and mixed bidding packages with a price not exceeding VND 1 billion.

In case it is necessary to adjust the limits specified at this Point to suit socio-economic conditions and state management requirements, the Government shall submit the adjustments to the National Assembly Standing Committee for consideration and decision.

2. For the bidding packages specified at Points a, b and c, Clause 1 of this Article, project owners shall decide on, and be held responsible for, contractor appointment according to the fast-track procedures for capable and experienced contractors to immediately execute such bidding packages. Within 15 days from the date of commencement of the execution of a bidding package, involved parties shall complete procedures for contractor appointment, including the following steps: preparation and sending of the draft contract to the to-be-appointed contractor; contract finalization; submission, approval and disclosure of the contractor selection result; and contract conclusion and management of contract performance.

3. Contractor appointment for a bidding package specified at Points d, dd, e, g, h, i, k, l and m, Clause 1 of this Article must fully satisfy the following conditions:

a/ The project's investment decision has been approved, except bidding packages for provision of project preparation consultancy;

b/ The contractor selection plan has been approved;

c/ Capital has been allocated for the bidding package execution;

d/ The cost estimate has been approved under regulations, except for EP, EC, EPC and turnkey bidding packages;

4. For bidding packages or procurements with a price not exceeding VND 50 million, heads of agencies or units in charge of the procurement shall decide on the procurement, ensuring economic efficiency and take responsibility for their decision without having to formulate, appraise and approve the contractor selection plan and bidding package cost estimate and conclude contracts with suppliers but must comply with regulations on invoices and documents in accordance with law.

5. The time period for carrying out contractor appointment is 45 days, counted from the date of approval of the dossier of requirements to the date of contract conclusion. For large-sized and complicated bidding packages, such time period is 90 days;

6. In case the bidding packages specified in Clause 1 of this Article satisfy the conditions for contractor appointment specified in Clause 3 of this Article but it is still possible to apply other forms of contractor selection specified in Articles 21, 22, 24 and 25 of this Law, competent persons are encouraged to apply such forms of contractor selection.

7. The Government shall detail Point c, Clause 1 of this Article.

Article 24. Competitive offer

Competitive offer shall be applied to bidding packages with a price not exceeding VND 5 billion and falling in one of the following cases:

1. Ordinary and simple non-consultancy service bidding packages;
2. Bidding packages for procurement of ordinary goods that are available in the market with standardized technical properties and of equivalent quality;
3. Simple work construction bidding packages with approved construction drawing designs.
4. Mixed procurement and construction bidding packages with the construction jobs complying with Clause 3 of this Article.

Article 25. Direct procurement

1. Direct procurement shall be applied to bidding packages for procurement of similar goods under projects or procurement estimates of the same project owner or of other project owners and satisfying Clause 2 of this Article.

2. Direct procurement shall be applied when the following conditions are fully satisfied:

a/ The contractor has won at an open bidding or a restricted bidding and has concluded a contract for execution of the previous bidding package;

b/ The project owner may apply direct procurement only once for goods of the bidding package of which the volume of each work item is smaller than 130% of that the previous bidding package for which a contract was concluded, exclusive of the additional procurement volume (if any);

c/ Unit prices of jobs of the bidding package do not exceed those of corresponding jobs of a similar bidding package for which a contract was concluded and concurrently match market prices at the time of contract finalization;

d/ The period from the date of contract conclusion for the previous bidding package to the date of approval of direct procurement results does not exceed 12 months.

3. In case the contractor performing the previous contract is incapable of further executing the direct procurement bidding package, direct procurement may be applied to another contractor that fully satisfies requirements on capacity, experience, techniques and prices according to the bidding dossier and previous contractor selection results.

Article 26. Self-execution

1. A project owner that directly manages and uses a bidding package under a project or procurement estimate may self-execute such bidding package when fully satisfying the following conditions:

a/ Having its functions, tasks, operating fields or business lines conformable with requirements of the bidding package;

b/ Having technical and financial capacity and experience satisfying requirements of the bidding package;

c/ Having a feasible plan on mobilization of manpower, machinery and equipment to meet bidding package execution schedule requirements.

2. A project owner shall directly self-execute the bidding package or assign its dependent accounting unit or its attached division or section to execute the bidding package.

3. An organization or a unit specified in Clause 2 of this Article may not transfer to another organization or individual a work volume valued at 10% or more of the work value or over VND 50 billion as agreed upon in the work assignment agreement.

Article 27. Community participation in execution

Residential communities or workers' teams in localities where bidding packages under national target programs or public investment programs jointly executed by the State and the People with a price not exceeding VND 5 billion shall be assigned to execute the whole or part of such bidding packages.

Article 28. Price negotiation

1. Price negotiation shall be applied to the following bidding packages:

a/ Procurement of proprietary drugs or reference biologicals;

b/ Procurement of medicines, medical equipment or medical lab supplies with only 1 manufacturer or 2 manufacturers available.

2. The Minister of Health shall decide on the application of price negotiation, promulgate the list of medicines, medical equipment and medical lab supplies to be procured through price negotiation, and specify the contractor selection process and procedures for bidding packages for which price negotiation is applied.

Article 29. Contractor selection in special cases

1. The contractor selection in special cases may be applied to bidding packages to which the forms of contractor selection specified in Articles 21 thru 28 of this Law cannot be applied, including:

a/ Bidding packages for procurement of medicines or vaccines under trials with the manufacturers' specific requirements on procurement, payment, guarantee, security and other conditions during the contract performance;

b/ Bidding packages for procurement of medicines, vaccines and medical equipment through international organizations;

c/ Bidding packages subject to strict requirements on national defense and security, external affairs and territorial borders;

d/ Selection of lawyers for provision of legal services to protect lawful rights and interests of the Vietnamese State and state agencies at foreign or international jurisdictional bodies;

dd/ Bidding packages for provision of intensive training for state agencies and public non-business units that are directly organized by foreign training institutions overseas; procurement of airfares for domestic and international working delegations; bidding packages for provision of professional training and further training in specific areas for cadres and civil servants which are necessary to invite agencies or units that are competent or have professional training functions and tasks assigned by competent agencies;

e/ Bidding packages for performance of political tasks assigned by the Party or the State, including dissemination of information on printed newspapers, online newspapers, radio and television, and other mass media in case the agency or unit allocated with funding sources to carry out the dissemination directly concludes contracts with such agency for implementation; organization of special art programs; and coordination in film production;

g/ Bidding packages for production and installation of stages for production of broadcasts combined with creative ideas thereon; and lease of venues to organize the production and shooting of videos of highly artistic programs;

h/ Bidding packages for provision of printing services, stamps, receipts and seals in accordance with the laws on tax administration and customs; bidding packages for procurement police dogs, provision of training of police dogs, and procurement of narcotics, explosives, narcotics or explosive scent pads used for police dog training;

i/ In case a project or bidding package has specific conditions regarding contractor selection process, procedures and criteria, and conditions on contract

conclusion and execution other than those specified at Points a, b, c, d, dd, e, g and h of this Clause, the Government shall submit to the National Assembly Standing Committee for decision on addition cases eligible for the form of contractor selection in special cases.

2. Competence to decide on the form of contractor selection in special cases is as follows:

a/ The Prime Minister shall decide on the selection of contractors specified at Point c, Clause 1 of this Article;

b/ The Minister of Health shall decide on, and take responsibility for, the selection of contractors specified at Points a and b, Clause 1 of this Article;

c/ Ministers, heads of ministerial-level agencies, government-attached agencies, other central agencies, and chairpersons of provincial-level People's Committees shall decide on, and take responsibility for, the selection of contractors specified at Points d, dd, e, g and h, Clause 1 of this Article.

3. A written request for approval of the contractor selection plan in special cases must clearly state the reason for the failure to satisfy the conditions specified in Articles 21 thru 28 of this Law.

4. The Government shall specify dossiers, process and procedures for contractor selection in special cases.

Section 2

CONTRACTOR SELECTION METHODS

Article 30. Single-stage single-envelope method

1. The single-stage single-envelope method shall be applied to:

a/ Open bidding and restricted bidding for non-consultancy service, goods procurement, construction and mixed bidding packages, except for the case specified at Point b, Clause 1, Article 31 of this Law;

b/ Competitive offer for non-consultancy service, goods procurement, construction and mixed goods procurement and construction bidding packages;

c/ Contractor appointment for consultancy service, non-consultancy service, goods procurement, construction, and mixed bidding packages;

d/ Direct procurement for goods procurement bidding packages;

2. Contractors shall submit their bid dossiers or dossiers of proposals which consist of both technical and financial proposals according to requirements of the bidding dossier or dossier of requirements.

3. The opening of bids shall be carried out only once for all bid dossiers or dossiers of proposals.

Article 31. Single-stage two-envelope method

1. The single-stage two-envelope method shall be applied to:

a/ Open bidding or restricted bidding for consultancy service bidding packages;

b/ Open bidding or restrict bidding for non-consultancy service, goods procurement, construction, and mixed bidding packages requiring high techniques in accordance with the law on science and technology.

2. Contractors shall submit simultaneously separate dossiers of technical proposals and dossiers of financial proposals according to requirements of the bidding dossier.

3. The opening of bids shall be carried out twice. Dossiers of technical proposals shall be opened right after the bid closing time. Dossiers of financial proposals of contractors that satisfy technical requirements shall be opened for evaluation.

Article 32. Two-stage single-envelope method

1. The two-stage single-envelope method shall be applied to open bidding or restricted bidding for goods procurement, construction and mixed bidding packages of which specific technical requirements have not been accurately and fully identified at the time of bidding organization.

2. In the first stage, each contractor shall submit a dossier of technical proposals according to the requirements of the bidding dossier and based on the basic designs or technical parameters of the bidding package without offering any bid. A contractor may propose an alternative plan for the requirements in the bidding dossier which, however, must be made as a separate plan together with the main technical plan according to the requirements of the bidding dossier. Dossiers of technical proposals shall be opened right after the bid closing time. Contractors whose dossiers of technical proposals satisfy the requirements of the bidding dossier in the first stage shall be invited to participate in bidding in the second stage.

3. In the second stage, the procedures for contractor selection are as follows:

a/ Contractors on the list of those satisfying the requirements in the first stage shall be invited to clarify their dossiers of technical proposals. Clarification of technical proposals covers the project owner's or bid solicitor's request for the

contractors' adjustment of their technical proposals in the first stage. The contractors may give their opinions on contents of the bidding dossier;

b/ Based on the clarification of each contractor's technical proposals, the bidding dossier in the first stage shall be adjusted and supplemented in terms of instructions for contractors, evaluation criteria, technical requirements, contract conditions and other contents to constitute the bidding dossier for the second stage, including also contractors' technical deviations which have been approved and alternative proposals which have been accepted;

c/ Contractors shall submit their bid dossiers, including both technical proposals and financial proposals according to the requirements of the bidding dossier in the second stage which must include their bids and bid security on the basis of adjusted technical proposals at the first stage under Point a of this Clause. Bids shall be opened once for all bid dossiers.

Article 33. Two-stage two-envelope method

1. The two-stage two-envelope method shall be applied to open bidding or restricted bidding for goods procurement, construction and mixed bidding packages involving new, complex and particular techniques and technologies, of which specific technical requirements have not been accurately and fully identified at the time of bidding organization.

2. In the first stage, contractors shall submit technical proposals according to the requirements of the bidding dossier based on the basic designs or technical parameters of the bidding package without offering any bid. A contractor may propose an alternative plan for the requirements in the bidding dossier which, however, must be made as a separate plan together with the main technical plan according to the requirements of the bidding dossier. Dossiers of technical proposals shall be opened right after the bid closing time. Contractors whose dossiers of technical proposals satisfy the requirements of the bidding dossier in the first stage shall be invited to participate in bidding in the second stage.

3. In the second stage, the process for contractor selection is as follows:

a/ Contractors on the list of those satisfying the requirements in the first stage shall be invited to clarify their dossiers of technical proposals. Clarification of technical proposal covers the project owner's or bid solicitor's request for the contractors' adjustment of their technical proposals in the first stage. The contractors may give their opinions on contents of the bidding dossier;

b/ Based on the clarification of each contractor's technical proposals, the bidding dossier in the first stage shall be adjusted and supplemented in terms of instructions for contractors, evaluation criteria, technical requirements, contract

conditions, and other contents to constitute the bidding dossier for the second stage, including also contractors' technical deviations which have been approved and proposals in their alternative plans which have been accepted;

c/ Contractors shall submit their bid dossiers, including separate technical proposals and financial proposals according to requirements of the bidding dossier in the second stage which must include their bids and bid security, dossiers of financial proposals must conform to the contractors' main technical proposals. In case a contractor offers an alternative technical plan, it/he/she shall enclose financial proposals for this alternative plan. Bids shall be opened twice. Dossiers of technical proposals shall be opened right after the bid closing time. Dossiers of financial proposals of contractors that satisfy technical requirements shall be opened for evaluation.

Section 3

INVESTOR SELECTION FORMS AND METHODS

Article 34. Investor selection forms

1. Open bidding:

Open bidding shall be applied to business investment projects in which the number of participating investor is not limited.

2. Restricted bidding:

Restricted bidding shall be applied to business investment projects with high technical and technological requirements or involving special techniques in accordance with relevant specialized law in which only contractors that satisfy the projects' requirements are invited to participate in the bidding.

Article 35. Investor selection methods

1. Single-stage single-envelope method:

a/ The single-stage single-envelope method shall be applied to open bidding and restricted bidding for investor selection;

b/ Investors shall submit their bid dossiers which consist of both technical and financial proposals according to the requirements of the bidding dossier;

c/ The opening of bids shall be carried out only once for all bid dossiers.

2. Single-stage two-envelope method:

a/ The single-stage two-envelope method shall be applied to open bidding for investor selection in business investment projects involving valuable architecture works in accordance with the law on architecture;

b/ Investors shall submit simultaneously separate dossiers of technical proposals and dossiers of financial proposals according to the requirements of the bidding dossier;

c/ The opening of bids shall be carried out twice. Dossiers of technical proposals shall be opened right after the time of bid closing. Dossiers of financial proposals of investors that satisfy technical requirements shall be opened for evaluation.

3. Two-stage single-envelope method:

The two-stage single-envelope method shall be applied to open bidding for selection of investors to implement business investment projects with special socio-economic development requirements of sectors, regions and localities in which specific technical, economic, social and environmental standards have not been determined.

4. The Government shall detail this Article

Chapter III

CONTRACTOR SELECTION PLANS

Article 36. General plans on contractor selection for projects

1. Based on the scale and characteristics of a project's bidding work, the project owner or project preparation agency may propose the competent person to consider and decide on the formulation and approval of the general plan on contractor selection.

2. A general plan on contractor selection shall be formulated simultaneously with, or independently from, a feasibility study report and approved right after the feasibility study report is approved.

3. A general plan on contractor selection must have the following principal contents:

a/ Consideration of the project implementation context for the bidding work;

b/ Assessment of the capacity, resources and experience of the project owner for implementation of the project's bidding activities;

c/ Analysis of the market and identification of bidding risks;

d/ Specific targets of bidding activities;

dd/ Proposals of the general plan for contractor selection for the project include division of the project into bidding packages; contractor selection forms

and methods; contract types, principles for risk classification and management; progress of implementation of main jobs and bidding packages; other contents to be noted in the compilation of a bidding dossier and management of contract performance.

4. The Government shall detail this Article.

Article 37. Principles of formulation of contractor selection plans

1. A contractor selection plan shall be formulated for the whole project or procurement estimate. For a procurement estimate, the contractor selection plan shall be formulated on the basis of the current budgetary year's procurement estimate, and expected procurement estimate of subsequent budgetary years. In case conditions for formulation of a contractor selection plan for the whole project or procurement estimate are not fully satisfied yet, a plan on selection of contractors shall be formulated for one bidding package or several bidding packages for execution first.

2. For a bidding package with the implementation duration of more than one year, the contractor selection plan must clearly state the implementation duration of the bidding package and the bidding package price based on the whole implementation duration of the bidding package.

3. A contractor selection plan must clearly state the number of bidding packages and contents of each bidding package.

4. The approval of the contractor selection plan must be based on its technical characteristics and implementation process, ensuring the synchronism of the project or procurement estimate and conformity with the approved general plan on contractor selection (if any).

5. A contractor selection plan may be formulated after the procurement estimate is made or the project approval decision is issued, or simultaneously with the formulation of the project or procurement estimate, or before the project approval decision is issued for bidding packages that need to be executed before such decision is issued.

Article 38. Formulation of contractor selection plans

1. Grounds for formulation of a contractor selection plan of a project:

a/ The project approval decision and relevant documents, except cases where a bidding package needs to be executed before the project is approved. For a bidding package that needs to be executed before the project is approved, the decision of the head of the project owner or the head of the unit assigned to prepare the project in case the investor is not yet identified;

b/ The general plan on contractor selection (if any);

c/ The project for which the medium-term public investment plan has been assigned, except urgent public investment projects specified in the law on public investment;

d/ The fund allocation plan for project implementation or funding sources for implementation of the project other than those specified at Point c of this Clause;

dd/ A treaty or loan agreement, for projects funded with ODA or concessional loans of foreign donors, except the cases of bidding in advance specified in Article 42 of this Law;

e/ Other relevant legal documents.

2. Grounds for formulation of a contractor selection plan for procurement cost estimates:

a/ Standards and norms of use of public assets of agencies, organizations and units, and officials, civil servants, public employees and workers (if any);

b/ The procurement estimate;

c/ Relevant legal documents.

Article 39. Contents of a contractor selection plan

1. Name of the bidding package:

The name of the bidding package must show characteristics, contents and scope of jobs of the bidding package. In case the bidding package consists of many separate parts, the contractor selection plan must state the name and principal contents of each part.

2. Bidding package price:

a/ The bidding package price is the value of the bidding package approved in the contractor selection plan. The bidding package price is inclusive of all expenses for the execution of the bidding package, including also contingency expenses, charges, fees and taxes. When necessary, the bidding package price shall be updated 28 days before the date of bid opening;

b/ For a bidding package consisting of many separate parts, each part's estimated price must be clearly stated in the bidding package price;

c/ For a bidding package applying additional procurement options as specified in Clause 8 of this Article, the bidding package price is exclusive of the additional procurement value.

The Government shall detail contents of bidding package prices in contractor selection plans.

3. Funding sources:

For each bidding package, it is requested to clearly state whether the funding sources have been identified or approved. In case of use of ODA or concessional loans of foreign donors, names of donors and structure of funding sources, including financial aid and domestic counterpart capital, must be clearly stated. For procurement estimates, in case of a bidding package with the implementation duration of more than one year, funding sources shall be identified on the basis of the current budgetary year's procurement estimates and expected procurement estimates of subsequent budgetary years.

4. Contractor selection forms and methods:

a/ For each bidding package, the contractor selection form and method must be specifically identified, including selection of domestic or international contractors; and whether the online contractor selection is applied or not;

b/ For projects applying the form of general plan on contractor selection, a bidding package must state contents in conformity with the general plan on contractor selection.

5. Time of organization of contractor selection:

A contractor selection plan must clarify the time limit and starting time of organization of contractor selection. The starting time of organizing the contractor selection is the time of distribution of a bidding dossier or dossier of requirements which will be either a month or a quarter of the year. For open bidding whereby procedures for selection of a shortlist are applied, the starting time of organizing the contractor selection is the time of distribution of a dossier of invitation for expression of interest or dossier of invitation to prequalification.

6. Types of contract:

a/ A contractor selection plan must specify the type of contract specified in Article 64 of this Law to serve as a basis for formulation of a dossier of invitation for expression of interest, dossier of invitation to prequalification, bidding dossier or dossier of requirements; and for contract conclusion.

b/ For projects applying the form of general plan on contractor selection, a contract must state contents in conformity with the general plan on contractor selection.

7. Bidding package execution duration:

The bidding package execution duration means the number of days counted from the effective date of the contract to the date of acceptance of completed works, goods (including related services, if any) or non-consultancy or consultancy services. The bidding package execution duration shall be counted in days, weeks, months or years, excluding the period for fulfillment of warranty obligations and author supervision period for consultancy service bidding packages (if any).

8. Additional procurement options (if any):

a/ Additional procurement option means the possibility that a project owner will procure an extra volume of goods, consultancy or non-consultancy services under the bidding package in addition to the volume stated in the contract;

b/ In case a bidding package has an additional procurement option, the contractor selection plan must clearly state the volume, quantity and estimated value of the additional procurement;

c/ An additional procurement option shall be implemented in case the contractor has won the bid through open bidding or price negotiation; the additional procurement volume does not exceed 30% of the corresponding work volume specified in the contract; the cost estimate for the additional procurement has been approved; unit price of additionally procured goods or services does not exceed that of the corresponding goods or services provided in the contract; the additional procurement option is valid during the contract's validity duration.

9. Supervision of bidding activities (if any).

Article 40. Approval of contractor selection plans for projects

1. A dossier for submission of a contractor selection plan for approval must have the following contents:

a/ Performed jobs, including jobs related to the project preparation and bidding packages previously executed with corresponding value, and legal grounds for execution;

b/ Jobs to which none of the contractor selection forms can be applied;

c/ Jobs stated in the contractor selection plan, including jobs and corresponding value constituting bidding packages to be executed in any of the contractor selection forms specified in Articles 21 thru 29 of this Law.

d/ Jobs not yet fully satisfying conditions for formulation of a contractor selection plan (if any), clearly stating activities involved in, and value of, these jobs;

dd/ Total value of the jobs specified at Points a, b, c and d of this Clause. Such total value must not exceed the project's approved total investment;

e/ Other related contents.

2. Competence to approve contractor selection plans:

a/ Project owners shall organize the formulation and approval of contractor selection plans in case general plans on contractor selection have been approved;

b/ Competent persons shall consider and approve contractor selection plans for projects having no general plans on contractor selection, or authorize project owners, agencies or units under their management to approve contractor selection plans, except the case specified at Point c of this Clause;

c/ Project owners or heads of the units assigned to prepare projects shall approve contractor selection plans in case the project owners are not identified yet under Article 42 of this Law, or bidding packages needs to be executed before project approval decisions are issued.

3. The persons approving contractor selection plans specified in Clause 2 of this Article shall organize the appraisal of contents specified in Article 39 of this Law before approving them.

Article 41. Approval of contractor selection plans for procurement estimates

1. A dossier for submission of a contractor selection plan for approval must have the following contents:

a/ Performed jobs, including jobs related to the project preparation, and bidding packages previously executed with corresponding value, and legal grounds for execution;

b/ Jobs to which none of the contractor selection forms can be applied;

c/ Jobs stated in the contractor selection plan, including jobs and corresponding value constituting bidding packages to be executed in any of the contractor selection forms specified in Articles 21 thru 29 of this Law.

d/ Jobs not yet fully satisfying the conditions for formulation of a contractor selection plan (if any), clearly stating activities involved in, and value of, these jobs;

dd/ Total value of jobs specified at Points a, b, c and d of this Clause. Such total value must not exceed the procurement cost estimate;

e/ Other related contents.

2. Competent persons shall approve contractor selection plans or authorize project owners, agencies or units under their management to approve them.

3. The persons approving contractor selection plans specified in Clause 2 of this Article shall organize the appraisal of contents specified in Article 39 of this Law before approving them.

Article 42. Bidding in advance

1. Bidding in advance for bidding packages to select contractors for projects funded with ODA or concessional loans of foreign donors must comply with concluded treaties or agreements on ODA or concessional loans.

Activities to be performed before the conclusion of a treaty or an agreement on ODA or concessional loans of a foreign donor include formulation, submission for approval, appraisal and approval of a contractor selection plan, dossier of invitation for expression of interest, dossier of invitation to prequalification, bidding dossier, dossier of requirements, and identification of a shortlist.

2. The activities specified in Clause 1 of this Article must comply with Point a, Clause 1, Article 43 of this Law.

Chapter IV

PROCESS AND PROCEDURES FOR CONTRACTOR OR INVESTOR
SELECTION

Article 43. Process and procedures for contractor selection

1. The process and procedures for contractor selection for open bidding or restricted bidding must include the following steps:

a/ Preparation for contractor selection;

b/ Organization of contractor selection;

c/ Evaluation of bid dossiers;

d/ Contract negotiation, for consultancy service bidding packages;

For goods procurement, construction and non-consultancy service bidding packages subject to international bidding, mixed bidding packages and bidding packages with high technical requirements, in case of necessity, bid solicitors may negotiate contracts with first-ranked contractors;

dd/ Submission, appraisal, approval and publicization of contractor selection results and explanation of the reason(s) for not winning the bid at contractors' request (if any);

e/ Finalization and conclusion of contracts and management of contract performance.

2. The process and procedures for contractor selection for cases of contractor appointment must include the following steps:

a/ Preparation for contractor selection;

b/ Organization of contractor selection;

c/ Evaluation of dossiers of proposals and negotiation on the proposals of the contractor(s) (if any);

d/ Submission, appraisal, approval and publicization of contractor selection results;

dd/ Finalization and conclusion of contracts and management of contract performance.

For the cases specified at Point m, Clause 1, Article 23 of this Law, competent persons may decide on the application of fast-track procedures which must include the following steps: preparation and sending of the draft contract to contractors; finalization of contracts; submission, approval and publicization of contractor selection results; conclusion of contracts and management of contract performance.

3. The process and procedures for contractor selection for cases of competitive offer must include the following steps:

a/ Preparation for contractor selection;

b/ Organization of contractor selection;

c/ Evaluation of bid dossiers;

d/ Submission, appraisal, approval and publicization of contractor selection results and explanation of the reason(s) for not winning the bid at contractors' request (if any);

dd/ Finalization and conclusion of contracts and management of contract performance.

4. The process and procedures for contractor selection for cases of direct procurement must include the following steps:

a/ Preparation for contractor selection;

b/ Organization of contractor selection;

c/ Evaluation of dossiers of proposals and negotiation on proposals of contractors;

d/ Submission, appraisal, approval and publicization of contractor selection results;

dd/ Finalization and conclusion of contracts and management of contract performance.

5. The process and procedures for contractor selection for cases of self-execution must include the following steps:

a/ Preparation of self-execution plans, including draft job assignment agreements;

b/ Finalization of self-execution plans;

c/ Approval and publicization of contractor selection results;

d/ Conclusion of job assignment agreements; management of bidding package execution.

6. Selection of individual consultants shall be applied in case the performance jobs under bidding packages requires only one or some experienced and capable expert(s) and neither needs the participation of organizations nor requires conditions as for institutional contractors. The process and procedures for selection of individual consultants must include the following steps:

a/ Preparation for contractor selection;

b/ Organization of contractor selection;

c/ Evaluation of science resumes of individual consultancy contractors;

d/ Contract negotiation;

dd/ Submission, approval and publicization of contractor selection results;

e/ Conclusion of contracts and management of contract performance.

7. The process and procedures for contractor selection for bidding packages with the participation of local communities must include the following steps:

a/ Preparation of plans on selection of local communities or worker teams for bidding package execution;

b/ Organization of selection;

c/ Approval and publicization of selection results;

d/ Finalization and conclusion of contracts and management of contract performance.

8. The Government shall detail this Article.

Article 44. Contents of bidding dossiers for contractor selection

1. A bidding dossier must comprise:

a/ Instructions for contractors, additional procurement options (if any);

b/ Bidding datasheet;

c/ Criteria for evaluation of validity of bid dossiers; capacity and experience of contractors; technical, financial and commercial qualifications; contractors' prestige through their participation in bidding or the previous performance of similar contracts and quality of used similar goods.

In case of use of a special subcontractor, the bidding dossier must clearly specify the scope of work and requirements on capacity and experience of such special subcontractor;

d/ Bidding and bid forms;

dd/ Scope of provision, technical requirements, terms of reference;

e/ Contract conditions and forms;

g/ Dossiers, drawing designs and other contents (if any).

2. Bidding dossiers may state the origin by group of countries or territories. In case a bidding package falls into the cases specified at Point dd, Clause 1, Article 23 and fully satisfies the conditions for application of the form of contractor appointment under Clause 3, Article 23 of this Law, but the competent person decides to apply open bidding, restricted bidding or competitive bidding for contractor selection, the bidding dossier may state the origin and brand of goods.

3. Bidding dossiers may not state any conditions to limit the participation of contractors or to create advantage for one or some contractor(s), thus causing unfair competition.

4. In case a bidding dossier has contents that violate Clause 3 of this Article, such contents shall be regarded as invalid and not a basis for evaluation of bid dossiers.

Article 45. Time periods for organization of contractor selection

1. Time periods for organization of contractor selection are as follows:

a/ The time period for preparing a dossier of expression of interest or dossier for participation in prequalification is at least 9 days, for domestic bidding, or 18 days, for international bidding, counted from the first date of distribution of the dossier of invitation for expression of interest or dossier of invitation to prequalification to the date of bid closing;

b/ The time period for preparing bid dossiers for open bidding or restricted bidding is at least 18 days, for domestic bidding, or 35 days, for international bidding, counted from the first date of distribution of the bidding dossier to the date of bid closing; for a construction bidding package or mixed bidding packages with a price not exceeding VND 20 billion, a goods procurement or non-consultancy service bidding package with a price not exceeding VND 10 billion, the time period for preparing bid dossiers is at least 9 days, for domestic bidding, or 18 days, for international bidding.

c/ The time period for preparing bid dossiers for competitive offer is at least 5 working days, counted from the first date of distribution of the bidding dossier to the date of bid closing;

d/ In case a bidding package is eligible for contractor appointment under Points a, b and c, Clause 1, Article 23 of this Law but the competent person decides to apply open bidding for contractor selection, the time period for preparing bid dossiers is at least 9 days, counted from the first date of distribution of the bidding dossier to the date of bid closing;

dd/ The modification of the bidding dossier shall be carried out at least 10 days before the date of bid closing; for a construction bidding package or mixed bidding packages with a price not exceeding VND 20 billion, goods procurement or non-consultancy service bidding package with a price not exceeding VND 10 billion, the modification of the bidding dossier shall be carried out at least 3 working days before the date of bid closing. The modification of the dossier of invitation for expression of interest or dossier of invitation to prequalification shall be carried out at least 3 working days before the date of bid closing.

2. Dossiers of invitation for expression of interest, dossiers of invitation to prequalification and bidding dossiers shall be distributed simultaneously with notices of invitation for expression of interest, notices of invitation to prequalification and notices of invitation to bid.

3. For jobs other than those specified in Clauses 1 and 2 of this Article, competent persons and project owners shall decide on the time periods for implementation on the basis of ensuring progress of projects and bidding packages.

Section 2

PROCESS AND PROCEDURES FOR INVESTOR SELECTION

Article 46. Process and procedures for investor selection

1. The investor selection process must include the following steps:

a/ Announcement of the business investment project;

b/ Preparation for bidding for investor selection, including formulation, appraisal and approval of the bidding dossier;

c/ Organization of bidding for investor selection, including bidding, distribution, modification and clarification of the bidding dossier; preparation, submission, receipt, management, modification, withdrawal and replacement of bid dossiers;

d/ Evaluation of bid dossiers, including opening of bids; examination and evaluation of validity of bid dossiers; evaluation of details of bid dossiers;

dd/ Submission, appraisal, approval and publicization of contractor selection results and explanation of the reason(s) for not winning the bid at investors' request (if any);

e/ Contract negotiation, finalization and conclusion.

2. In case the land law or a relevant specialized law provides that bidding for investor selection must be organized when there are at least 2 investors expressing interest, in addition to the steps specified in Clause 1 of this Article, the competent agency shall formulate a dossier of invitation for expression of interest and notice of invitation for expression of interest, organize the evaluation of dossiers of registration for project implementation and approve results of the invitation for expression of interest before carrying out the step of bidding preparation for investor selection under Point b, Clause 1 of this Article.

3. The Government shall detail this Article.

Article 47. Announcement of business investment projects

1. Competent agencies shall announce business investment projects on the Vietnam National E-Procurement System for use as a basis for the organization of investor selection.

2. To-be-announced contents of a business investment project include:

a/ Investment policy approval decision (if any);

b/ Project name; objectives; investment scale; investment capital;

c/ Location of project implementation, current state of land use and land area for the project implementation; land use purposes; and approved planning targets;

d/ Project implementation duration and progress; a preliminary plan on investment phasing or division of the project into mini-projects (if any); project implementation progress in each phase (if any);

dd/ Name of the bid solicitor; investor selection form and method; time of commencement of investor selection;

e/ Other related contents.

Article 48. Contents of bidding dossiers for investor selection

1. A bidding dossier must comprise:

a/ Instructions for investors;

b/ Bidding datasheet;

c/ Contents of examination and evaluation of validity of bid dossiers;

d/ Methods and standards for evaluation of capacity and experience of investors; business investment plans; land use efficiency or investment efficiency for sectoral or local development;

dd/ Bidding and bid forms;

e/ Information on and requirements for implementation of the business investment project;

g/ Draft contract and contract form;

h/ Other related contents.

2. Bidding dossiers may not state any conditions to limit the participation of certain investors or to create advantage for one or some investor(s), thus causing unfair competition.

Article 49. Time for organization of investor selection

1. For domestic bidding, the time period for preparing bid dossiers is at least 45 days, counted from the first date of distribution of the bidding dossier to the date of bid closing.

2. For international bidding, the time period for preparing bid dossiers is at least 60 days, counted from the first date of distribution of the bidding dossier to the date of bid closing.

3. For jobs other than those specified in Clauses 1 and 2 of this Article, competent persons and bid solicitors shall decide on the time periods for

implementation on the basis of ensuring the implementation progress of business investment projects.

Section 3

ONLINE BIDDING

Article 50. Online contractor or investor selection

1. Open bidding, restricted bidding and domestic competitive offer must be carried out on the Vietnam National E-Procurement System according to the following roadmap:

a/ From the effective date of this Law through December 31, 2024, online or offline bidding activities shall comply with the Government's regulations;

b/ From January 1, 2025, online bidding shall be applied to all bidding packages, except cases in which bidding is not carried out on the Vietnam National E-Procurement System under Clause 5 of this Article.

2. Contractor and investor selection activities to be carried out on the Vietnam National E-Procurement System include:

a/ Posting of information on contractor or investor selection;

b/ Formulation, appraisal and approval of dossiers of invitation to prequalification, dossiers of invitation for expression of interest, bidding dossiers, and dossiers of requirements;

c/ Formulation and submission of dossiers for participation in prequalification, dossiers of expression of interest, dossiers of registration for project implementation, bid dossiers, and dossiers of proposals;

d/ Bid opening;

dd/ Evaluation of dossiers for participation in prequalification, dossiers of expression of interest, bid dossiers, dossiers of proposals, invitation for contract negotiation, and appraisal and approval of contractor selection results;

e/ Consortium agreements, electronic bid security, electronic contract performance security;

g/ Clarification of bidding contents;

h/ Sending and receipt of petitions;

i/ E-contracts;

k/ E-payment.

3. E-documents on the Vietnam National E-Procurement System are valid in accordance with the law on e-transactions and serve as a basis for collating, comparing and authenticating information for the evaluation, appraisal, inspection, examination, audit and disbursement purposes.

4. Expenses for online bidding include expenses for joining the Vietnam National E-Procurement System; expenses for posting bidding information specified at Point c, Clause 1 and Point c, Clause 2, Article 15 of this Law, participating in bidding, concluding contracts, and other expenses for bidding on the Vietnam National E-Procurement System.

5. The Government shall provide the connection and sharing of information under Clause 6, Article 51 of this Law; online bidding techniques suitable to utilities and development of the Vietnam National E-Procurement System; process, procedures and expenses for online bidding; roadmap for online investor selection; and cases in which bidding is not carried out on the Vietnam National E-Procurement System.

Article 51. Requirements on the Vietnam National E-Procurement System

1. Information publicly posted on the Vietnam National E-Procurement System must be made public without any access restriction.

2. The time source of the Vietnam National E-Procurement System must be determined in accordance with the law on national standard time source.

3. The Vietnam National E-Procurement System must operate in an uninterrupted, uniform and stable manner, ensuring information safety, user authentication, and data confidentiality and integrity.

4. The Vietnam National E-Procurement System must be able to record information on, and track the history of, all transactions conducted therein.

5. The Vietnam National E-Procurement System must ensure that contractors and investors cannot send dossiers of expression of interest, dossiers for participation in prequalification, bid dossiers and dossiers of proposals to bid solicitors after the bid closing time.

6. Information on contractors and investors must be connected and shared from the National Information System on Enterprise Registration, Tax Administration Information System, Budget and Treasury Management Information System and other systems. The Vietnam National E-Procurement System shall be connected to e-portals and other information technology systems for exchange and sharing of data and information serving the online bidding and state management of bidding.

Article 52. Responsibilities of the organization operating the Vietnam National E-Procurement System

1. To ensure information security, cyber security, and confidentiality for the Vietnam National E-Procurement System's database.

2. To ensure the integrity of dossiers on the Vietnam National E-Procurement System, preventing unauthorized access to, and illegal alteration of, dossiers.

3. To ensure user safety, security and confidentiality and manage user files; to develop a mechanism for time-based and action-based recording and tracking of information on the Vietnam National E-Procurement System.

4. To build the Vietnam National E-Procurement System in compatibility with other systems, with a user-friendly interface up to information technology standards.

5. To administer information security and cybersecurity risks of the Vietnam National E-Procurement System.

6. To refrain from using information on projects, business investment projects, bidding packages, project owners, bid solicitors, contractors, investors and other information on the Vietnam National E-Procurement System for purposes other than its functions and tasks.

7. To ensure the hardware system's satisfaction of requirements for organization of bidding activities.

8. To discharge other responsibilities specified in this Law and other relevant laws.

Chapter V

CENTRALIZED PROCUREMENT; PROCUREMENT OF MEDICINES, CHEMICALS AND SUPPLIES FOR MEDICAL TESTS AND MEDICAL EQUIPMENT; PROVISION OF PUBLIC PRODUCTS AND SERVICES

Article 53. Centralized procurement

1. Centralized procurement is applied when the following conditions are satisfied:

a/ There is a need for procurement of goods and services in large quantities or of similar types at one or more than one agency, organization or unit.

In case of procurement of orphan medicines or medicines in small quantities, centralized procurement may be applied to ensure sufficient medicines for medical examination and treatment;

b/ Goods and services are on lists of goods and services subject to centralized procurement specified in Clause 2 of this Article.

2. The competence to promulgate lists of goods and services subject to centralized procurement is as follows:

a/ The Minister of Health shall promulgate a list of medicines subject to national-level centralized procurement; a list of medical equipment and medical lab supplies subject to national-level centralized procurement in case of necessity;

b/ The Minister of Finance shall promulgate a list of goods and services subject to national-level centralized procurement, except the list promulgated by the Minister of Health specified at Point a of this Clause;

c/ Ministers, heads of ministerial-level agencies, heads of government-attached agencies, heads of other central agencies, chairpersons of provincial-level People's Committee, heads of state-owned enterprises and enterprises with 100% of charter capital held by state-owned enterprises shall promulgate lists of goods and services subject to centralized procurement (including also lists of medicines, medical equipment and medical lab supplies) under their management, except goods or services on lists of goods and services subject to national-level centralized procurement promulgated by the Minister of Health and the Minister of Finance specified at Points a and b of this Clause.

3. Centralized procurement shall be carried out in the form of open bidding. For goods that are on lists of goods and services subject to centralized procurement but need to be procured to serve epidemic prevention and control under Point c, Clause 1, Article 23 of this Law, the mode of contractor appointment may be applied. For goods that are on lists of goods or services subject to centralized procurement and satisfy the conditions for price negotiation specified in Clause 1, Article 28 of this Law, the mode of price negotiation may be applied.

4. Centralized procurement shall be carried out at the national level and at ministries, central agencies, localities or enterprises by either of the following methods:

a/ Centralized procurement units select contractors and directly sign contracts with selected contractors;

b/ Centralized procurement units select contractors, sign a written framework agreement with one or more than one selected contractor to serve as a basis for units with procurement demand to directly sign contracts with selected contractors.

5. For goods and services that are not on the list of goods and services subject to centralized procurement, in case many agencies, organizations and units need to procure goods and services of the same type, they may combine their procurements into one bidding package for one of them or for a centralized procurement unit to carry out the procurement.

6. Centralized procurement units shall carry out contractor selection according to their assigned tasks or under contracts signed with units with demand.

7. The Government shall detail this Article and provide the summarization of centralized procurement demands of private medical examination and treatment establishments.

Article 54. Framework agreements

1. A framework agreement in centralized procurement means an agreement between a centralized procurement unit and one or more than one selected contractor, for non-split bidding packages or certain part of split bidding packages.

2. Framework agreements provide contents and conditions which serve as a basis for procurement under each specific contract.

3. The time limit for application of a framework agreement shall be specified in the contractor selection plan and must not exceed 36 months. At the time of signing of the framework agreement, the selected contractor's bid dossier must remain valid.

4. For a consortium of contractors, all consortium members shall directly sign and append their seals (if any) on framework agreements.

Article 55. Selection of contractors for procurement of medicines, chemicals and supplies for medical tests, and medical equipment

1. Medical examination and treatment establishments may choose contractors for procurement of chemicals and supplies for medical tests and medical equipment by either of the following methods:

a/ Selection of contractors to perform bidding packages for procurement of chemicals and supplies for medical tests. Selected contractors shall provide medical equipment using these chemicals and supplies at the request of project owners, in this case, contractors shall not transfer the ownership but transfer only the right to use medical equipment to medical examination and treatment establishments;

b/ Selection of contractors based on quantity of technical services:

Contractors shall provide project owners with chemicals and supplies for medical tests, medical equipment and their components, spare parts and related services to serve the operation of medical equipment based on quantity of technical services as required by project owners or bid solicitors in bidding dossiers and dossiers of requirements; not provide medical equipment operation staffs.

Contractors shall only transfer the right to use but not transfer the ownership of medical equipment to project owners. Bidding package prices and bid prices shall be determined on the basis of the estimated quantity of technical services. The contract performance duration must not exceed 5 years;

c/ Selection of contractors to carry out bidding packages for procurement of medical equipment and chemicals and supplies for medical tests: Contractors shall transfer the ownership of medical equipment and chemicals and supplies for medical tests to project owners after contracts between them take effect.

d/ Selection of contractors for procurement of medical equipment in accordance with the bidding law;

dd/ Selection of contractors for procurement of chemicals and supplies for medical tests serving the operation of existing medical equipment;

e/ Selection of contractors for procurement of technical equipment in accordance with the Law on Medical Examination and Treatment.

2. For the procurement of medicines not on the list of medicines covered by the health insurance fund and for procurement of vaccines for on-demand vaccination services, medical examination and treatment establishments and healthcare establishments may themselves decide on the procurement on the basis of ensuring publicity, transparency, economic efficiency and accountability.

3. In case a private medical examination and treatment establishment chooses not to apply this Law's provisions regarding the procurement of medicines, chemicals and supplies for medical tests and medical equipment, the health insurance fund shall pay for the medical examination and treatment establishment's medicines, chemicals and supplies for medical tests and medical equipment according to the winning bids of provincial- and national-level public medical examination and treatment establishments or medical examination and treatment establishments at the same technical and professional level in the same locality. In case such winning bids are not available, the Government's regulations shall be applied.

4. The Government shall detail this Article.

Article 56. Preferences in procurement of medicines

Preferences in procurement of medicines must comply with Article 10 of this Law and the following provisions:

a/ For medicines with at least 3 domestic manufacturers meeting the Ministry of Health's technical criteria and quality and price requirements, project owners shall decide to request contractors to offer medicines of domestic origin.

b/ For medicines with at least 3 domestic manufacturers announced by the Ministry of Health as producing such medicines on production lines meeting EU-GMP principles and standards or equivalent ones and meeting the Ministry of Health's technical criteria and requirements on quality, price and supply capacity, bidding dossiers and dossiers of requirements must state that contractors may only offer medicines of domestic origin.

2. The Ministry of Health shall announce the list of medicines specified at Point b, Clause 1 of this Article.

Article 57. Selection of contractors for provision of public products and services

1. Public products and services means products and services which are essential for national socio-economic development, residential communities or national defense and security assurance and must be provided by the State in the fields of education and training; vocational education; health; culture, sports and tourism; information and communications; science and technology; natural resources and environment; transport; agriculture and rural development; industry and trade; construction; labor, invalids and social affairs; justice, and other fields in accordance with law.

Public products and services include public-utility products and services and public non-business services.

2. The selection of contractors for provision of public products and services shall be carried out in accordance with this Law.

3. In addition to the forms of contractor selection specified in Chapter II of this Law, the selection of contractors for provision of public products and services may be carried out in the form of order placement or task assignment under the Government's regulations.

Chapter IV

METHODS OF EVALUATION OF BID DOSSIERS AND CONSIDERATION AND APPROVAL OF BID WINNERS

Section 1

METHODS OF EVALUATION OF BID DOSSIERS AND CONSIDERATION AND APPROVAL OF BID WINNERS IN CONTRACTOR SELECTION

Article 58. Methods of evaluation of bid dossiers for non-consultancy service, goods procurement, construction, and mixed bidding packages

1. Lowest price method:

a/ The lowest price method shall be applied to bidding packages in which technical, financial or commercial proposals are regarded to be on the same plane when they satisfy requirements stated in bidding dossiers;

b/ The contractor with bid dossier meeting technical requirements and with the lowest price after error correction or deviation adjustment (if any), minus the value of discounts (if any) shall be ranked first.

2. Evaluated price bid method:

a/ Evaluated price means the bid price errors are corrected and deviations are adjusted according to requirements stated in the bidding dossier, minus the value of discounts (if any), plus elements for conversion on the same plane for the whole use life of goods, works or non-consultancy services. Evaluated price shall be used for ranking bid dossiers for goods procurement, non-consultancy service, construction and mixed bidding packages subject to open bidding, restricted bidding or competitive offer.

b/ The evaluated-price method shall be applied to bidding packages in which costs can be converted to the same plane in terms of technical, financial or commercial elements for the whole use life of goods, works or non-consultancy services;

c/ Elements to be converted to the same plane for determination of evaluated price include one or more than one of the following elements: necessary operation and maintenance costs and other costs related to loan interests, implementation schedule and quality of goods, services or construction works under bidding packages; capacity and efficiency; and statistics and evaluation of the implementation of previous similar contracts, with origin, sustainable bidding, and other elements taken into consideration;

d/ The contractor with the lowest evaluated-price shall be ranked first.

3. Combined technique-and-price method:

a/ The combined technique-and-price method shall be applied to technology information, telecommunications and insurance bidding packages; goods procurement and construction bidding packages with particular characteristics or high technical requirements for which the evaluated price method cannot be applied; and bidding packages that need to be considered on the basis of attaching importance to technical and price factors;

b/ The general score shall be developed on the basis of combination of technical score and price score. The contractor with the highest general score shall be ranked first.

4. For capacity and experience evaluation, the “pass” and “fail” criteria shall be used. For technical evaluation, the scoring method or “pass” and “fail” criteria shall be used. For the combined technique-and-price method specified in Clause 3 of this Article, the scoring method shall be used for formulating criteria for technical evaluation. When applying the scoring method, the minimum required technical score must not be lower than 70% of total technical score.

Article 59. Methods of evaluation of bid dossiers for consultancy service bidding package

1. Lowest price method

a/ The lowest price method shall be applied to simple consultancy service bidding packages and consultancy bidding packages with a clear implementation process according to existing criteria;

b/ The contractor with a bid dossier satisfying technical requirements and with the lowest bid price after the error correction or deviation adjustment (if any), minus the value of discounts (if any) shall be ranked first.

2. Fixed price method

a/ The fixed price method shall be applied to simple consultancy service bidding packages of which the scope of jobs is determined accurately, execution costs of bidding packages are determined in a reasonable, specific and fixed manner in bidding dossiers;

b/ The contractor with a bid dossier satisfying technical requirements, with the price after error correction or deviation adjustment (if any), minus the value of discounts (if any) not exceeding the bidding package price, and the highest technical score shall be ranked first.

3. Combined technique-and-price method:

a/ The combined technique and bid method shall be applied to consultancy service bidding packages attaching importance to both quality and execution costs of bidding packages.

b/ General scores shall be developed on the basis of combination of technical scores and price scores. The development of general scores must adhere to the principle that the technical score shall account for 70-80% and the price score, 20-30% of the total score of the general score scale (100%). The contractor with the highest general score shall be ranked first;

4. Technique-based method

a/ The technique-based method shall be applied to consultancy service bidding packages with high and special technical requirements.

b/ The contractor with a bid dossier satisfying technical requirements and the highest technical score shall be ranked first and invited to open the dossier of financial proposals to serve as a basis for contract negotiation.

Article 60. Consideration and approval of bid winners for provision of consultancy services

1. An institutional consultancy contractor shall be considered and proposed to be the bid winner when fully satisfying the following conditions:

a/ Having a valid bid dossier or dossier of proposals;

b/ Having technical proposals satisfying requirements of the bidding dossier and dossier of requirements;

c/ Having the lowest bid price after error correction or deviation adjustment (if any), minus the value of discounts (if any), in case of application of the lowest price method; having the lowest bid price after deviation adjustment (if any), for bidding packages applying the lump-sum contract; having the highest technical score, in case of application of the fixed-price method or technique-based method; or having the highest general score, in case of application of the combined technique-and-price method;

d/ Having the proposed winning bid not exceeding the approved bidding package price.

2. An individual consultancy contractor shall be considered and proposed to be the bid winner when fully satisfying the following conditions:

a/ Having the best science resume and technical proposals (if any) and satisfying requirements of reference terms;

b/ Having the proposed winning bid not exceeding the approved bidding package price.

3. For unselected contractors, notices of contractor selection results must clearly state the reason for not winning.

Article 61. Consideration and approval of bid winners for non-consultancy services, goods procurement, construction, and mixed bidding packages

1. A contractor participating in bidding for non-consultancy service, goods procurement, construction or mixed bidding package shall be considered or proposed to be the bid winner when fully satisfying the following conditions:

a/ Having a valid bid dossier or dossier of proposals;

b/ Having capacity and experience satisfying requirements of the bidding dossier and dossier of requirements;

c/ Having technical proposals satisfying requirements of the bidding dossier and dossier of requirements;

d/ Having a deficient deviation not exceeding 10% of its/his/her bid;

dd/ Having the lowest bid price after error correction or deviation adjustment (if any), minus the value of discounts (if any), in case of application of the lowest price method; having the lowest evaluated price, in case of application of the evaluation bid method; or having the highest general score, in case of application of the combined technique and bid method;

e/ Having the proposed winning bid not exceeding the approved bidding package price.

2. For unselected contractors, notices of contractor selection results must clearly state the reason for not winning.

Section 2

METHODS OF EVALUATION OF BID DOSSIERS AND CONSIDERATION AND APPROVAL OF BID WINNERS IN CONTRACTOR SELECTION

Article 62. Methods of evaluation of bid dossiers

1. The method of evaluation of social benefits and state benefits shall be applied to evaluate capacity and experience of investors and efficiency of business investment plans proposed by investors, including land use efficiency and local and sectoral development investment efficiency.

2. Investors' bid dossiers shall be evaluated based on the following criteria:

a/ Criteria for evaluation of investors' capacity in term of finance, capital arrangement ability, and experience in implementing similar business investment projects;

b/ Criteria for evaluation of investors' business investment plans, including technical, social and environmental criteria;

c/ Criteria for evaluation of land use efficiency and sectoral and local development investment efficiency.

3. For business investment projects with special requirements on business investment conditions and sectoral management and development in accordance with the investment law and relevant specialized laws, bidding dossiers shall determine fixed criteria among the criteria specified in Clause 2 of this Article.

4. Bid dossier evaluation criteria shall be formulated on a scale of 100 or 1,000 points. General scores shall be developed on the basis of combination of scores of capacity, experience, business investment plan, land use efficiency and sectoral and local development investment efficiency. The investor with the minimum score for each criterion specified in Clauses 2 and 3 of this Article and the highest general score shall be ranked first.

5. The Government shall detail this Article.

Article 63. Consideration and approval of bid winners

1. Investors may be considered and proposed to be the bid winner when fully satisfying the following conditions:

a/ Having a valid bid dossier;

b/ Satisfying requirements on capacity and experience;

c/ Satisfying requirements on business investment plan;

d/ Satisfying requirements on land use efficiency and sectoral and local development investment efficiency;

dd/ Having the highest general score on capacity, experience, business investment plan, land use efficiency and sectoral and local development investment efficiency.

2. For unselected investors, notices of investor selection results must clearly state the reason(s) for not winning.

Chapter VII
CONTRACTS

Section 1

CONTRACTS WITH CONTRACTORS

Article 64. Types of contract

1. Lump-sum contract:

a/ Lump-sum contract shall be applied to bidding packages for which at the time of contractor selection, the scope of jobs, technical requirements and duration of bidding package execution are clearly determined or which have a low possibility of change in volume, technical requirements and unforeseeable conditions; and bidding packages of which volume and unit prices are not yet determined but contracting parties can determine the capacity of risk management and management of arising changes or determine nature and characteristics of output products, including EPC contracts and turnkey contracts;

b/ In case of a lump-sum contract, the bidding package price serving as a ground for consideration and approval of the bid winner must include contingency expenses for risks of work volume and provisions for inflation which may occur in the course of contract performance corresponding to the responsibility for risk management assigned to contractors in the bidding package. A bid price must be inclusive of all expenses for risks of work volume and provisions for inflation which may occur in the course of contract performance corresponding to the responsibility of contractors in the execution of the bidding package.

c/ The contract price remains unchanged in the course of contract performance for scope of jobs, technical requirements and terms stated in the contract, except *force majeure* events and the change in the scope of jobs to be performed that lead to the change in the contract price;

d/ Payment shall be made according to the percentage of the contract price or the price of works, work items and work volume corresponding to the payment period as agreed upon by parties in the contract. The certification of the completed volume in detail is not required when the payment is made.

2. Fixed unit price contract:

a/ Fixed unit price contract shall be applied to bidding packages for which at the time of contractor selection, the nature of jobs is clearly determined but the accurate quantity or work volume actually to be completed is not yet determined. The original contract price is based on the work quantity and volume and the fixed

unit price stated in the contract and contingency expenses for the work quantity and volume that may arise shall be determined in accordance with law;

b/ The unit price of a fixed unit price contract shall remain unchanged throughout the course of performance of the whole contracted work. The contractor may receive payment according to the actually tested and accepted work quantity or volume and on the basis of the fixed unit price stated in the contract.

3. Adjustable unit price contract:

a/ Adjustable unit price contract shall be applied to bidding packages with long execution duration and risks of price fluctuations for input costs for contract performance that may have negative impacts on the execution of bidding packages if the fixed unit price is applied. The unit price and contract price of an adjustable unit price contract may be adjusted on the basis of agreements in the contract for the whole contracted work. The original contract price shall be determined based on the necessary work quantity and volume with the base unit price stated in the contract and contingency expenses for the work quantity and volume that may arise and provisions of inflation. The contract must provide methods of inflation calculation and provisions of inflation in accordance with law;

b/ The contractor shall receive payment according to the actually tested and accepted work quantity and volume and on the basis of the unit price stated in the contract or adjusted unit price (if any).

4. Time-based contract:

Time-based contract shall be applied in case of emergency, repair and maintenance of works, machinery and equipment; and consultancy services when the scope and duration of provision of such services are difficult to determine. The contract price shall be calculated on the basis of the unit price for the time unit, agreed hourly, daily, weekly or monthly wage levels stated in the contract and reimbursable arising reasonable costs.

5. Cost-plus-fee contract:

Cost-plus-fee contracts shall be applied to jobs and services for which at the time of contractor selection, there is insufficient grounds for determining the scope of jobs and needs for input elements and costs for the performance of projected contractual jobs. At the time of contract conclusion, parties shall reach agreement on management expenses, general costs, profits, direct cost-based calculation methods, methods of determination of direct costs to serve the calculation of direct costs and other contents for contract performance.

6. Outcome-based contract:

Outcome-based contract shall be applied to jobs and services for which payment is based on contract performance outcomes tested and accepted in terms of quality, quantity and other elements. Such a contract must clearly state specific requirements on output quality and quantity, measures to inspect, evaluate and determine the level of satisfaction of output quality requirements, payment reduction level, provisions on price adjustment (if any) and other contents for contract performance.

7. Percentage-based contracts:

Percentage-based contract may only be applied to work insurance bidding packages for which the contract value is determined accurately based on the actually tested and accepted work value.

8. Mixed contracts:

Mixed contract means a contract whose content combines the types of contract specified in Clauses 1 thru 7 of this Article. A mixed contract must clearly provide the scope of jobs applicable to each corresponding type of contract and relevant modified and adjusted contents when several types of contract are applied simultaneously to a number of jobs or services. Payment for a mixed contract shall be made in compliance with payment regulations applicable to each specific type of contract for the scope of performed jobs.

Article 65. Dossiers of contracts with contractors

1. A dossier of a contract with a contractor must comprise:

a/ The contract;

b/ Contract annexes, including a detailed list of jobs, price table and performance schedule (if any);

c/ Decision approving contractor selection results.

2. In addition to the documents specified in Clause 1 of this Article, depending on the size and characteristics of the bidding package, the contract dossier may include one or several of the following documents:

a/ Minutes of contract finalization;

b/ Minutes of contract negotiation (if any);

c/ Written agreement between parties on conditions of the contract, including general conditions and specific conditions;

d/ Bid dossier or dossier of proposals and documents clarifying such dossier of the selected contractor;

dd/ Bidding dossier or dossier of requirements and documents amending or supplementing such dossier;

e/ Other relevant documents.

Article 66. Contract conclusion conditions

1. At the time of contract conclusion, the bid dossier and dossier of proposals of the selected contractor remain valid. A framework agreement applied to centralized procurement remains valid at the time of conclusion.

2. At the time of contract conclusion, the selected contractor must satisfy requirements on technical and financial capacity to execute the bidding package as required by the bidding dossier or dossier of requirements.

3. Project owners must ensure conditions on advanced capital, capital for payment, site ground and other necessary conditions for execution of bidding packages according to schedule.

Article 67. Conclusion of contracts with selected contractors

The conclusion of a contract between a project owner and a contractor is as follows:

1. Each bidding package shall be executed under one contract of one or several types of contract specified in Article 64 of this Law. For a centralized procurement bidding package or a bidding package consisting of many separate parts, the bidding package may be executed under several contracts corresponding to one or several parts. In case several types of contract are applied, the type of contract corresponding to each specific job must be clearly stated.

2. The contract concluded between parties must conform to contents of the bidding dossier, dossier of requirements, bid dossier, dossier of proposals, contract negotiation results (if any) and decision approving contractor selection results and clearly state the scope of jobs for special subcontractors (if any) and the maximum job value for subcontractors. The maximum job value for subcontractors does not include work volume for special subcontractors;

3. For a consortium of contractors, all consortium members shall directly sign and append their seals (if any) on the contract; for centralized procurement applying a framework agreement, all consortium members shall directly sign and append their seals (if any) on the contract or all consortium members shall sign

and append their seals (if any) on the contract with units with the procurement demand as assigned in the consortium agreement.

4. The Government shall detail this Article.

Article 68. Contract performance security

1. A contractor shall implement one of the following measures to secure its/his/her contract performance liability:

a/ Paying a deposit;

b/ Submitting a guarantee letter issued by a domestic credit institution or foreign bank branch established in accordance with Vietnam's law;

c/ Submitting a certificate of guarantee insurance issued by a domestic non-life insurance business or a branch of a foreign non-life insurance business established in accordance with Vietnam's law.

2. Contract performance security shall be applied to selected contractors, except the following cases:

a/ Contractors providing consultancy services;

b/ Contractors selected in the form of self-execution or participation of local communities in execution;

c/ Contractors executing bidding packages whose price is within the contractor appointment threshold specified at Point m, Clause 1, Article 23 of this Law.

3. Selected contractors shall provide contract performance security before or at the time the contract takes effect.

4. Based on the size and characteristics of a bidding package, the value of contract performance security stated in the bidding dossier or dossier of requirements shall be 2-10% of the contract price.

5. The validity duration of contract performance security shall be counted from the date the contract takes effect to the date the parties fulfill the contract obligations or the date of commencement of the warranty obligation in case warranty is provided in the contract. In case of necessity to prolong the contract performance duration, the contractor shall be required to prolong the validity duration of the contract performance security before prolonging the contract performance duration.

6. A contractor shall not be refunded the contract performance security in the following cases:

a/ It/he/she refuses to perform the contract when the contract has taken effect;

b/ It/he/she breaches the contract;

c/ It/he/she performs the contract behind schedule due to its/his/her own faults but refuses to prolong the validity duration of the contract performance security.

Article 69. Principles of contract performance

1. To comply with concluded contracts.

2. To ensure truthfulness, cooperation and lawfulness.

3. Not to infringe upon interests of the State and the community and lawful interests of other organizations and individuals.

Article 70. Modification of contracts

1. A contract may be modified when:

a/ The parties so agree in the concluded contract in accordance with law;

b/ There are basic changes in the contract performance circumstance as specified by the civil law;

c/ A competent state agency so requests, affecting the contract performance but the contractor is not at fault.

2. To-be-modified contents of a contract may include the volume, schedule, price, application of additional procurement options and other contents agreed upon by the parties in the concluded contract, except the cases specified in Clause 5 of this Article. The schedule, volume and price may only be adjusted during the execution of the bidding package stated in the contract, unless the additional procurement option is applied.

3. In the course of the contract performance, the parties may adjust the deadlines for completion of specific jobs stated in the contract when:

a/ A *force majeure* event or disadvantageous conditions arise(s), obstructing the contractor's contract performance while there are no violation or mistake of contracting parties;

b/ The project, scope of jobs, scope of supply, designs, major construction solutions and supply measures are changed or adjusted due to objective requirements, affecting the contract performance schedule;

c/ One party or several parties propose(s) initiatives or innovations in the contract performance that need a change in the schedule in order to bring higher benefits to the project owner;

d/ The site ground is handed over at variance with agreements in the contract or the contract performance is temporarily suspended due to the project owner's fault but not the contractor's fault;

dd/ The performance of jobs is temporarily suspended at the request of a competent state agency but not due to the project owner's or the contractor's fault.

4. The modification of a contract that leads to a change in the contract performance duration or an excess in the approved bidding package price (including contingency expenses) must be permitted by a competent person. The contract price after being adjusted must not exceed the approved total investment or procurement estimate. For a project or procurement estimate consisting of many bidding packages, the total contract price after being adjusted must not exceed the approved total investment or procurement estimate.

5. The parties are not required to sign the document on modification of the contract in case of changing the contract price, volume and other contents stated in the contract when the following conditions are satisfied:

a/ The contract price does not exceed the bidding package price written in the contractor selection plan. If the bidding package cost estimate is approved after the contractor selection plan is made, the contract price does not exceed the bidding package cost estimate;

b/ The bidding package execution duration does not exceed the duration stated in the contract;

c/ The method(s), formula, items and contents necessary for modification are already stated in the contract.

6. The Government shall detail this Article.

Section 2

BUSINESS INVESTMENT PROJECT CONTRACTS WITH INVESTORS

Article 71. Conclusion of and principles of performance of business investment project contracts

1. The conclusion of a business investment project contract must fully satisfy the following conditions:

a/ At the time of contract conclusion, the bid dossier of the selected investor remains valid;

b/ At the time of contract conclusion, the selected investor satisfies requirements on technical and financial capacity to implement the business investment project as required by the bidding dossier.

2. The contract concluded between the parties must be consistent with contents of the bidding dossier, bid dossier, decision approving investor selection results and minutes of contract negotiation and finalization.

3. The competent agency or bid solicitor (if authorized) shall conclude the contract with the selected investor. For a consortium of investors, all consortium members shall directly sign and append their seals (if any) on the contract.

4. The performance of business investment project contracts must comply with Article 69 of this Law.

Article 72. Dossiers of business investment project contracts

A dossier of a business investment project contract must comprise:

1. The contract;
2. Contract annexes (if any);
3. Minutes of contract negotiation and finalization;
4. Decision approving investor selection results;
5. Bid dossier of the selected investor and clarifying documents;
6. Bidding dossier and amending or supplementing documents;
7. Other relevant documents.

Article 73. Contents of business investment project contracts

1. A business investment project contract must have the following principal contents:

a/ Information on contracting parties, and effective date and validity duration of the contract;

b/ Information on the business investment project, including project implementation objectives, location and schedule; scope and total investment capital; conditions for use of land and other resources (if any); plans and requirements for compensation, support, resettlement and organization of construction of auxiliary works (if any); assurance of safety and environmental protection; *force majeure* events and remedies in *force majeure* events;

c/ Responsibility to carry out procedures for compensation, support and resettlement and organization of construction of auxiliary works (if any); land allocation and lease (if any);

d/ The investor's obligation to fulfill the commitments it/he/she proposes in the bid dossier; and the establishment of an enterprise to manage the business investment project (if any);

dd/ Contract performance security; principles of, and conditions for, modification or termination of the contract; the transfer of contracting parties' rights and obligations;

e/ The law governing the contract and dispute resolution mechanism.

2. The Government shall detail this Article.

Article 74. Validity duration of business investment project contracts

1. The validity duration of a business investment project contract means the duration for contract performance determined in the contract concluded between the parties.

2. The validity duration of a business investment project contract shall be counted from the date the contract takes effect until the investor fulfills the obligations to implement the commitments proposed in the bid dossier and other obligations as agreed upon by the parties in the contract.

3. Upon the expiration of the validity duration of the contract, the investor shall implement the business investment project in accordance with the law on investment and relevant laws.

Article 75. Security for performance of business investment project contracts

1. An investor shall implement one of the following measures to secure its/his/her liability to perform a business investment project contract before or at the time the contract takes effect:

a/ Submitting a letter of guarantee issued by a domestic credit institution or foreign bank branch established in accordance with Vietnam's law;

b/ Submitting a certificate of guarantee insurance issued by a domestic non-life insurance business or a branch of a foreign non-life insurance business established in accordance with Vietnam's law.

2. Based on the size and characteristics of a business investment project, the value of contract performance security stated in the bidding dossier shall be 1-3% of the total investment capital.

3. The validity duration of contract performance security shall be counted from the date the contract is officially signed to the date the contract is terminated. In case of prolongation of the contract performance duration, the investor shall be required to prolong the validity duration of the contract performance security.

4. An investor shall not be refunded the contract performance security in the following cases:

a/ It/he/she refuses to perform the contract when the contract has taken effect;

b/ It/he/she breaches the contract;

c/ It/he/she performs the contract behind schedule due to its/his/her faults but refuses to prolong the validity duration of the contract performance security.

Article 76. Modification of business investment project contracts

1. A business investment project contract shall be modified in the following cases:

a/ The business investment project is adjusted in accordance with the law on investment, resulting in a change in contents of the contract, for projects subject to investment policy approval.

In this case, the contract may only be modified after a competent agency approves the adjustment of the investment policy. The investor must satisfy requirements on technical and financial capacity to implement the business investment project after the project is adjusted.

b/ The business investment project is transferred in accordance with the law on investment and relevant laws;

c/ Other cases as agreed upon by the parties in the contract in accordance with law.

2. The transfer of a business investment project specified at Point b, Clause 1 of this Article must satisfy the following conditions:

a/ The transfer is approved by a competent person;

b/ The investor being the business investment project transferee satisfies the conditions on technical and financial capacity to implement such project;

c/ The investor being the business investment project transferee commits to inheriting all rights and obligations of the transferor stated in the business investment project contract.

Chapter VIII

RESPONSIBILITIES OF INVOLVED PARTIES IN BIDDING ACTIVITIES

Article 77. Responsibilities of competent persons

1. To approve the general plans on contractor selection specified in Article 36 of this Law.

2. To approve the contractor selection plans specified in Articles 40 and 41 of this Law.

3. To organize the appraisal of the contents specified in Clauses 1 and 2 of this Article.

4. To suspend the bidding, refuse to recognize contractor or investor selection results, and handle violations of the bidding law in accordance with this Law and relevant laws.

5. To cancel the bidding, for the cases specified at Points b, c, d and dd, Clause 1 and Points b, c, d and dd, Clause 2, Article 17 of this Law.

6. To settle petitions in contractor or investor selection process in accordance with this Law.

7. To organize inspection and supervision of bidding and contract performance.

8. In case of contractor selection, in addition to the responsibilities specified in Clauses 1 thru 7 of this Article, competent persons have the following responsibilities:

a/ To adjust tasks and competence of project owners in case project owners do not satisfy the conditions specified by the bidding law and requirements of projects or bidding packages;

b/ To request project owners or bid solicitors to provide dossiers and documents to serve the inspection, supervision, settlement of petitions, handling of violations of the bidding law, and performance of the jobs specified in Clauses 4 and 5 of this Article;

c/ To give opinions on the response to arising circumstances in complicated cases at the request of project owners as specified at Point a, Clause 3, Article 88 of this Law.

9. In case of investor selection, in addition to the responsibilities specified in Clauses 4 thru 7 of this Article, competent persons have the following responsibilities:

a/ To represent competent agencies in deciding on organization of bidding for investor selection;

b/ To decide to assign units with staffs meeting requirements of investor selection to act as bid solicitors. In case of unqualified staffs, to select consultancy contractors to perform some tasks of bid solicitors;

c/ To approve dossiers of invitation for expression of interest and bidding dossiers or authorize the approval of bidding dossiers;

d/ To approve results of the invitation for expression of interest and investor selection results;

dd/ To decide on the response to arising circumstances in bidding;

e/ To conclude contracts under competent agencies' approval; to organize contract management with selected investors;

g/ To request bid solicitors to provide dossiers and documents to serve inspection, supervision, settlement of petitions, handling of violations of the bidding law, and performance of the responsibilities specified in Clauses 4 and 5 of this Article.

10. To explain the performance of the responsibilities specified in this Article at the request of superior agencies, inspection and examination agencies and state management agencies in charge of bidding activities.

11. To discharge other responsibilities specified in this Law and relevant laws.

Article 78. Responsibilities of project owners

1. To approve:

a/ Contractor selection plans, for bidding packages that executed before decisions approving projects are issued and or bidding packages entitled to advance bidding; contractor selection plans, for projects for which general plans on contractor selection have been approved;

b/ Dossiers of invitation for expression of interest, dossiers of invitation to prequalification, and shortlists;

c/ Bidding dossiers and dossiers of requirements;

d/ Contractor selection results.

2. To appraise the contents specified in Clause 1 of this Article.

3. To conclude or authorize others to conclude contracts with, and manage the performance of contracts by, contractors; to conclude and manage framework

agreements, for centralized procurement applying framework agreements; to make payments to contractors under concluded contracts.

4. To decide to establish bid solicitors with staffs meeting requirements of the contractor selection. In case of unqualified staffs, to select consultancy contractors to act as bid solicitors or perform some tasks of bid solicitors; to decide to form expert teams under Article 19 of this Law in case of not hiring consultancy units to act as bid solicitors.

5. To decide on response to circumstances in bidding.

6. To settle petitions in the course of contractor selection.

7. To ensure confidentiality of relevant information and documents in the course of contractor selection.

8. To preserve relevant information in the course of contractor selection in accordance with the law on archives and this Law.

9. To make annual reports on bidding activities.

10. To cancel bidding, for the case specified at Point a, Clause 1, Article 17 of this Law.

11. To provide relevant information and documents and explain the performance of the responsibilities specified in this Article upon requests of competent persons, inspection and examination agencies and state management agencies in charge of bidding activities.

12. To take responsibility before law and competent persons for the contractor selection.

13. To perform the responsibilities specified in Article 79 of this Law, in case project owners concurrently act as bid solicitors.

14. To build information technology infrastructure facilities to meet online bidding requirements.

15. To take responsibility before law for the accuracy and truthfulness of information registered and published on the Vietnam National E-Procurement System when signing in with their digital certificates.

16. To discharge other responsibilities specified in this Law and relevant laws.

Article 79. Responsibilities of bid solicitors

1. In case of contractor selection:

a/ To prepare for the contractor selection; to organize the contractor selection; to evaluate dossiers of expression of interest, dossiers for participation in prequalification, bid dossiers, and dossiers of proposals;

b/ To decide to form expert teams in case bid solicitors are consultancy units selected by project owners;

c/ To request contractors to clarify their dossiers of expression of interests, dossiers for participation in prequalification, bid dossiers and dossiers of proposals in the course of dossier evaluation;

d/ To submit for approval dossiers of invitation to prequalification, dossier of invitation for expression of interest, dossier of requirements, bidding dossier, and shortlists and contractor selection results;

dd/ To negotiate (when such step is carried out) and finalize contracts with contractors and manage the contract performance (if any);

e/ To negotiate (when such step is carried out) and finalize framework agreements with contractors and manage the performance of framework agreements (if any) for centralized procurement that applies framework agreements;

g/ To ensure confidentiality of relevant information and documents in the course of contractor selection;

h/ To publish information on the Vietnam National E-Procurement System; to provide relevant information and documents and explain the performance of the responsibilities specified in this Clause upon requests of competent persons, project owners, inspection and examination agencies and state management agencies in charge of bidding activities;

i/ To take responsibility before law and project owners for their assigned tasks specified in this Clause.

2. In case of investor selection, in addition to the responsibilities specified at Point h, Clause 1 of this Article, bid solicitors have the following responsibilities:

a/ To prepare for the investor selection; to organize the investor selection and evaluation of bid dossiers in accordance with this Law;

b/ To decide to form expert teams;

c/ To request investors to clarify their bid dossiers in the course of dossier evaluation;

d/ To submit for approval bidding dossiers and investor selection results; to approve bidding dossiers if authorized;

dd/ To negotiate contracts with investors; to conclude and manage contracts with investors if authorized;

e/ To cancel bidding under Point a, Clause 2, Article 17 of this Law.

g/ To ensure confidentiality of relevant information and documents in the course of investor selection;

h/ To archive relevant information in the course of investor selection in accordance with the law on archives and this Law;

i/ To settle petitions in the course of investor selection;

k/ To make annual reports on bidding activities;

l/ To take responsibility before law and competent persons for their assigned tasks under this Clause.

3. To build information technology infrastructure facilities to meet online bidding requirements.

4. To discharge other responsibilities specified in this Law and relevant laws.

Article 80. Responsibilities of expert teams

1. To formulate dossiers of invitation for expression of interest, dossiers of invitation to prequalification, bidding dossiers and dossiers of requirements.

2. To evaluate dossiers of expression of interest, dossiers for participation in prequalification, dossiers of registration for the implementation of business investment projects, bid dossiers and dossiers of proposals; to propose to bid solicitors plans on response to unexpected circumstances arising in bidding (if any).

3. To ensure confidentiality of relevant information and documents in the course of contractor or investor selection.

4. To provide relevant information and documents and explain the performance of the responsibilities specified in this Article at the request of competent persons, project owners, bid solicitors, inspection and examination agencies, and state management agencies in charge of bidding activities.

5. To discharge other responsibilities specified in this Law and relevant laws.

Article 81. Responsibilities of appraisal teams

1. To ensure independence and objectivity in appraisal activities.

2. To request project owners and bid solicitors to fully provide relevant documents.

3. To ensure confidentiality of relevant information and documents in the course of appraisal.

4. To provide relevant information and documents and explain the performance of responsibilities specified in this Article at the request of competent persons, project owners, inspection and examination agencies, and state management agencies in charge of bidding activities.

5. To take responsibility before law, competent persons and project owners for appraisal results and tasks assigned under this Article.

6. To discharge other responsibilities specified in this Law and relevant laws.

Article 82. Responsibilities of contractors and investors

1. To request bid solicitors to clarify dossiers of invitation for expression of interest, dossiers of invitation to prequalification, bidding dossiers or dossier of requirements.

2. To provide relevant information and documents and explain the performance of responsibilities specified in this Article at the request of competent persons, project owners, bid solicitors, inspection and examination agencies, and state management agencies in charge of bidding activities.

3. In addition to the responsibilities specified in Clauses 1 and 2 of this Article, contractors or investors that join the Vietnam National E-Procurement System have the following responsibilities:

a/ To build information technology infrastructure facilities to meet online bidding requirements.

b/ To take responsibility before law for the accuracy and truthfulness of information registered and published on the Vietnam National E-Procurement System.

4. To perform concluded contracts.

5. To discharge other responsibilities specified in this Law and relevant laws.

Chapter IX

STATE MANAGEMENT OF BIDDING ACTIVITIES

Section 1

STATE MANAGEMENT OF BIDDING ACTIVITIES

Article 83. Contents of state management of bidding activities

1. Promulgating, and organizing the implementation of, legal documents on bidding.
2. Reviewing, assessing, and reporting on, bidding activities.
3. Managing bidding information systems and databases nationwide.
4. Supervising, inspecting, examining, and settling complaints, denunciations and petitions related to, bidding and handling violations of the bidding law according to one's competence and responsibilities specified in this Law and other relevant laws.
5. Providing training and retraining in bidding knowledge and skills.
6. Entering into international cooperation on bidding.

Article 84. Responsibility for state management of bidding

1. The Government shall perform the unified state management of bidding activities nationwide.

2. The Ministry of Planning and Investment shall act as the focal agency assisting the Government in performing unified state management of bidding activities, and has the following powers and responsibilities:

a/ To formulate, promulgate, or submit to competent agencies for promulgation of, legal documents on bidding according to its competence;

b/ To build and manage the Vietnam National E-Procurement System and journalistic products on bidding to serve online bidding and publicization of information on contractor and investor selection in accordance with this Law;

c/ To build and manage the national database on investors and contractors, including contract performance results and quality of used goods in accordance with the Government's regulations;

d/ To issue regulations on training and retraining in, updating of, bidding knowledge and skills for persons engaged in bidding work; regulations on examination, grant and revocation of professional certificates in bidding;

dd/ To carry out the inspection and examination of bidding activities;

e/ To exercise other powers and discharge other responsibilities for state management of bidding activities assigned by the Government and Prime Minister in accordance with this Law and other relevant laws.

Article 85. Responsibilities of ministries, ministerial-level agencies and People's Committees at all levels

1. To perform the state management of bidding activities under their management.

2. To organize retraining in bidding knowledge and skills for cadres, civil servants and public employees engaged in bidding work.

3. To examine, inspect, settle petitions, complaints and denunciations, and handle violations of the bidding law.

4. To review, assess, and report on, bidding activities.

5. To exercise other powers and discharge other responsibilities in accordance with this Law and other relevant laws.

Article 86. Inspection, examination and supervision of bidding activities

1. Inspection of bidding activities:

a/ Inspection of bidding activities shall be carried out for organizations and individuals engaged in the bidding activities specified in this Law;

b/ The organization and operation of bidding inspectorates must comply with the inspection law.

2. Examination of bidding activities:

a/ Examination of bidding activities shall be carried out regularly under plans or irregularly under decisions of heads of competent examination agencies;

b/ Examination of bidding activities shall cover one or more than one of the following activities: promulgation of documents guiding and directing bidding activities; submission, appraisal and approval of contractor selection plans; preparation for contractor and investor selection; organization of contractor and investor selection; management and performance of contracts; and other bidding-related activities;

c/ Examination of bidding activities shall be carried out by the mode of direct examination or through documentary reporting;

d/ Order and procedures for examination: preparing for examination; organizing examination; making examination conclusion; and monitoring the execution of examination conclusions.

3. Supervision of bidding activities:

a/ Competent persons and state management agencies in charge of bidding shall supervise bidding activities of project owners and bid solicitors so as to ensure the contractor and investor selection's compliance with this Law and relevant laws;

b/ Bidding activities shall be supervised by the community. Vietnam Fatherland Front Committees at all levels shall assume the prime responsibility for organizing the community's supervision of bidding activities;

c/ State management agencies in charge of bidding under ministries, sectors, and localities shall regularly supervise bidding activities for bidding packages under projects, business investment projects and procurement estimates in the localities and fields under their management;

d/ Competent persons shall supervise bidding activities for projects, business investment projects and procurement estimates under their management;

dd/ Supervision of bidding activities shall cover one or more than one of the following contents: dossiers of invitation to prequalification, bidding dossiers, dossiers of requirements; evaluation of bid dossiers, dossiers of proposals; process of organizing contractor or investor selection;

e/ Order and procedures for supervision of bidding activities by competent persons: preparing for supervision; conducting supervision; reporting on supervision results.

4. The Government shall detail this Article.

Article 87. Handling of violations

1. An organization or individual that violates the bidding law shall, depending on the nature and severity of its/his/her violations, be disciplined, administratively sanctioned or examined for penal liability; and pay compensations for any damage caused in accordance with law.

2. Apart from being handled in accordance with Clause 1 of this Article, depending on the nature and severity of its/his/her violations, an organization or individual that commits the prohibited acts specified in this Law may be banned from participating in bidding activities for a time period of between 6 months and 5 years.

3. The competence to ban the participation in bidding activities is provided as follows:

a/ Competent persons may ban the participation in bidding activities for projects, business investment projects and procurement estimates under their management;

b/ Ministers, heads of ministerial-level agencies, heads of government-attached agencies, heads of other central agencies, and chairpersons of provincial-

level People's Committees may ban the participation in bidding activities under the management of their ministries, sectors or localities;

c/ The Minister of Planning and Investment may ban the participation in bidding activities under the ministry's management nationwide.

4. Decisions to ban the participation in bidding activities must be sent to the organizations and individuals concerned, related agencies and organizations, and the Ministry of Planning and Investment; and published on the National E-Procurement Network.

5. The Government shall detail Clauses 2, 3 and 4 of this Article.

Section 2

RESPONSE TO ARISING EVENTUALITIES AND SETTLEMENT OF PETITIONS IN BIDDING ACTIVITIES

Article 88. Response to arising eventualities in bidding activities

1. For arising eventualities which have not yet been specifically and clearly provided in contractor selection plans; dossiers of invitation for expression of interest, dossiers of invitation to prequalification, bidding dossiers, or dossiers of requirements and other contents of bidding activities, competent persons and project owners shall decide on, and take responsibility before the law for, response to arising eventualities, adhering to the principles of competitiveness, fairness, transparency, economic efficiency and accountability.

2. The response to arising eventualities shall be based on contractor selection plans; dossiers of invitation for expression of interest, dossiers of invitation to prequalification, bidding dossiers, dossiers of requirements; dossiers of expression of interest, dossiers for participation in prequalification, dossiers of registration for implementation of business investment projects, bid dossiers, dossiers of proposals; contractor or investor selection results; contracts signed with selected contractors or investors; and practical performance or implementation of bidding packages, projects or business investment projects.

3. Competence to respond to arising eventualities in bidding:

a/ For contractor selection, the persons deciding on the response to arising eventualities are project owners. In complicated cases, project owners shall decide on the response to arising eventualities after obtaining opinions of competent persons;

b/ For investor selection, the persons deciding on the response to arising eventualities are competent persons.

4. The Government shall detail this Article.

Article 89. Settlement of petitions in bidding activities

1. If deeming that its/his/her legitimate rights and interests are affected, a contractor or an investor, agency or organization may lodge a petition to the competent person, project owner or bid solicitor to request the latter to reconsider matters arising in the course of contractor or investor selection, or on the contractor or investor selection result in accordance with Articles 90, 91 and 92 of this Law.

2. A petition of a contractor or an investor, agency or organization may be considered and settled only when it/he/she has yet to file a complaint or denunciation or initiate a lawsuit over the same matter. In case the contractor, investor, agency or organization initiates a lawsuit or files a complaint or denunciation while its/his/her petition is being settled, the settlement shall immediately cease.

3. Contractors, investors, agencies and organizations may withdraw their petitions any time during the process of settlement.

Article 90. Conditions for consideration and settlement of petitions

1. To be eligible for consideration and settlement, a petition about matters arising before the contractor or investor selection result is announced must fully satisfy the following conditions:

a/ In case the petition is related to the contents of the bidding dossier, it may be made by an agency or organization interested in the bidding package or business investment project; in case the petition is about other matters arising during the course of contractor or investor selection, it must be made by a contractor or investor participating in the bidding;

b/ The petition must be signed and sealed (if any) by the lawful representative of the petition-submitting contractor, investor, agency or organization or digitally signed and sent on the Vietnam National E-Procurement Network;

c/ The petition must be sent to the petition-settling unit specified in Clause 1, Article 91 or Clause 1, Article 92 of this Law before the contractor selection result is announced.

2. To be eligible for consideration and settlement, a petition about the contractor or investor selection result must fully satisfy the following conditions:

a/ The petition must be made by a contractor or investor participating in the bidding;

b/ The petition must be signed and sealed (if any) by the lawful representative of the contractor or investor concerned, or digitally signed and sent on the Vietnam National E-Procurement Network;

c/ The contractor or investor concerned has yet to initiate a lawsuit or file a complaint or denunciation on the same matter;

d/ The petition must be directly related to the result of evaluation of the bid dossier of the contractor or investor concerned;

dd/ The contractor or investor that files the petition must pay the expenses for settlement of its/his/her petition to the standing body assisting the chairperson of the petition settlement consultancy council (below referred to as the standing body) before or at the time of submission of the petition;

e/ The contractor must file the petition to the project owner or competent person within the time limit specified in Clause 2, Article 91 of this Law; the investors must file the petition to the bid solicitors or competent person within the time limit specified in Clause 2, Article 92 of this Law.

3. In case a petition of a contractor, an investor, agency or organization does not satisfy the conditions specified in Clauses 1 and 2 of this Article, the person in charge of settlement of the petition shall notify in writing the refusal of consideration and settlement of the petition to the contractor, an investor, agency or organization.

Article 91. Procedures for settlement of petitions about contractor selection

1. A petition about matters arising before the contractor selection result is announced shall be settled as follows:

a/ The contractor, agency or organization shall file the petition to the project owner before the contractor selection result is published on the Vietnam National E-Procurement Network;

b/ The project owner shall issue a petition settlement decision to the concerned contractor, agency or organization within 7 working days after receiving the petition;

c/ In case the contractor, agency or organization disagrees with the petition settlement result, or past the time limit specified at Point b of this Clause but the project owner has yet to issue a petition settlement decision, the contractor, agency or organization may file a petition to the competent person within 5

working days after the deadline for petition settlement or after receiving the petition settlement decision from the project owner;

d/ The competent person shall issue a petition settlement decision to the concerned contractor, agency or organization within 5 working days after receiving the petition.

2. A petition about matters arising after the contractor selection result is announced shall be settled according to either of the following two processes:

a/ The contractor shall file the petition to the project owner within 10 days after the contractor selection result is published on the Vietnam National E-Procurement Network. The project owner shall issue a petition settlement decision to the contractor within 7 working days after receiving the contractor's petition.

In case the contractor disagrees with the petition settlement result, or past the time limit specified in this Clause but the project owner has yet to issue a petition settlement decision, the contractor may file a petition to the competent person through the standing body within 5 working days after the deadline for petition settlement or after receiving the petition settlement decision from the project owner. The competent person shall issue a decision on settlement of the petition about the contractor selection result within 5 working days after receiving written opinions of the petition settlement consultancy council;

b/ The contractor shall file a petition to the competent person through the standing body within 10 days after the contractor selection result is published on the Vietnam National E-Procurement Network. The competent person shall issue a decision on settlement of the petition about the contractor selection result within 5 working days after receiving written opinions of the petition settlement consultancy council.

3. The time limit for settlement of a petition specified in Clauses 1 and 2 of this Article shall be calculated from the date on which the administrative division of the person in charge of settlement of petition receives the petition or the date on which the petition is published on the Vietnam National E-Procurement Network.

4. In case of necessity, the petition settlement consultancy council shall base itself on the contractor's petition to propose the competent person to consider the suspension of conclusion and performance of the contract. If approving, within 5 working days after receiving the written proposal, the competent person shall send to the project owner a notice of suspension of the conclusion and performance of the contract, clearly stating the period of suspension.

5. A petition settlement decision must contain the conclusion on the contents of the contractor's petition; in case the petition is concluded to be correct, the

petition settlement decision must clearly state the measures, methods and time limit to remedy consequences (if any); the concerned contractor shall be refunded the petition settlement expenses it/he/she has paid. In case the contractor's petition is concluded to be incorrect, the written reply must clearly explain the reason; the concerned contractor shall not be refunded the petition settlement expenses it/he/she has paid.

6. In case of disagreement with the competent person's petition settlement decision, the project owner and contractor may initiate a lawsuit at court.

Article 92. Procedures for settlement of petitions about investor selection

1. A petition about matters arising before the investor selection result is announced shall be settled as follows:

a/ The investor, agency or organization shall file the petition to the bid solicitor before the investor selection result is announced;

b/ The bid solicitor shall issue a petition settlement decision to the concerned investor within 15 working days after receiving the petition;

c/ In case the investor, agency or organization disagrees with the petition settlement result, or past the time limit specified at Point b of this Clause but the bid solicitor has yet to issue a petition settlement decision, the contractor, agency or organization may file a petition to the competent person within 5 working days after the deadline for petition settlement or after receiving the petition settlement decision from the bid solicitor;

d/ The competent person shall issue a petition settlement decision to the concerned investor, agency or organization within 5 working days after receiving the petition.

2. A petition about matters arising after the investor selection result is announced shall be settled according to either of the following two processes:

a/ The investor shall file the petition to the bid solicitor within 10 days after the investor selection result is announced. The bid solicitor shall issue a petition settlement decision to the investor within 15 working days after receiving the investor's petition.

In case the investor disagrees with the petition settlement result, or past the time limit specified in this Clause but the project owner has yet to issue a petition settlement decision, the investor may file a written petition to the competent person through the standing body within 5 working days after the deadline for petition settlement or after receiving the petition settlement decision from the bid solicitor. The competent person shall issue a decision on settlement of the petition

about the investor selection result within 10 working days after receiving opinions of the petition settlement consultancy council;

b/ The investor shall file the petition to the competent person through the standing body within 10 days after the investor selection result is announced. The competent person shall issue a decision on settlement of the petition about the investor selection result within 10 working days after receiving the written opinions of the petition settlement consultancy council.

3. The time limit for settlement of a petition specified in Clauses 1 and 2 of this Article shall be calculated from the date on which the administrative division of the person in charge of settlement of petition receives the petition or the date on which the petition is published on the national bidding network.

4. In case of necessity, the petition settlement consultancy council shall base itself on the investor's written petition to propose the competent person to consider the suspension of signing and performance of the contract. If approving, within 10 working days after receiving the written proposal, the competent person shall issue a notice of suspension of conclusion and performance of the contract, clearly stating the period of suspension.

5. A petition settlement decision must contain the conclusion on the contents of the investor's petition; in case the petition is concluded to be correct, the petition settlement decision must clearly state the measures, methods and time limit to remedy consequences (if any); the investor, agency or organization concerned shall be refunded the petition settlement expenses it/he/she has paid. In case the contractor's petition is concluded to be incorrect, the reply must clearly explain the reason; the investor, agency or organization shall not be refunded the petition settlement expenses it/he/she has paid.

6. In case of disagreement with the competent person's petition settlement decision, the bid solicitor and investor may initiate a lawsuit at court.

Article 93. Composition, responsibilities and operation of petition settlement consultancy councils

1. Petition settlement consultancy councils include:

a/ The petition settlement consultancy council established by the Minister of Planning and Investment;

b/ Petition settlement consultancy councils established by ministers, heads of ministerial-level agencies, heads of government-attached agencies and heads of other central agencies;

c/ Petition settlement consultancy councils established by directors of provincial-level Departments of Planning and Investment.

A petition settlement consultancy council shall be established within 5 working days after receiving a petition of a contractor or an investor.

2. The composition of petition settlement consultancy councils and standing bodies assisting their chairpersons is provided as follows:

a/ A petition settlement consultancy council shall be composed of a chairperson, vice chairperson (if necessary) and other members being representatives of the competent person, related agencies and representatives of professional associations, experts and scientists, when necessary.

Members of a consultancy council must not be persons having family relationships specified in the Law on Enterprises with the person undersigning the petition, members of the expert group and appraisal group, and the person signing to approve the contractor or investor selection result;

b/ The chairperson of the petition settlement consultancy council specified at Point a, Clause 1 of this Article shall be a representative of the Ministry of Planning and Investment. Chairpersons of the petition settlement consultancy councils specified at Point b, Clause 1 of this Article shall be representatives of units assigned to manage bidding activities of these agencies. Chairpersons of petition settlement consultancy councils specified at Point c, Clause 1 of this Article shall be representatives of provincial-level Departments of Planning and Investment;

c/ The standing body assisting the chairperson of a petition settlement consultancy council is a unit assigned to manage bidding activities which must not be composed of members of the expert team and appraisal team of the same bidding package or project. The standing body shall perform administrative tasks specified by the chairperson of petition settlement consultancy council; receive and manage money amounts paid by the petition-filing contractor or investor.

3. Petition settlement consultancy councils have the following responsibilities:

a/ The petition settlement consultancy council specified at Point a, Clause 1 of this Article shall provide petition settlement consultancy at the Prime Minister's request;

b/ The petition settlement consultancy councils specified at Point b, Clause 1 of this Article shall provide petition settlement consultancy for all bidding packages under projects, procurement estimates and business investment projects

for which ministers, heads of ministerial-level agencies, heads of government-attached agencies or heads of other central agencies act as competent persons, except the bidding packages and projects specified at Points a and b of this Clause;

c/ The petition settlement consultancy councils specified at Point c, Clause 1 of this Article shall provide petition settlement consultancy for all bidding packages under projects, procurement estimates and business investment projects in their provinces or centrally-run cities, except the bidding packages and projects specified at Points a and b of this Clause.

4. A petition settlement consultancy council shall operate as follows:

a/ The petition settlement consultancy council shall operate on a case-by-case basis, work on a collegial basis and make decisions by majority. Members may reserve their opinions and shall take responsibility before law for their opinions;

b/ The petition settlement consultancy council may request the contractor, investor, project owner, bid solicitor and related agencies to provide information on the bidding package, project, business investment project and other relevant information to perform its tasks;

c/ Petition settlement results shall be sent to the competent person within 25 days, for contractors' petitions, or within 35 days, for investors' petitions, after the petition settlement consultancy council is established.

Article 94. Rights to initiate lawsuits and request courts to apply interim emergency measures

1. The initiation of lawsuits must comply with the civil procedure law.

2. When filing a lawsuit petition or during the court's lawsuit settlement, the parties may request the court to promptly suspend the bid closure; approval of shortlists; approval of the contractor or investor selection result; conclusion of contracts; or performance of contracts or apply other interim emergency measures in accordance with law.

Chapter X

IMPLEMENTATION PROVISIONS

Article 95. Effect

1. This Law takes effect on January 1, 2024.

2. Law No. 43/2013/QH13 on Bidding, which had a number of articles amended and supplemented under Law No. 03/2016/QH14, Law No. 04/2017/QH14, Law No. 40/2019/QH14, Law No. 64/2020/QH14 and Law No. 03/2022/QH15 (below referred to as Law No. 43/2013/QH13 on Bidding) ceases to be effective on the effective date of this Law, except Article 96 of this Law.

3. Contracts concluded under Point a, Clause 1, Article 55 of this Law shall be performed within the terms specified therein but for at most 5 years from the effective date of this Law.

Article 96. Transitional provisions

1. For bidding packages for contractor selection of which dossiers of invitation for expression of interest, dossiers of invitation to prequalification, bidding dossiers, and dossiers of requirements have been approved and issued before the effective date of this Law, the selection of contractors for inclusion in the shortlists, selection of contractors, conclusion of contracts and management of contract performance must comply with Law No. 43/2013/QH13 on Bidding and its guiding documents.

2. For business investment projects of which bidding dossiers have been approved and issued before the effective date of this Law, the selection of investors, conclusion of contracts and management of contract performance must comply with Law No. 43/2013/QH13 on Bidding and its guiding documents. The Government shall issue transitional provisions applicable to these business investment projects.

3. From January 1, 2024, to the effective date of the amended Land Law, the selection of investors to implement land-using investment projects must comply with Law No. 43/2013/QH13 on Bidding and its guiding documents.

4. Contracts on provision of supplies and chemicals which are signed before the effective date of this Law and under which bid-winning contractors are obliged to provide medical equipment using such supplies and chemicals, may continue to be performed within the terms specified therein but for at most 5 years from the effective date of this Law.

This Law was passed on June 23, 2023, by the 15th National Assembly of the Socialist Republic of Vietnam at its 5th session.-

Chairman of the National Assembly
VUONG DINH HUE