

**LAW**

**ON BIDDING**

*Pursuant to the Constitution of the Socialist Republic of Vietnam;*

*National Assembly promulgates the Law on bidding.*

**Chapter 1.**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation**

This Law provides for state management on bidding; responsibilities of concerned parties and activities of bidding, including:

1. Selection of provider of advisory services, non-advisory services, goods, construction and installation for:

a) Projects on development investment financed by state of state agencies, political organizations, socio-political organizations, professional-socio-political organizations, socio-professional organizations, social organizations, units of People's armed forces, and public non-business units;

b) Projects on development investment of state-owned enterprises;

c) Projects on development investment other than cases defined at point a and point b of this Clause which are financed by state, state-owned enterprises with level equal to 30% or more or less than 30% but more than 500 billion VND in total invested capital of project.

d) Procurement financed by state aiming to maintain regular activities of State bodies, political organizations, socio-political organizations, socio-political-occupational organizations, social organizations, socio-occupational organizations and units of the People's armed forces, and public non-business units;

dd) Procurement financed by state aiming to supply products and services in serve of public purpose;

e) Purchase of national reserve goods financed by state;

g) Purchase of drugs, medical supplies financed state; medical insurance fund, revenues from services of medical examination and treatment and other lawful revenues of public medical establishments;

2. Selection of providers of advisory services, non-advisory services, goods on Vietnam's territory for implementation of overseas direct-investment projects of Vietnamese enterprises which are financed by state with level equal to 30% or more or less than 30% but more than 500 billion VND in total invested capital of project.

3. Selection of investors to perform the investment projects in form of public-private partnership (PPP), investment projects with land use;
4. Selection of contractors in petroleum field, except for selection of contractors to supply petroleum services related directly to activities of search, exploration and development of mines and petroleum exploitation as prescribed by law on petroleum.

## **Article 2. Subjects of application**

1. Organizations and individuals that participate in or related to activities of bidding defined in Article 1 of this Law.
2. Organizations and individuals that have activities of bidding not within the governing scope of this Law may choose to apply this Law. In case of choosing to apply, organizations and individuals must observe the concerned provisions of this law and ensure fairness, transparency and economic efficiency.

## **Article 3. Application of Law on bidding, International treaties and international agreements**

1. Bidding activities must comply with the provisions of this Law and other related laws.
2. Case of selecting by bidding for provision of raw materials, fuel, materials, supplies, advisory services, non-advisory services in order to ensure the continuity for production and business and procurement with the aim to maintain regular activities of state-owned enterprises; implementation of procurements of investment projects in the form of public-private partnership, investment projects with land use of the selected investors, enterprises must promulgate regulations on choosing bidders for unified application in enterprises on the basis of ensuring objective of fairness, transparency, and economic efficiency.
3. For selection of contractors, investors for projects financed by official development assistance (ODA) capital, concessional loans arising from International treaties, international agreements between Vietnam and donors, international treaties, international agreements shall be applied.
4. If International treaties to which the Socialist Republic of Vietnam is a contracting party have provisions on selection of contractors and investors different from this Law, such International treaties shall prevail.

## **Article 4. Interpretation of terms**

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

1. *Bid security* means the bidder or investor provides security by one of the security methods of paying a deposit, escrow or providing a letter of guarantee of credit institutions or foreign banks' branches which are established under Vietnamese law in order to secure the liability in the bid participation of bidder or investor for a definite term as stipulated in the bid invitation documents, dossier of requirements.
2. *Contract performance guarantee* means the bidder or investor provides security by one of the security methods of paying a deposit, escrow or providing a letter of guarantee of credit institutions or foreign banks' branches which are established under Vietnamese law in order to secure the liability of the Contract performance by bidder or investor.
3. *Bid solicitor* means a professional agency or organization with sufficient capability to perform

bidding activities, including:

a) Investor or organization which is decided for establishment or selected by the investor;

b) Estimation unit directly using capital source for regular procurement;

c) The unit of concentrated procurement:

d) Competent state agencies or the affiliated organizations which are selected by the competent state agencies.

4. *Investor* means the entity owning the financing capital or the entity assigned responsibility to represent such owner, or the borrower directly managing and implementing project.

5. *Digital certificate* means electronic certificate granted by providers of digital signature certificate service in order to perform bidding via network on the national bidding network system.

6. *Competent state agencies mean agencies signing contracts with investors.*

7. *Short list means* list of bidders, investors winning pre-qualification for open bidding with pre-qualification; list of bidders invited for bid participation for limited bidding; list of bidders with dossiers of expression of interest meeting requirements of dossiers of invitation for expression of interest.

8. *Advisory service means one or a number of activities including:* Preparation, assessment of the planning report, overall development diagram, architecture; survey and making of pre-feasibility study report, feasibility study report, environmental impact assessment report; survey and making of engineering, estimate; preparation of dossiers of invitation for expression of interest, dossier of invitation for pre-qualification, bid dossiers, dossiers of requirements; assessment of dossiers of expression of interest, dossiers of prequalification participation, bid dossiers, dossiers of proposals; verification, appraisal; supervision; management of project; arranging finance; audit, training, transfer of technologies; other advisory services.

9. *Non-advisory service means one or a number of activities including:* Logistics, insurance, advertisement, installation not belong to Clause 45 of this Article, pre-acceptance test and operation run, holding of training, maintenance, drawing maps and other activities not being advisory services defined at clause 8 of this article.

10. *Project management enterprise* means enterprise which is established by investor for performance of investment project in form of private-public partnership or investment project with land use.

11. *Projects on development investment (hereinafter collectively referred to as projects) include:* programs or projects on investment in new construction; projects on renovation, upgrading, expansion of projects invested in construction; projects on procurement of assets, including equipment, machinery without installation; projects on repair, upgrading of assets, equipment; projects, schemes on planning; projects, subjects on scientific research, technology development, application of technologies, technical support, basic survey; other programs, projects, or schemes on development investment.

12. *Bidding* means the process of selecting a bidder to sign and implement contract of provision of advisory services, non-advisory services, procurement of goods, construction and installation; selecting an investor to sign and implement contract of investment project in form of public-

private partnership, investment project with land use on the basis of ensuring competitiveness, fairness, transparency and economic efficiency.

13. *Bidding via network* means bidding which is performed via use of the national bidding network system.

14. *International bidding* means bidding in which both foreign and domestic bidders and investors may participate.

15. *Domestic bidding* means bidding in which only domestic bidders and investors may participate.

16. The procurement price means the value of a procurement approved in the plan on selecting bidders.

17. *The bidding price* means the price stated by a bidder in application for bid participation, quotation, including all costs for implementation of procurement as required by dossier of bid invitation, dossier of requirement.

18. *The assessment price* means the bidding price after the errors have been rectified and discrepancies have been adjusted as required in dossier of bid invitation, minus the value of discount (if any), plus elements to convert on a same ground for whole use life cycle of goods and works. The assessment price is used to rank dossiers of bid participation for procurements of procurement of goods, construction and installation and the mixture procurements applying form of public bidding or limited bidding.

19. *Proposed bid-winning price* means the bidding price of the bidder who are proposed to win bid after the errors have been rectified and discrepancies have been adjusted as required by the bidding invitation documents, dossiers of requirements, minus the value of discount (if any).

20. *Winning bid price* means the price approved in the results of selection of contractor.

21. *Contractual price* means the price stated in written contract as the basis for advance payment, payment, liquidation and finalization of contract.

22. *Procurement* means a part of, or entire project, estimate of procurement; a procurement may comprise items for the procurement of similar goods for a number of projects or a one-off procurement, procurement for a period in recurrent procurement, concentrated procurement of goods.

23. *Mixture procurement* means a procurement comprising of engineering and goods provision (EP); engineering, construction and installation (EC); goods provision and construction and installation (PC); engineering, goods provision, construction and installation (EPC); making project, engineering, goods provision, construction and installation (turnkey).

24. *Procurement with small scale* means a procurement with price in limitation prescribed by the Government.

25. *Goods include* machinery, equipment, raw materials, fuel, materials, supplies, accessories; consumables; drugs, medical supplies used for medical establishment.

26. *The national bidding network system* means an information technology system which is set up and managed by the state management agency of bidding activities with the aim to perform unified management of information on bidding and bidding via network.

27. *Dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification* mean all documents including requirements on capability and experiences of bidders, investors as the basis for the bid solicitor to select list of bidders, investors winning pre-qualification, list of bidders with dossiers of expression of interest meeting requirements of dossiers of invitation for expression of interest.

28. *Dossiers of expression of interest, dossiers of pre-qualification participation* mean all documents which are made by bidders, investors and submitted to the bid solicitor at the requirements of dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification.

29. *Bid invitation documents* mean all of the documents used for open or limited bidding stipulating the requirements for a project, procurement and providing the legal basis for bidders, investors to prepare their bid dossiers and for the bid solicitor to assess bid dossiers aimed at selection of a winning bidder, or investor.

30. *Dossier of requirements* mean all of the documents used for direct appointment of contractor, direct procurement, competitive quotation including the requirements for a project, procurement and providing the basis for bidders, investors to prepare their dossier of proposals and for the bid solicitor to assess dossier of proposals aimed at selection of a winning bidder, or investor.

31. *Bid dossiers, dossiers of proposals* mean all documents which are made by bidders, investors and submitted to the bid solicitor at the requirements of the bidding dossiers, dossiers of requirements.

32. *Contract* means the document signed between the investor and the selected contractor in implementation of procurement under project; between bid solicitor and the selected contractor in regular procurement; between the concentrated-procurement unit or unit with procurement need with the selected contractor in the concentrated procurement; between competent state agency with the selected investor or between the competent state agency and the selected investor and project enterprise in the investor selection.

33. *Protest* means a request from any bidder, investor participating in bidding for reconsideration of the results of selection of contractor, results of selection of investor and regarding any other relevant matter during the process or selecting contractor, investor when such bidder or investor considers his rights and interests have been adversely affected.

34. *Competent person* means person who decides on the approval of project or person who decides on procurement as prescribed by law. In case of selection of investor, the competent person means the head of competent state agency as prescribed by law.

35. *Head contractor* means a bidder liable for its participation in bidding which gives its name to a tender, and which directly signs in and implements a contract if selected. Head contractor may be dependent contractor or member of partnership of contractors.

36. *Sub-contractor* means a contractor performing part of the work of a procurement on the basis of a contract signed with the head contractor. The special sub-contractor means a sub-contractor performing special works of a procurement proposed by the head contractor in bidding dossier, dossier of proposals on the basis of requirements stated in bidding dossier, dossier of requirements.

37. *Foreign contractor* means an organization established under foreign law or an individual of

foreign nationality participating in bid in Vietnam.

38. *Domestic contractor* means an organization established under Vietnamese law or individual of Vietnamese nationality participating in bid.

39. *Public products and services* mean the essential products and services for economic-social life of country, population communities or assurance of national defense and security which the State must organize implementation in the fields: Health, education - training, culture, information, communications, science – technology, natural resources - environment, transport and other fields as prescribed by Government. Public products and services include the public-interest products and services, and services for public career.

40. *Appraisal in the course of selecting contractor or investor* means check and assessment plan on selecting contractors, investors, dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bidding dossiers, dossier of requirements and results of invitation for expression of interest, results of pre-qualification, results of selection of contractor, investor as the basis for the authorized person to consider and make a decision on approval in accordance with this Law.

41. *Time of bid closure* means the expiry time of receiving dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossier of proposals.

42. *The validity duration of bid dossiers, dossier of proposals* means number of days stipulated in bidding dossier, dossier of requirements and calculated from the time of bid closure to the end effect day as prescribed in bidding dossiers, dossiers of requirements. From the time of bid closure until ending of 24 hours of day of bid closure is calculated as 01 day.

43. *The expert group* includes individuals with capability and experiences set up by the bid solicitor or the bid consultancy unit in order to assess dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossier of proposals and perform other tasks during selection of contractors, investors.

44. *Financed by the State* means the use of State Budget funds; national bonds, Governmental bonds, bonds of local authorities; official development assistance capital, concessional loans from donors; fund for development of non-business activities; credit facilities for investment and development of the State; credit facilities guaranteed by the Government, loans guaranteed by assets of state; investment and development funds of State-owned enterprises, and value of land-use right.

45. *Construction and installation* include works of construction and installation of works and work items.

## **Article 5. Eligibility of bidders, investors**

1. A bidder or investor being an organization shall be deemed to be eligible when it satisfies the following conditions:

- a) Having registration for establishment and operation issued by the competent authority of country where it is operating;
- b) It is an independent cost accounting entity;
- c) It is not in the process of dissolution; not concluded to fall into the state of bankruptcy or to be

insolvent as prescribed by law.

- d) It has registered on the national bidding network system;
- dd) To ensure competitiveness in bid as prescribed in Article 6 of this Law;
- e) It is not in time banned from bid participation;
- g) Its name is stated in short list for case where the short list has been selected;
- h) It must have a partnership with domestic contractors or use sub-contractors if it is foreign bidder when participating in international bid in Vietnam, unless domestic contractors have not full capability to participate in any part of procurement.

2. A bidder or investor being an individual shall be deemed to be eligible when it satisfies the following conditions:

- a) Having full capacity for civil acts pursuant to the law of the country of which such individual is a citizen;
- b) Having an appropriate professional certificate as prescribed by law;
- c) Having lawful registration for operation as prescribed by law;
- d) Such individual is not being examined for penal liability;
- d) Such individual is not in time banned from bid participation.

3. Bidders and investors with eligibility as prescribed in Clause 1 and Clause 2 of this Article may participate in bid with an independent status or partnership; in case of partnership, it must have written agreement among members, in which clearly stating responsibilities of head of partnership and general responsibilities, separate responsibilities of each member in partnership.

#### **Article 6. Ensuring competitiveness in bid**

1. Bidders submitting dossiers of expression of interest, dossiers of pre-qualification participation must be independent legally and independent financial with advisory bidders for making dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification; assessment of dossiers of expression of interest, dossiers of pre-qualification participation; appraisal for results of invitation for interest, results of pre-qualification.

2. Bidders participating in bid must be independent legally and independent financial with the following parties:

- a) Investment owner, bid solicitor;
- b) The advisory bidders for the making, verification, and appraisal of dossiers of design and estimate; the making, verification of bidding dossiers, dossier of requirements; assessment of bid dossiers, dossier of proposals; appraisal of results of selecting bidder of such procurement;
- c) Other bidders that participate in same procurement for limited bidding.

3. A consultancy bidder who supervises implementation of a contract must be independent legally, independent financially from the bidder who performs the contract, the consultancy bidder who verifies such procurement.

4. Investors participating in bid must be independent legally and independent financial with the

following parties:

- a) The consultancy bidders for bidding for investment projects in form of public-private partnership (PPP), investment projects with land use, until day of signing the project contract;
- b) The consultancy bidder that verifies the investment project in form of public-private partnership (PPP), investment project with land use, until day of signing the project contract;
- c) Competent state agencies, and the bid solicitor.

5. The Government shall detail this Article.

### **Article 7. Conditions for issuing the bidding dossiers, dossier of requirements**

1. The bidding dossiers, dossier of requirements of a procurement may be only issued to select bidders when having full the following conditions:

- a) The approved plan on selection of contractors;
- b) The approved bidding dossiers, dossier of requirements include contents of requirements on procedures for bidding, tables of bidding data; criteria for evaluation, forms of bidding, volume table of bid invitation; requirements on progress, techniques, quality; general conditions, specific conditions of contracts, model contracts and other necessary contents;
- c) Notice of bid invitation, notice of quotation invitation or short list must be published as prescribed by this Law;
- d) Capital sources for procurement are allocated under the implementation schedule of procurement;
- dd) Content, list of goods, services and estimates already been approved by competent person in case of regular procurement and concentrated procurement;
- e) Ensuring the handing over of construction ground under implementation schedule of procurement.

2. Bidding dossiers, dossier of requirements of a project may be only issued to select investors when having full the following conditions:

- a) Project under list of projects announced by Ministries, Ministerial agencies, Governmental agencies, the provincial/municipal People's Committees as prescribed by law or projects proposed by investors;
- b) The approved plan on selection of contractors;
- c) The approved bidding dossiers, dossier of requirements;
- d) Notice of bid invitation, or short list must be published as prescribed by this Law.

### **Article 8. Information of bidding**

1. All information must be published on the national bidding network system, bidding newspapers including:

- a) The plan on selection of contractors, investors;
- b) Notice of invitation for expression of interest, notice of invitation for pre-qualification;



- c) Notice of invitation for quotation, notice of bid invitation;
- d) Short list;
- dd) Results of selection of contractors, investors;
- e) Results of bid opening for bidding via network;
- g) Information on handling of violations of law on bidding;
- h) Legal documents on bidding;
- i) List of investment projects in the form of public-private partnership, projects with land use;
- k) The database of bidders, investors, bidding experts, lecturers of bidding, and establishments of training on bidding;
- l) Other relevant information.

2. The information defined at Clause 1 this Article is encouraged to publish on websites of Ministries, sectors and localities or on other means of mass media.

3. The Government shall detail this Article.

#### **Article 9. Language to be used in bidding**

Language to be used in bidding shall be Vietnamese in the case of domestic bidding, and English or Vietnamese and English in the case of international bidding.

#### **Article 10. Currency to be used in bidding**

1. For domestic bidding, bidders are only allowed to have bid quotation in Vietnam dong.

2. For international bidding:

- a) Bidding dossiers, dossier of requirements must state the currency for bidding in bid dossiers, dossier of proposals but not exceeding three currencies; for a specific work item, only give bid quotation in a currency kind;
- b) In case where bidding dossiers, dossier of requirements stipulate that bidders may have bid quotation in two or three currencies when assessing bid dossiers, dossier of proposals, quotation must be converted into a currency kind; if having Vietnam dong used in such currencies, quotation must be converted into Vietnam dong. Bidding dossiers, dossier of requirements must stipulate the convertible currency, time and bases to determine the exchange rate for converting;
- c) For domestic costs involving implementation of bidding, bidders must have a bid quotation in Vietnam dong;
- d) For overseas costs involving implementation of bidding, bidders may have a bid quotation in foreign currency

#### **Article 11. Bid security**

1. Bid security shall apply in the following cases:

- a) Open bidding, limited bidding, and competitive quotation for procurement of non-advisory service provision, goods procurement, construction and installation, and mixture procurement;
- b) Open bidding and direct appointment of contractor for selection of investor.

2. Bidders and investors must conduct measures for bid security before time of bid closure for bid dossiers, dossiers of proposals; case of applying method of two-phase bidding, bidders must provide a bid security during phase two.

3. Value of bid security bid security is stipulated as follows:

a) For selection of contractor, value of bid security is stipulated in bidding dossiers, dossier of requirements under a defined amount of between 1% and 3% of the procurement price basing on the scale and nature of each particular procurement;

b) For selection of investor, value of bid security is stipulated in bidding dossiers, dossier of requirements under a defined amount of between 0.5% and 1.5% of total invested capital basing on the scale and nature of each particular project.

4. The validity duration of bid security is stipulated in bidding dossier, dossier of requirements equal to the term of validity of the bid dossiers, dossier of proposals plus thirty (30) days.

5. Case of extending the period of validity of bid dossiers, dossiers of proposals after time of bid closure, and the bid solicitor must require bidders, investors to extend the period of validity of their bid security for an equivalent term. In such a case, bidders, investors must extend the period of validity of their bid security and not be permitted to change the contents of their submitted bid dossiers, dossiers of proposals. If any bidder or investor refuses to extend the period of validity, his bid dossier, dossier of proposals will be no valid longer and be rejected, the party calling for tenders shall return or release the bidding guarantee to the bidder, investor within 20 days, since the bid solicitor receives a written refusal for extension.

6. If a partnership participates in bid, every member in partnership may perform separate bid security or make agreement in which one member will be responsible for implementation of its bid security or for bid security of other members in partnership. Total value of bid security is not lower than the value required in bidding dossiers, dossier of requirements. When having member in partnership violating provision in Clause 8 of this Article, bid security of all members in partnership will not be returned.

7. The bid solicitor shall return or release bid security to bidders or investors who are not selected under the duration specified in bidding dossier, dossier of requirements but not exceeding 20 days, after the day of approving result of selection of contractor, investor. For the selected bidder, investor, his bid security will be returned or released after he provides a contract performance guarantee as prescribed in Article 66 and Article 72 of this Law.

8. A Bid security shall not be refunded in the following cases:

a) Bidder or investor withdraws bid dossier, dossier of proposals after time of bid closure when the bid dossier, dossier of proposals still remains valid.

b) Bidder or investor violates law on bidding which leads to be cancelled bid as prescribed at Clause 4 Article 17 of this Law;

c) Bidder or investor fails to provide a contract performance guarantee as prescribed at Article 66 and Article 72 of this Law;

d) The bidder fails or refuses to negotiate and finalize the contract, within a period of twenty (20) days from the date of receipt of notification of winning bid from the bid solicitor or has negotiated and finalized the contract but refuses to sign the contract except for force majeure

cases;

dd) The investor fails or refuses to negotiate and finalize the contract, within a period of thirty (30) days from the date of receipt of notification of winning bid from the bid solicitor or has negotiated and finalized the contract but refuses to sign the contract except for force majeure cases.

## **Article 12. Time-limits applicable during selection of contractors, investors**

1. Time-limits applicable during selection of contractors:

a) The maximum time for approval of plan on contractor selection shall be 05 working days after receiving report on appraisal;

b) Dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bidding dossiers, dossier of requirements shall be issued after 03 working days from the first day of publishing notice of invitation for submission of dossiers of expression of interest, notice of pre-qualification invitation, notice of bid invitation, notice of quotation invitation, sending of letters inviting submission of bidding before time of bid closure;

c) Duration for preparing dossiers of expression of interest shall be at least 10 days for domestic bidding and 20 days for international bidding, from the first day when dossiers of invitation for expression of interest are issued until day of bid closure time; Bidders must submit dossiers of expression of interest before time of bid closure;

d) Duration for preparing dossiers of pre-qualification participation shall be at least 10 days for domestic bidding and 20 days for international bidding, from the first day when dossiers of invitation for pre-qualification are issued until day of bid closure time. Bidders must submit dossiers of pre-qualification participation before time of bid closure;

d) Duration for preparing dossiers of proposals shall be at least 05 working days, from the first day when dossiers of requirements are issued until day of bid closure time. Bidders must submit dossiers of proposals before time of bid closure;

e) Duration for preparing the bid dossiers shall be at least 20 days for domestic bidding and 40 days for international bidding, from the first day when bidding dossiers are issued until day of bid closure time. Bidders must submit the bid dossiers before time of bid closure;

g) The maximum time allowed for assessment of dossiers of expression of interest, dossiers of pre-qualification participation shall be 20 days, for dossier of proposals shall be 30 days, for bid dossiers shall be 45 days in the case of domestic bidding, as from the date of bid closure time until the date the bid solicitor submits to investment owner for approving the results of contractor selection. The maximum time allowed for assessment of dossiers of expression of interest, dossiers of pre-qualification participation shall be 30 days, for dossier of proposals shall be 40 days, for bid dossiers shall be 60 days in the case of international bidding, as from the date of bid closure time until the date the bid solicitor submits to investment owner for approving the results of contractor selection. In necessary case, time for assessment of dossiers of bid dossier, dossier of proposals may be prolonged but not exceed 20 days and must ensure implementation schedule of project;

h) The maximum time for appraisal shall be 20 days for each content of appraisal: plan on selection of contractor, dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bidding dossiers, dossier of requirements, result of selection of contractor after

receiving full the submitted documents;

i) The maximum time for approving dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, dossier of requirements, bidding dossiers shall be 10 days, as from the date of receiving the written request for approving dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, dossier of requirements, bidding dossiers of the bid solicitor or the appraisal report in case of having appraisal requirement;

k) The maximum time for approving or giving the handling opinion on result of contractor selection shall be 10 days, as from the date of receiving the written request for approving the result of contractor selection of the bid solicitor or the appraisal report in case of having appraisal requirement;

l) The maximum period of validity of a bid dossier, dossier of proposals shall be 180 days as from the bid closure; in case of procurement with bid scale, complex nature, procurement under two-phase bidding method, the maximum period of validity of a bid dossier shall be 210 days, as from the bid closure. In necessary cases a bidder may request extension of the period of validity of his bid dossier, dossier of proposals, and must ensure progress of project;

m) Time for sending a document to modify a bidding dossier to bidders already received bidding dossier shall be 10 days minimally for domestic bidding and 15 days minimally for international bidding before day of bid closure; for modification of dossier of invitation for expression of interest, dossier of invitation for pre-qualification, dossier of requirements, it shall be 03 working days minimally before day of bid closure. If time for sending a document to modify dossiers fail to meet provision at this point, the bid solicitor shall perform extension of bid closure time respectively in order to ensure provision on time for sending a document to modify a dossier of invitation for expression of interest, dossier of pre-qualification invitation, bidding dossier or dossier of requirements;

n) Time-limit for sending notice of contractor selection result to bidders bidding via post, facsimile shall be 05 working days, as from the date of approving the result of contractor selection.

2. The Government shall detail time-limits applicable during selection of contractor for procurements with small scale, procurements with participation of community; time-limits applicable during selection of investor; time-limits applicable during selection of contractor or investor via network.

### **Article 13. Expenses for bidding**

1. Expenses of the process of selection of contractor include:

a) Expenses for preparation of dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals and participation in bidding shall be borne by bidders.

b) Expenses of process of contractor selection shall be included in total invested capital or estimated budget of procurement;

c) Dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification shall be issued to bidders free;

d) Bidding dossiers, dossiers of requirements shall be sold or issued free to bidders;

2. Expenses of the process of selection of investor include:

- a) Expenses for preparation of dossiers of pre-qualification participation, bid dossiers, dossiers of proposals and participation in bidding shall be borne by investors;
- b) Expenses of process of investor selection shall be financed by state, other lawful capital sources and included in total invested capital;
- c) The investor who is selected to perform project must pay expenses of process of investor selection;
- d) Dossiers of invitation for pre-qualification, bidding dossiers, dossiers of requirements shall be sold to investors.

3. Expenses of the process of bidding via network include:

- a) Expenses for participation in the national bidding network system, expenses for publishing information of bidding and other expenses;
- b) Expenses for participation in a bid, organization of bid as prescribed at Clause 1 and Clause 2 of this Article.

4. The Government shall detail this Article.

**Article 14. Preferential treatment in selection of contractors:**

1. Bidders shall be enjoyed preferential treatment when participating in domestic or international bidding to supply goods of which costs for domestic production occupy 25% or more.

2. Entities entitled to preferential treatment in international bidding to supply the advisory services, non-advisory services, construction and installment include:

- a) Domestic bidders bidding with independent or partnership status;
- b) Foreign bidders in partnership with domestic bidders in which the domestic bidders take over from 25% or more of work value of procurement.

3. Entities entitled to preferential treatment in domestic bidding to supply the advisory services, non-advisory services, construction and installment include:

- a) Bidders employing female laborers of 25 % or more of laborer quantity;
- b) Bidders employing laborers being invalids, disable people of 25 % or more of laborer quantity;
- c) Bidders being small-size enterprises.

4. Preferential treatment is calculated to apply during assessing the bid dossiers, dossiers of proposals in order to compare, rank the bid dossiers, dossiers of proposals according to one of the following methods:

- a) Plus more points into the assessment point of bidders belonging to entities entitled to preferential treatment;
- b) Plus more amount into the bidding price or assessment price of bidders not belonging to entities entitled to preferential treatment;

5. Entities and content or preferential treatment in selection of contractor specified in this Article

shall not apply in case where International treaties in which the Socialist Republic of Vietnam is a contracting party or international agreements between Vietnam and donors otherwise provides for preferential treatment in selection of contractor.

6. The Government shall detail this Article.

#### **Article 15. International bidding**

1. International bidding shall be held to select bidder only when it meets one of the following conditions:

- a) The donor of procurement requests for holding international bidding;
- b) Procurements for procurement of goods where the goods are not yet able to be manufactured domestically or able to be manufactured but fail to meet technical, quality or price requirements. Cases of common goods, already been imported and offered for sale in Vietnam, do not organize international bidding;
- c) Procurements of providing advisory service, non-advisory service, construction and installation, mixture provision which domestic bidders are not able to satisfy requirements of procurement performance.

2. Investment projects in form of public-private partnership (PPP), investment projects with land use, except for cases limited investment as prescribed by law on investment.

3. The Government shall detail this Article.

#### **Article 16. Conditions for individuals to participate in bidding activities**

1. Individuals participating in bidding activities must possess certificate of training on bidding and have professional expertise, capability, experiences, language appropriate to the requirements of the procurement, project, except for individuals belonging to bidders, investors.

2. Individuals who directly participate in making dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bidding dossiers, dossiers of requirements; assessment of dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossier of proposals of professional bidding organizations, enterprises, units operating in advisory for bidding, professional management board of projects must have certificate of practicing on bidding operation.

#### **Article 17. Cases of bidding cancellation**

1. All bid dossiers, dossiers of proposals failed to satisfy the requirements of the bid invitation documents, dossier of requirements.

2. Alteration of the objectives or scope of the investment stated in the bid invitation documents, dossier of requirements.

3. The bid invitation documents, dossier of requirements failed to comply with legislation on bidding or other relevant legislation that lead to the failure of the selected bidder or investor to meet requirements to perform procurement, project.

4. There is evidence showing the handing, taking, brokerage of bribes, conclusion with each other in bidding, fraud, taking advantage of positions, powers aiming to interfere illegally in bidding activities that lead to the falsified result of selecting the bidder, investor.

## **Article 18. Responsibilities upon bidding cancellation**

Organizations and individuals infringing law on bidding that lead to bidding cancellation as prescribed in Clause 3 and Clause 4 Article 17 of this Law must compensate expenses for related parties and be handled as prescribed by law.

## **Article 19. Training and capacity building on bidding**

1. Facilities are entitled to hold activities of training and capacity building on bidding for individuals specified in Article 16 of this Law upon satisfying the following conditions:

- a) Be established and operate as prescribed by law;
- b) Have material facilities, documents for teaching which meet standards as prescribed by state management agencies on bidding activities;
- c) Have contingent of lecturers on bidding possessing certificate of practicing in bidding operation;
- d) Have name in list of facilities of bidding training on the national bidding network system.

2. Facilities of bidding training have the following responsibilities:

- a) Ensure quality of training and capacity building; supply information on their training facilities to the state management agencies on bidding operation;
- b) Perform activities of training and capacity building on the basis of framework programs on training in bidding and grant the certificates of bidding for learners in accordance with regulations;
- c) Store all dossiers of courses of training and capacity building in bidding which are held by them in accordance with regulations;
- d) Conduct annual reports and reports at the request of state management agencies of bidding operation about situation of training and capacity building in bidding.

3. The Government shall detail this Article.

## **Chapter 2.**

### **FORMS AND METHODS OF SELECTION OF CONTRACTORS, INVESTORS AND PROFESSIONAL BIDDING ORGANIZATIONS**

#### **SECTION 1. FORMS OF SELECTION OF CONTRACTORS, INVESTORS**

### **Article 20. Open bidding**

1. Open bidding is form of selection of contractors, investors in which the number of participating tenders, investors shall be unrestricted.
2. Open bidding is applied to procurements, projects under Scope of regulation of this Law, except for cases specified in Articles 21, 22, 23, 24, 25, 26 and 27 of this Law.

### **Article 21. Limited bidding**

Limited bidding shall apply in case where a procurement has highly technical requirements or technical peculiarities for which only a limited number of bidders are capable of satisfying the requirements of the procurement.

## **Article 22. Direct appointment of contractor**

1. Direct appointment of contractor for contractor shall apply in the following cases:

- a) Procurements need be performed to immediately overcome or timely handle consequences caused by force majeure event; procurements need be performed to ensure national secret; procurements need be carried out immediately to not cause damages directly to life, health and assets of population communities on geographical areas or to not severely affect to adjacent projects; procurement of purchasing drugs, chemicals, supplies, and health equipment in order to carry out the work of prevention and fighting of epidemics in urgent cases;
- b) Urgent procurements need be carried out aiming to protect national sovereignty, national borders, and islands;
- c) Procurements of provision of advisory services, non-advisory services, procurement of goods which must buy from contractors performed previously due to ensuring the compatibility of technologies, copyright which not able to buy from other contractors; procurements with nature of research, test; purchase of intellectual property copyright;
- d) Procurements provide advisory service for making feasible study reports, construction designs which have been appointed for authors of designs of works architectures who won in selection or are selected when authors have full conditions and capability in accordance with regulations; procurements of construction of statues, reliefs, monumental paintings, art works in association with author right from the creation stage to stage of construction of the works;
- dd) Procurements of relocation of technical infrastructure works managed directly by a specialized unit in order to serve the work of ground clearance; procurements of detection and disposal of bombs, mines, explosives in order to prepare construction of works;
- e) Procurements of providing public products and services, procurements with procurement price in the limitation allowed to apply direct appointment of contractor as prescribed by Government in line with economic-social conditions in each period.

2. Implementation of direct appointment of contractor for procurements defined at points b, c, d, dd and e Clause 1 this Article must satisfy all the following conditions:

- a) Having an approved decision on investment, except for advisory procurements for project preparation;
- b) Having an approved plan on selection of contractors;
- c) Having been allocated capital at the request of the implementation schedule of procurement;
- d) Having an approved estimate in accordance with regulation, except for case of EP, EC, EPC procurements, turnkey procurements;
- dd) Having time for implementation of direct appointment of contractor as from the day of approving dossier of requirements to day of signing contract not exceeding 45 days, case of procurements with big scale, complex content not exceeding 90 days;
- e) Contractor who is suggested for direct appointment of contractor must have name in the database on contractors of state management agencies on bidding operation.

3. For procurements under cases of direct appointment of contractor specified at Clause 1 this Article and satisfy conditions for direct appointment of contractor specified at Clause 2 this



Article but still able to apply other forms of selection of contractor defined at Articles 20, 21, 23 and 24 of this Law, encouraging to apply other forms of selection of contractor.

4. Direct appointment of contractor for investor shall apply in the following cases:

- a) There is only one investor registering implementation;
- b) There is only one investor able to perform due to concerning intellectual property, commercial secret, technologies or capital arrangement;
- c) Investor proposing project satisfy requirements of implementation project with feasibility and highest efficiency in accordance with regulations of Government.

#### **Article 23. Competitive quotation**

1. Competitive quotation shall apply to procurements with value in limitation as prescribed by Government and belonging to one of the following cases:

- a) Procurement of non-advisory services which are commonly used and simple;
- b) Procurement of procurement of goods which are commonly used goods, readily available on the market, have standardized technical features and are similar to each other in quality;
- c) Procurement of construction and installation of simple works which have had the approved construction drawing design.

2. Competitive quotation is performed when satisfying all following conditions:

- a) Having an approved plan on selection of contractors;
- b) Having an approved estimate in accordance with regulation;
- c) Having been allocated capital at the request of the implementation schedule of procurement.

#### **Article 24. Direct procurement**

1. Direct procurement shall apply to procurements of procurement of similar goods of a same project, estimated budget of procurement or of other project, estimate of procurement.

2. Direct procurement shall be performed when satisfying all following conditions:

- a) The contractor has won bidding through open or limited bidding and has signed performance contract of previous procurement;
- b) Procurement has similar content, nature, and scale less than 130% of procurement signed contract previously;
- c) The unit price of the items of a procurement for which the form of direct procurement is applied shall not exceed the unit price of the corresponding items of the previous similar procurement for which a contract was signed;
- d) Time-limit from signing contract of previous procurement to day of approving result of direct procurement does not exceed 12 months.

3. If contractor performed the previous contract fails to be able to continue implementation of procurement of direct procurement, form of direct procurement shall be applied to other contractor if such contractor satisfies requirements on capability, experiences, techniques and price according to the previous bidding dossier and result of selection of contractor.

### **Article 25. Self-implementation**

Self-implementation shall apply to procurements of projects and estimates of procurement in case organizations directly managing and using such procurements have technical and financial capability, and experiences satisfying requirements of procurements.

### **Article 26. Selection of contractors, investors in special cases**

In the case of a procurement, project with particular requirements for which the forms of selection of contractor, investor stipulated in articles 20, 21, 22, 23, 24 and 25 of this Law cannot be applied, the competent person shall prepare a plan for selection of contractor, investor and submit it to the Prime Minister for consideration and decision.

### **Article 27. Community's participation in performance**

Population communities, organizations, teams, groups of workers in localities where have procurements may be assigned to perform entire or part of such procurement in the following cases:

1. Procurements under the national objective programs, support programs of hunger elimination, poverty reduction for districts, communes in mountainous, deep-lying and remote areas, islands, areas with special difficulty-stricken economic-social conditions;
2. Procurements with small scale which population communities, organizations, teams, groups of workers may undertake.

## **SECTION 2. METHODS OF SELECTION OF CONTRACTORS, INVESTORS**

### **Article 28. The one-phase method with one dossier bag**

1. The one-phase method with one dossier bag shall apply in the following cases:
  - a) Open bidding, limited bidding for procurement of non-advisory service provision; procurement of procurement of goods, construction and installation, mixture content with small scale;
  - b) Competitive quotation for procurement of non-advisory service provision, goods procurement, construction and installation;
  - c) Direct appointment of contractor for procurement of the advisory service provision, non-advisory service provision, goods procurement, construction and installment, mixture content;
  - d) Direct procurement for procurement of goods procurement;
  - dd) Direct appointment of contractor for selection of investor.
2. Bidders, investors may submit bid dossiers, dossiers of proposals including technical proposals and financial proposals at the request of bidding dossiers, dossiers of requirements.
3. The bid opening shall be conducted once for all bid dossiers, dossier of proposals.

### **Article 29. The one-phase method with two dossier bags**

1. The one-phase method with two dossier bags shall apply in the following cases:
  - a) Open bidding, limited bidding for procurement of provision of advisory services, non-advisory services, goods procurement, construction and installation, mixture content;

b) Open bidding for selection of investor.

2. Bidder or investor may submit concurrently both dossier of technical proposals and dossier of financial proposals in a separate form at the request of bidding dossier.

3. Bid opening shall be conducted twice. Dossiers of technical proposals shall be opened as soon as bid closure. Bidders or investors satisfying the technical requirements shall be opened dossiers of financial proposals for assessment.

**Article 30. The two-phase method with one dossier bag**

1. The two-phase method with one dossier bag shall apply in cases of open bidding, limited bidding for procurement of goods, construction and installation, mixture content with big scale and complex nature;

2. In the first phase, bidders may submit technical proposals and financial plans at the request of bidding dossiers but not yet had bidding price. On the basis of exchange with each contractor participating in this phase, dossiers shall be determined for bid invitation in second phase.

3. In second phase, bidders participated in first phase shall be invited for submission of bid dossiers. Bid dossiers include technical proposals and financial proposals at the request of bidding dossier for second phase, in which included bidding price and bid security.

**Article 31. The two-phase method with two dossier bags**

1. The two-phase method with two dossier bags shall apply in cases of open bidding, limited bidding for procurement of goods procurement, construction and installation, mixture content with new, complex and particular techniques and technologies;

2. In first phase, bidders shall submit concurrently both dossier of technical proposals and dossier of financial proposals in a separate form at the request of bidding dossier. Dossiers of technical proposals shall be opened as soon as bid closure. On the basis of assessment on technical proposals of bidders in this phase, to determine contents corrected in techniques in comparison with bidding dossier and list of tenders satisfying requirements and being invited for bidding in second phase. Dossier of financial proposals shall be opened in second phase.

3. In second phase, bidders satisfying requirements in first phase shall be invited for submission of bid dossiers. Bid dossiers include technical proposals and financial proposals at the request of bidding dossier for second phase corresponding to content corrected in techniques. In this phase, dossiers of financial proposals submitted in first phase shall be opened concurrently with bid dossiers in second phase for assessment.

**Section 3. PROFESSIONAL BIDDING ORGANIZATION**

**Article 32. Professional bidding organization**

1. Professional bidding organization includes bidding agents, non-business units which are established with function of performing professional tender.

2. The establishment and operation of bidding agents shall comply with legislations on enterprises.

3. The Government shall detail this Article.

**Chapter 3.**

## **THE PLAN AND PROCESS OF CONTRACTOR SELECTION**

### **Article 33. Principles of making the plan on contractor selection**

1. The plan on contractor selection shall be formulated for the entire project, estimate of procurement. In case where there are inadequate conditions to formulate a plan on contractor selection for the entire project, estimate of procurement, it shall be permitted to formulate a plan on contractor selection for one or a number of procurements to be implemented in advance. 2. A plan on contractor selection must set out clearly the number of procurements and the contents of each procurement.

3. Division of the project, estimate of procurement into different procurements shall be based on the technical nature and the sequence for its implementation, ensuring unity within the project, estimate of procurement and an appropriate size of procurement.

### **Article 34. Formulation of plan on contractor selection**

1. Bases to formulate plan on contractor selection for project:

a) Decision on approving project or certificate of investment and relevant documents. For procurements which must be implemented prior to a decision on approving project, based on decision of head of investment owner or head of unit assigned task of preparation of project, in case the investment owner has not yet been identified;

b) Capital sources for project;

c) International treaties, international agreements for projects used official development assistance capital, concessional loans;

d) Relevant legal documents.

2. Bases to formulate plan on contractor selection for regular procurement:

a) Standards, norms of equipment, means of working of agencies, organizations, units and cadres, civil servants, public employees; equipment, means of working existing which need be replaced, purchased for supplementation, procured new ones to serve for work;

b) The approved decision on procurement;

c) The approved capital sources and estimate for regular procurement;

d) Scheme on procurement, equipping for entire branch which has been approved by the Prime Minister (if any);

dd) Result of price evaluation of agencies and organizations with function providing service of price or quotation evaluation (if any).

3. Plan on contractor selection may be formulated after decision on approving project, estimate of procurement or concurrently with process of formulating project, estimate of procurement or before decision on approving project for procurement which need be performed before decision on approving project.

### **Article 35. Content of plan on contractor selection for each procurement**

1. Name of procurement:

Name of procurement presents nature, content and work scope of procurement, in line with

contents stated in project, estimate of procurement. If procurement includes many separate parts, plan on contractor selection should state the name describing basic content of each part.

## 2. Price of procurement:

a) Price of procurement is determined on the basis of total invested capital or estimated budget (if any) for project; estimate of procurement for regular procurement. Price of procurement is included exactly and fully entire expenses for implementation of procurement, including reserve expenses, charges, fees and taxes. Price of procurement may be updated in time limit of 28 days before day of bid opening if necessary;

b) For procurements of advisory service provision for formulation of pre-feasible study report, feasible study report, price of procurement shall be defined on the basis of information on average price according to statistics of projects which have been made in a defined duration; the estimated total invested capital based on investment ratio norms of projects; preliminary total invested capital;

c) If procurement include many separate parts, to clearly indicate the estimated price for each part in price of procurement.

## 3. Capital sources:

For each procurement, it must clearly state capital sources or methods of capital arrangement, time of capital allocation to pay for bidder; case of using official development assistance capital, concessional loans, it must clearly state name of donors and structure of capital sources, including the financed capital, domestic reciprocal capital.

## 4. Forms and methods of selection of contractors:

For each procurements, it must clearly state forms and methods of selection of contractors; selection of domestic or international contractor.

## 5. Time beginning of contractor selection:

Time beginning of contractor selection is calculated as from issuing bidding dossier, dossier of requirements, and clearly indicated under month or quarter in year. Case of open bidding with application of short-list selection procedures, time beginning of contractor selection is calculated as from issuing dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification.

## 6. Contract type:

Plan on selection of contractor must clarify contract type as prescribed in Article 62 of this Law as the basis for formulation of dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bidding dossiers, dossier of requirements; and signing contract.

## 7. Time for contract performance:

Time for contract performance is number of days calculated from the effective date of contract until parties fulfill obligations as prescribed in contract, exclusive of duration of warranty obligation performance (if any).

## **Article 36. Submission for approval of plan on contractor selection**

### 1. Responsibilities for submission for approval of plan on contractor selection:

a) Investment owner for project, the bid solicitor for regular procurement shall be responsible for submission of plan on contractor selection to the competent person for consideration and approval;

b) For procurements which need be implemented prior to a decision on approving project, in case where the investment owner is identified, unit of investment owner shall submit the plan on contractor selection to the head of investment owner for consideration and approval. In case the investment owner has not yet been identified, unit assigned task of preparation of project shall submit plan on contractor selection to the head of its unit for consideration and approval.

2. Documents to submit for plan on contractor selection include the following contents:

a) The implemented work part, including content of work related to preparation of project, procurements performed previously with the respective value and legal bases for implementation;

b) The work part which is not able to apply one of form of contractor selection, including: operation of project management board, organization of compensation and ground clearance, commencement, inauguration, payment of loan interest and other affairs not able to apply form of contractor selection;

c) The work part in plan on contractor selection, including content of work and respective value forming procurements which are performed in one of forms of contractor selection defined in Articles 20, 21, 22, 23, 24, 25, 26 and 27 of this Law. This part must clarify bases of division of project, estimate of procurement into procurements. For each procurement, it must ensure to have full contents specified in Article 35 of this Law. For procurement not apply form of open bidding, document to submit for plan on contractor selection must clarify reason of applying other selection form;

d) The work part which have not yet adequate conditions for formulating plan on contractor selection (if any), in which clarifying content and value of this work part;

dd) Part of summing up values of work parts specified in points a, b, c and d this Clause. Total value of this part does not exceed the approved total invested capital of project or estimated budget of procurement.

3. Documents enclosed with report to submit for approval of plan on contractor selection:

When submitting for approval of plan on contractor selection, it must enclose copies of documents as the basis for formulation of plan on contractor selection as prescribed in Article 34 of this Law.

### **Article 37. Evaluation and approval of plan on contractor selection**

1. Evaluation of plan on contractor selection:

a) Evaluation of plan on contractor selection includes examination, assessment of contents as prescribed in Articles 33, 34, 35 and 36 of this Law;

b) Organization assigned evaluation of the plan on contractor selection shall formulate report on evaluation and submit to the competent person for the approval;

c) Organization assigned evaluation of the plan on contractor selection shall make an evaluation report and submit it to the head of investment owner or the head of unit assigned task of

preparation of project for approving plan on contractor selection in case where procurement needs to be performed prior to decision on approval for project.

2. The approval for plan on contractor selection:

a) Based on the evaluation report, the competent person shall approve the plan on contractor selection in writing in order to do as basis for selection of contractor after project or estimate of procurement has been approved or concurrently with decision on approving of project, estimate of procurement in eligible case;

b) Based on the evaluation report, the head of investment owner or the head of unit assigned task of preparation of project shall approve plan on contractor selection in case where procurement needs to be performed prior to decision on approval for project.

### **Article 38. The process of contractor selection**

1. The process of contractor selection for open bidding, limited bidding shall be implemented as follows:

a) Prepare for selection of contractor;

b) Organize selection of contractor;

c) Assess the bid dossiers and negotiate contract;

d) Submit, evaluate, approve and publicize result of contractor selection;

dd) Finalize and sign contract.

2. The process of contractor selection for direct appointment of contractor shall be implemented as follows:

a) For direct appointment of contractor according to the normal process including steps: Prepare for contractor selection; organize the contractor selection; assess dossier of proposals and negotiate on proposals of bidders; submit, evaluate, approve and publicize the result of contractor selection; finalize and sign contract;

b) For direct appointment of contractor according to the simplified process including steps: Prepare and send draft contract to bidder; negotiate, finalize contract; submit, approve and publicize the result of contractor selection; sign contract.

3. The process of contractor selection for Competitive quotation shall be implemented as follows:

a) For competitive quotation according to the normal process including steps: Prepare for contractor selection; organize the contractor selection; assess dossier of proposals and negotiate contract; submit, evaluate, approve and publicize the result of contractor selection; finalize and sign contract;

b) For competitive quotation according to the simplified process including steps: Prepare and send requirement for quotation to bidder; bidders submit quotation; assess quotations and negotiate contract; submit, approve and publicize the result of contractor selection; finalize and sign contract.

4. The process of contractor selection for direct procurement shall be implemented as follows:

- a) Prepare for selection of contractor;
  - b) Organize selection of contractor;
  - c) Assess the dossiers of proposals and negotiate on proposals of bidders;
  - d) Submit, evaluate, approve and publicize result of contractor selection;
  - dd) Finalize and sign contract.
5. The process of contractor selection for self-implementation shall be implemented as follows:
- a) Prepare for plan on self-implementation and draft contract;
  - b) Finalize the plan on self-implementation and negotiate, finalize contract;
  - c) Sign contract.
6. The process of contractor selection for direct appointment of contractor shall be implemented as follows:
- a) Prepare and send reference provisions to the individual advisory bidders;
  - b) The individual advisory bidders submit dossier of scientific curriculum vitae;
  - c) Assess dossier of scientific curriculum vitae of individual advisory bidders;
  - d) Negotiate, finalize contract;
  - dd) Submit, approve and publicize result of contractor selection;
  - e) Sign contract.
7. The process of contractor selection for procurements with participation of community in performance shall be implemented as follows:
- a) Prepare plan on selecting population communities, organizations, teams, groups of workers in localities to carry out procurement.
  - b) Organize selection;
  - c) Approve and publicize the selection result;
  - d) Finalize and sign contract.
8. The Government shall detail this Article.

#### **Chapter 4.**

### **METHODS TO ASSESS BID DOSSIER, DOSSIER OF PROPOSALS; CONSIDERATION FOR RECOMMENDATION AS THE WINNING BIDDER**

#### **Article 39. Methods to assess bid dossiers for procurements of the non-advisory service provision, goods procurement, construction and installment, mixture content**

1. Method of lowest price:
  - a) This method applies to simple procurements with small scale in which technical, financial and commercial proposals are considered as a same ground when satisfy requirements stated in bidding dossier;
  - b) Criteria for evaluation of bid dossier include: Evaluation criteria of capability, experiences and



criteria of procurement;

c) For the bid dossiers which have been assessed to satisfy criteria for evaluation as prescribed at point b this Clause, bidding prices after the errors have been rectified and discrepancies have been adjusted are basis for comparison and ranking. Contractors shall be ranked corresponding to the bidding price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any). The bidder with lowest price shall be ranked the first.

2. Method of assessment price:

a) This method applies to procurements of which expenses may be converted on a same ground on technical, financial and commercial elements for entire use life cycle of goods or works;

b) Criteria for evaluation of bid dossier include: assessment criteria of capability, experiences in case of not applying pre-qualification; assessment criteria of technical aspect; standards for determination of the assessment price.

Elements which are converted on the same ground to determine the assessment price include: Necessary expenses for operation, maintenance and other expenses related to origin of goods, loan interest, progress, quality of goods or construction works of procurement, prestige of contractor through the progress and quality during implementation of previous similar contracts and other elements;

c) For bid dossiers which have passed step of technical assessment, comparison and ranking are based on the assessment prices. The bidder with lowest price shall be ranked the first.

3. Method of combination of technical aspect and price:

a) This method apply to procurements of information technology, telecommunication or procurements of goods procurement, construction and installation, mixture content when both the method of lowest price and method of assessment price specified at Clause 1 and Clause 2 of this Article fail to be able to apply;

b) Criteria for evaluation of bid dossier include: assessment criteria of capability, experiences in case of not applying pre-qualification; assessment criteria of technical aspect; and the overall criteria for evaluation. The overall criteria for evaluation are formulated on the basis of combination between technical aspect and price;

c) For bid dossiers which have passed step of technical assessment, comparison and ranking are based on the overall points score respectively. The bidder with the highest overall points score shall be ranked the first.

4. For assessment criteria of capability, experiences, use criterion of pass or fail; for assessment criteria of technical aspect, use method of marking a score or criterion of pass or fail; for method of combination of technical aspect and price specified at Clause 3 of this Article, use method of marking a score. When using method of making a score, the score of minimum technical requirement must be stipulated and not be less than 70% of the total points for technical aspects.

5. The Government shall detail this Article.

#### **Article 40. Method to assess bid dossier for procurements of advisory service provision**

1. For advisory bidder being organization, apply one of the following methods:

a) Method of lowest price shall be applied to the simple advisory procurements. Criteria for

evaluation of bid dossier are assessment criteria of technical aspect. For bid dossiers which have passed step of technical assessment, base on the bidding price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any). The bidder with lowest price shall be ranked the first.

b) Method of fixed price shall be applied to the simple advisory procurements, expenses for implementation of procurement are determined specifically and fixed in bidding dossier. Criteria for evaluation of bid dossier are assessment criteria of technical aspect. For bid dossiers which have passed step of technical assessment, the bidding price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) not exceeding expenses for implementation of procurement, based on technical points for comparison and ranking. The bidder with the highest technical point shall be ranked the first.

c) Method of combination between technical aspect and price shall be applied to the advisory procurements that pay attention to quality and expenses for implementation of procurement. Criteria for evaluation of bid dossier are assessment criteria of technical aspect and overall criteria for evaluation. The overall criteria for evaluation are formulated on the basis of combination between technical aspect and price; When formulating the overall criteria for evaluation, it must ensure principle which the points for technical aspects shall account for between 70% and 80% and the points for price shall account for between 20% and 30% of the overall points score, percentage of points for technical aspects plus to percentage of points for price shall be equal to 100%. The bidder with the highest overall points score is ranked the first.

d) Method of basing on technical aspect shall apply to advisory procurements with high and particular technical requirements. Criteria for evaluation of bid dossier are assessment criteria of technical aspect. When formulating assessment criteria of technical aspect, the score of minimum technical requirement must be stipulated and not be less than 80% of the total points for technical aspects. Bidder has bid dossier satisfying the minimum technical points as prescribed and obtain the highest technical points shall be ranked the first and invited to come for opening dossier of financial proposals as basis for negotiating contract.

2. For assessment criteria of technical aspect specified at points a, b, c and d Clause 1 of this Article, use the method of marking a score. When formulating assessment criteria of technical aspect, the score of minimum technical requirement must be stipulated and not be less than 70% of the total points for technical aspects, except for case specified at point d Clause 1 of this Article.

3. For advisory bidders being individuals, criteria for evaluation of bid dossiers shall be criteria for evaluation of dossiers of scientific curriculum vitae and technical proposals (if any). The bidder with the best dossier of scientific curriculum vitae, technical proposals and satisfying requirements of reference provisions shall be ranked the first.

#### **Article 41. Methods to assess dossier of proposals**

Method to assess dossier of proposals in competitive quotation shall comply with the method of lowest price specified at clause 1 article 39 of this Law.

#### **Article 42. Consideration for recommendation as the winning bidder for procurements of the advisory service provision**

1. The advisory bidder being organization shall be considered for recommendation as the

winning bidder upon satisfying the following conditions:

- a) Having valid bid dossier and dossier of proposals;
- b) Having technical proposals satisfying requirements;
- c) Having the bidding price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) being lowest price for method of lowest price; having the highest technical points for method of fixed price and method of basing on technical aspect; having the highest overall points for the method of combination between technical aspect and price;
- d) Having the proposed bid-winning price not exceeding the approved procurement price. If the approved estimated budget of procurement is lower than or higher than the approved procurement price, this estimate shall replace the procurement price as basis for consideration for recommendation as the winning bidder.

2. The advisory bidder being individual shall be considered for recommendation as the winning bidder upon satisfying the following conditions:

- a) The bidder has the best dossier of scientific curriculum vitae, technical proposals (if any) and satisfying requirements of reference provisions;
- b) The bidder has the proposed bid-winning price not exceeding the approved procurement price. If the approved estimated budget of procurement is lower than or higher than the approved procurement price, this estimate shall replace the procurement price as basis for consideration for recommendation as the winning bidder.

3. For bidders fail to be selected, in notice of bidder-selection result must clearly state the reason thereof.

**Article 43. Consideration for recommendation as the winning bidder for bidding the non-advisory service provision, goods procurement, construction and installation and mixture content**

1. The supplier of non-advisory service, goods, construction and installation, mixture content shall be considered for recommendation as the winning bidder upon satisfying the following conditions:

- a) Having valid bid dossier and dossier of proposals;
- b) Having capability and experiences satisfying requirements;
- c) Having technical proposals satisfying requirements;
- d) Having deficient discrepancies not exceeding 10% of bidding price;
- dd) Having the bidding price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) being lowest price for method of lowest price; having the lowest assessment price for method of assessment price; having the highest overall points for the method of combination between technical aspect and price;
- e) The bidder has the proposed bid-winning price not exceeding the approved procurement price. If the approved estimated budget of procurement is lower than or higher than the approved procurement price, this estimate shall replace the procurement price as basis for consideration for

recommendation as the winning bidder.

2. For bidders fail to be selected, in notice of bidder-selection result must clearly state the reason thereof.

## **Chapter 5.**

# **CONCENTRATED PROCUREMENT, REGULAR PROCUREMENT, PURCHASE OF DRUGS, MEDICAL SUPPLIES; PROVISION OF PUBLIC PRODUCTS AND SERVICES**

## **SECTION 1. CONCENTRATED PROCUREMENT**

### **Article 44. General provisions on concentrated procurement**

1. Concentrated procurement means a way to organize an open bidding in order to select contractor through a concentrated procurement unit with the aim to reduce expenses, time, and focal units of bidding organization, strengthen the professionalism in bidding, and contribute in increasing economic efficiency.

2. Concentrated procurement shall apply in case where goods and services need to be procured with big quantity, similar categories at one or many agencies, organizations, enterprises or investment owners.

3. Concentrated procurement may be performed in one of the following ways:

a) The concentrated procurement unit gathers needs of procurement, conduct the selection of contractor, directly sign contract with the selected contractor for goods or service provision;

b) The concentrated procurement unit gathers needs of procurement, conduct the selection of contractor, sign a written framework agreement with one or many selected contractors as basis for units which have need of direct procurement to sign contract with the selected contractors for goods or service provision.

4. The concentrated procurement unit shall conduct the selection of contractor on the basis of assigned tasks, or sign contract with units which have need for procurement.

5. The Government shall detail this Article.

### **Article 45. Framework agreement**

1. Framework agreement in the concentrated procurement means a long-term agreement between the concentrated procurement unit with one or many selected contractors, in which include standards and conditions as basis for procurement according to each specific contract.

2. Duration for use of framework agreements shall be stipulated in plan on contractor selection but not exceed 03 years.

## **SECTION 2. REGULAR PROCUREMENT**

### **Article 46. Conditions for application**

State bodies, political organizations, socio-political organizations, socio-political-occupational organizations, social organizations, socio-occupational organizations and units of the People's armed forces, and public non-business units may apply the regular procurement of goods and services upon satisfying all the following conditions:

1. Use the capital sources for regular procurement;
2. Goods and services under list of goods and services allowed applying regular procurement to maintain regular activities of agencies, organizations and units.

#### **Article 47. Organizing selection of contractor**

1. Selection of contractor in regular procurement shall comply with Articles 38, 39, 40, 41, 42 and 43 of this Law.
2. The Government shall detail on regular procurement.

### **SECTION 3. PURCHASE OF DRUGS AND MEDICAL SUPPLIES**

#### **Article 48. The selection of contractor for drugs and medical supplies provision**

1. Form, method, plan and process of selection of contractor and method of assessment of bid dossier, dossier of proposals for selection of contractor for drugs and medical supplies provision shall comply with provisions at chapter II, III and IV of this Law.
2. Selection of contractor for drugs provision shall also be performed under form of price negotiation. Form of negotiation shall be applied to procurements for purchase of drugs which there are only one to two producers; original proprietary medicines, rare drugs, drugs still in time protected copyright and other particular cases.
3. A bidder shall be considered for the advisory bidder being organization shall be considered for recommendation as the winning bidder upon satisfying the following conditions:
  - a) Conditions specified at points a, b, d, dd and e Clause 1 Article 43 of this Law;
  - b) Bidder has technical proposals which are assessed to satisfy requirements on quality, provision, preservation and time limit for drugs use.
4. The Government shall detail this Article.

#### **Article 49. Concentrated purchase of drugs**

1. The concentrated purchase of drugs shall be performed at national level and local level.
2. The Government shall provide for the concentrated purchase of drugs and roadmap to perform the concentrated purchase of drugs.

#### **Article 50. Preferential treatment in purchase of drugs**

The preferential treatment in purchase of drugs shall comply with Article 14 of this Law. For drugs produced domestically, and the Ministry of Health has announced as satisfaction of such drugs for the requirements on medical treatment, price of drugs and ability of provision, in bidding dossiers, dossier of requirements shall stipulate that bidders are not permitted to offer the import drugs.

#### **Article 51. Responsibilities of state management agencies in bidding of drugs and medical supplies**

1. The Ministry of Health shall promulgate list of drugs involving bidding; list of drugs involving concentrated bidding; and list of drugs allowed applying form of price negotiation.
2. Government shall provide for responsibilities of Ministries and sectors in bidding of drugs and medical supplies, and the disclosure of prices of drugs and medical supplies according to results

of contractor selection.

#### **Article 52. Payment of expenses for purchase of drugs and medical supplies**

If non-public medical establishments do not select to apply provisions of this Law for purchase of drugs, medical supplies, such medical establishments shall only be paid from medical insurance fund according to the drugs items and unit prices of drugs and medical supplies already won bidding of the public medical establishments at provincial level in the same localities.

### **SECTION 4. PROVISION OF PUBLIC PRODUCTS AND SERVICES**

#### **Article 53. Forms of selection of contractors**

The selection of contractors for provision of public products and service shall perform under forms of open bidding, limited bidding, and direct appointment of contractor, competitive quotation, direct procurement and self-implementation.

#### **Article 54. The process of contractor selection**

1. The process of contractor selection for provision of public products and services shall be implemented as follows:

- a) Prepare for selection of contractor;
- b) Organize selection of contractor;
- c) Assess the bid dossiers, dossier of proposals and negotiate contract;
- d) Submit, evaluate, approve and publicize result of contractor selection;
- dd) Finalize and sign contract.

2. The Government shall detail this Article.

### **Chapter 6.**

### **SELECTION OF INVESTORS**

#### **Article 55. Plan on investor selection**

1. Basis for plan on investor selection:

- a) Decision on approving project;
- b) International treaties, international agreements for projects used official development assistance capital, concessional loans;
- c) Relevant documents.

2. Content of plan on investor selection:

- a) Name of project;
- b) Total invested capital and total capital of project;
- c) Preliminary content of amount financed by State, financial regime of State to support for implementation of project (if any);
- d) Forms and methods of selection of investors;

- dd) Time beginning of organization for investor selection;
- e) Contract type;
- g) Time for contract performance.

**Article 56. The process of investor selection**

1. The process of investor selection shall be implemented as follows:
  - a) Prepare for selection of investor;
  - b) Organize the selection of investor;
  - c) Assess the bid dossiers, dossiers of proposals;
  - d) Submit, evaluate, approve and publicize result of investor selection;
  - dd) Negotiate, finalize and sign contract.
2. The Government shall detail this Article.

**Article 57. Submitting, appraising and approving the plan on selection of investor, dossier of invitation for pre-qualification, result of pre-qualification, bidding dossier, dossier of requirements and result of investor selection**

1. The bid solicitor shall submit the plan on selection of investor, dossier of invitation for pre-qualification, result of pre-qualification, bidding dossier, dossier of requirements and result of investor selection to the competent persons, concurrently organize appraisal.
2. Organizing the appraisal, making report on appraisal of the plan on selection of investor, dossier of invitation for pre-qualification, result of pre-qualification, bidding dossier, dossier of requirements and result of investor selection to submit to the competent persons.
3. Based on the submitted dossier and report on appraisal, the competent persons shall approve the plan on selection of investor, dossier of invitation for pre-qualification, result of pre-qualification, bidding dossier, dossier of requirements and result of investor selection.
4. The Government shall detail this Article.

**Article 58. Methods to assess the bid dossiers**

1. Methods to assess the bid dossiers include: Method of service price, method of State-contributed capital, method of social benefits, state benefits and combination method.
2. Criteria for evaluation of bid dossier include: criteria for evaluation on capability, experiences; criteria for evaluation on technical aspect; and criteria for evaluation on financial aspect.
3. The Government shall detail this Article.

**Article 59. Consideration for recommendation as the selected investor**

1. The selected investors must satisfy all following conditions:
  - a) Having valid bid dossier and dossier of proposals;
  - b) Satisfying requirements on capability and experiences;
  - c) Satisfying technical requirements;

- d) Satisfying financial requirements;
- dd) Project obtains highest efficiency.

2. For investors not be selected, in notice of result of investor selection must clearly state the reason thereof.

## **Chapter 7.**

### **SELECTION OF CONTRACTORS AND INVESTORS THROUGH NETWORK**

#### **Article 60. Selection of contractors and investors through network**

1. When selecting bidders, investors through network, the following contents and process shall be performed on the national bidding network system:

- a) Publishing information on bidding as prescribed in Article 8 of this Law;
- b) Publishing dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, dossiers of requirements;
- c) Submission of bid security, guarantee for performance of contract, partnership agreements;
- d) Submitting, withdrawing dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bid dossiers, dossiers of proposals;
- dd) Opening bid;
- e) Assessing dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals;
- g) Sign contract and pay under contract;
- h) Other relevant content.

2. The Government shall detail selection of contractors and investors through network and the roadmap for application

#### **Article 61. Requirements for the national bidding network system**

1. It must publicize, not limit the access of information.
2. Users may realize the real time upon accessing the national bidding network system. Time on the national bidding network system is the real time and standard time in bidding through the national bidding network system.
3. It must operate continuously, unified, be stable and safe on information, have ability to identify users, keep confidential and entire data.
4. It must perform the storage of information and may retrieve histories of transactions on the national bidding network system.
5. It must ensure that bidders and investors cannot send dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals to the bid solicitor after bid closure.

## **Chapter 8.**

### **CONTRACT**



## **SECTION 1. CONTRACT WITH CONTRACTOR**

### **Article 62. Contract type**

#### 1. Lump-sum contract:

a) Lump-sum contract means contract with fixed price during performance for all work contents in contract. Payment for lump-sum contract shall be performed many times during implementation or once upon finishing contract. Total amounts paid to contractor until finishing obligations under contract shall be equal to the price stated in contract;

b) When applying the lump-sum contract, prices of procurements as the basis for consideration for recommendation as the winning bidder must include expenses for risk elements which may happen during the course of implementation of contract, reserve expenses for slippage in price. Bidding price must include all expenses for risk elements and expenses for slippage in price which may happen during the course of implementation of contract;

c) Lump-sum contract is type of basic contract. When deciding on application of contract types defined at Clause 2 and Clause 3 of this Article, the person approving the plan on contractor selection must ensure that such contract types are more appropriate than lump-sum contract. For procurements of simple advisory service provision, and non-advisory service provision; procurements for goods procurement, construction and installation, mixture content with small scale must apply form of lump-sum contract;

d) For procurements of construction and installation, during the course of negotiating and finalizing contract, the relevant parties need review the table of work volume under the approved design; if the bidder or the bid solicitor detects that the tables of work quantity and volume are not exact in comparison with design, the bid solicitor shall report to the investment owner for consideration to decide on adjustment of the work volume in order to ensure the conformity with design;

dd) When applying the lump-sum contract, the investment owner for project, the bid solicitor for regular procurement, the concentrated procurement units or units with need of procurement for the concentrated procurement shall be responsible for the accuracy of work quantity and volume. In case of using advisory bidder to make dossier of design, bidding dossier, dossier of requirements, in contract between investment owner, bid solicitor, concentrated procurement unit or unit which has need of procurement with the advisory bidder must have provisions on responsibilities of parties in handling or compensation in case of calculating wrongly the work quantity and volume.

#### 2. Contract based on fixed unit price:

Contract based on fixed unit price means contract with unit price not changeable during performance of all work contents in contract. The contractor will be paid according to the practical work quantity and volume which are tested for acceptance as prescribed on the basis of the fixed unit price in contract.

#### 3. Contract based on modifiable unit price:

Contract based on modifiable unit price means contract with changeable unit price based on agreements in contract for all work contents in contract. The contractor will be paid according to the practical work quantity and volume which are tested for acceptance as prescribed on the basis

of the unit price in contract or the modified unit price.

#### 4. Time-based contract:

Time-based contract means contract which is applied to procurements providing advisory service. The contractual price is calculated on the basis of working time according to month, week, day, hour and costs other than remuneration. The contractor will be paid according to the practical working time on the basis of remuneration corresponding to the title and work stated in contract.

### **Article 63. Dossier of contract**

1. Contractual dossier includes the following documents:

- a) Written contract;
- b) Annex of contract including the detailed list of work scope, price table, and implementation schedule (if any);
- c) Decision on approving the result of contractor selection.

2. Apart from documents specified at Clause 1 of this Article, depend on scale, nature of procurement, contractual dossier may include one or a number of the following documents:

- a) The written record of finalizing contract;
- b) The written agreement of parties about contractual conditions, including general conditions and specific conditions;
- c) Bid dossier, dossier of proposals and documents to clarify these dossiers of the selected contractor;
- d) Bidding dossier, dossier of requirements and documents amending and supplementing these dossiers.
- dd) Relevant documents.

3. When having changes of contents within contract, parties must sign appendices for supplementation to contract.

### **Article 64. Conditions for signing contract**

1. At time of signing, bid dossier and dossier of proposals of the selected contractor are still valid.

2. At time of signing, the selected contractor must ensure to meet requirements on technical and financial capability for implementation of the procurement. In necessary case, the investment owner for a project, the bid solicitor for regular procurement, the concentrated procurement unit or unit with need of procurement for the concentrated procurement may conduct verification of information on capability of bidder, if the bidder still satisfies requirements for implementation of procurement, parties will sign contract.

3. The investment owner for a project, the bid solicitor for regular procurement, the concentrated procurement unit or unit with need of procurement for the concentrated procurement must ensure conditions on funding for advance payment, payment funding, ground for implementation and other necessary conditions for carrying out the procurement on the schedule.

## **Article 65. Contract with the selected contractor**

1. After selecting contractor, the investment owner for a project, the bid solicitor for regular procurement, the concentrated procurement unit or unit with need of procurement for the concentrated procurement and the selected contractor must sign contract to perform the procurement. For partnership contractor, all members participating in partnership must directly sign and affix their seal (if any) on the written contract. The contract signed between parties must comply with provisions of this Law and other provisions of relevant legislation.
2. A procurement may be performed according to one or many contract; in a contract may apply one or many contract kinds specified at Article 62 of this Law. Case of applying many contract kinds, it must clarify the contract kind respectively with each content of specific work.
3. Contract signed between parties must conform to content in bidding dossier, dossier of requirements, bid dossier, dossier of proposals, result of contractual negotiation, and decision on approving result of contractor selection.
4. Contractual price does not exceed the bid-winning price. Case of supplementing the work volume apart from bidding dossier, dossier of requirements, leading to the excess of contractual price in comparison with the bid-winning price, the contractual price must be ensured to not exceed the approved price of procurement or estimate; if project, estimate on procurement include many procurement, total contractual price must ensure to not exceed total the invested capital and estimated budget already been approved.
5. The Government shall provide for content of contract involving bidding.

## **Article 66. Guarantee for contract performance**

1. Guarantee for contract performance shall be applied to the selected contractors, except for contractors which provide the advisory services, the selected contractors according to form of self-implementation and participation in implementation of community.
2. The selected bidder must provide a contract performance guarantee prior to the date on which the contract takes effect.
3. Based on scale, nature of procurement, the value of a contract performance guarantee shall be stipulated in the bid invitation documents, dossiers of requirements at a definite level of between 2% and 10% of the bid-winning price.
4. The term of validity of a contract performance guarantee shall be calculated from the effective day of contract until the date parties finish contractual obligations or until the day of transfer of warranty obligations in case of having provisions on warranty. Case of extending the contract performance period, it must require the bidder to extend respectively term of validity of contract performance guarantee.
5. The contractor shall not be entitled to the return of the contract performance guarantee in the following cases:
  - a) The contractor refuses to perform the contract after the date the contract takes effect;
  - b) The contractor violates agreements in contract.
  - c) The contractor performs contract later than the progress due to the contractor's fault but refuse to extend the validity of contract performance guarantee.

## **Article 67. Principles of adjustment to contract**

1. Adjustment to contracts must be specified specifically in the written contract, written agreement on contractual conditions (if any).
2. Adjustment to contracts shall only apply within term of validity of contract.
3. Adjustment to contract price shall only apply contract based on fixed unit price, contract based on modifiable unit price and time-based contract.
4. The adjusted contract sum shall not exceed the procurement price or estimated budget already been approved. Case of projects, estimates on procurement including many procurements, the adjusted contract sum shall not exceed the total invested capital, the estimated budget for procurement already been approved.
5. For contracts based on modifiable unit price, the adjustment of unit price shall be performed as from time of arising the elements causing changes of price and only be applied for the performed volume in accordance with the progress stated in contract or the adjusted progress as prescribed in Clause 6 and Clause 7 of this Article.
6. The contract implementation schedule shall be only adjusted in the following case:
  - a) Case of force majeure, not relating to any violation or mistake of parties in contract;
  - b) Changes of the work scope, design, measures for construction due to objective requirements affect to the contract implementation schedule;
  - c) Handing over of ground inconsistently with agreements in contract affect to the contract implementation schedule but cause is not fault of contractor.
7. Cases of adjustment to the contract implementation schedule which do not prolong the progress of finishing project, contractual parties may agree and unify such adjustments. Case of adjustment to the contract implementation schedule which prolong the progress of finishing project, it must report to the competent person for consideration and decision.

## **SECTION 2. CONTRACT WITH INVESTOR**

### **Article 68. Contract type**

Contracts in selection of investor include: Building-Operation-Transfer (BOT) contract, building-transfer-operation (BTO) contract, building- owning-operation (BOO) contract, building-transfer (BT) contract and other contractual kinds as prescribed by law on investment.

### **Article 69. Contractual dossier**

1. Contractual dossier includes the following documents:
  - a) Written contract;
  - b) Appendices of contract (if any);
  - c) The written record of contractual negotiation;
  - d) Decision on approving the result of investor selection;
  - dd) The written agreement of parties about contractual conditions, including general conditions and specific conditions;

e) Bid dossier, dossier of proposals and documents to clarify these dossiers of the selected investor;

g) Bidding dossier, dossier of requirements and documents amending and supplementing these dossiers;

h) Relevant documents.

2. When having changes of contents within contract, parties must sign appendices for supplementation to contract.

#### **Article 70. Conditions for signing contract**

1. At time of signing, bid dossier and dossier of proposals of the selected investor are still valid.

2. At time of signing, the selected investor must ensure to meet requirements on technical and financial capability for implementation of the project. In necessary case, the competent person may conduct verification of information on capability of investor, if the investor still satisfies requirements for implementation of project, parties will sign contract.

3. The competent state agencies must ensure conditions on capital financed by state, ground for implementation and other necessary conditions for carrying out the project on the schedule.

#### **Article 71. Contract with the selected investor**

1. After selecting investor, the competent state agencies shall sign contract with the selected investor or the selected investor and project management enterprise. For partnership investor, all members participating in partnership must directly sign and affix their seal (if any) on the written contract. The contract signed between parties must comply with provisions of this Law and other provisions of relevant legislation.

2. Contract signed between parties must conform to content in bidding dossier, dossier of requirements, bid dossier, dossier of proposals, result of contractual negotiation, and decision on approving result of investor selection and written agreement on investment.

#### **Article 72. Contract performance guarantee**

1. The selected investor must provide a contract performance guarantee prior to the date on which the contract takes effect.

2. Based on scale, nature of project, the value of a contract performance guarantee shall be stipulated in the bid invitation documents, dossiers of requirements at a definite level of between 1% and 3% of total invested capital of project.

3. The term of validity of a contract performance guarantee shall be calculated from the day of officially signing contract until the date works is completed and tested for acceptance or until the date conditions of service provision guarantee are completed as prescribed in contract. Case of extending the contract performance period, it must require the investor to extend respectively term of validity of contract performance guarantee.

4. The investor shall not be entitled to the return of the contract performance guarantee in the following cases:

a) The investor refuses to perform the contract after the date the contract takes effect;

- b) The investor violates agreements in contract;
- c) The investor performs contract later than the progress due to the investor's fault but refuse to extend the validity of contract performance guarantee.

## **Chapter 9.**

### **RESPONSIBILITIES OF PARTIES IN SELECTION OF CONTRACTORS, INVESTORS**

#### **Article 73. Responsibilities of the competent person**

1. To approve the plan on selection of contractor, investor, except for case defined at point a Clause 1 Article 74 of this Law.
2. To resolve protests during selection of contractor, investor.
3. To deal with breaches of bidding in accordance with this Law and other relevant laws.
4. To cancel bid as prescribed at Clauses 2, 3 and 4 Article 17 of this Law.
5. To suspend bid, to refuse recognition of result of selecting bidder, investor, or to declare invalidity to decisions of the investment owner, the bid solicitor when detecting violations of bidding or other provisions of relevant law.
6. To inspect, supervise, monitor the work of bidding and contract performance.
7. For the selected contractor, apart from provisions at Clauses 1, 2, 3, 4, 5 and 6 of this Article, the competent person shall have the following responsibilities:
  - a) To adjust tasks and competence of investor in case of failing to meet legislation on bidding and requirements of project, procurement;
  - b) To require the investment owner, the bid solicitor to supply dossiers, documents in order to serve the inspection, supervision, monitoring, settlement of protests, handling of violations on bidding and works defined at Clause 4 and clause 5 of this article;
  - c) To give opinions on handling of complex circumstances at the proposal of the investment owner defined at point a clause 2 Article 86 of this Law.
8. For the selected investor, apart from provisions at Clauses 1, 2, 3, 4, 5 and 6 of this Article, the competent person shall have the following responsibilities:
  - a) To decide on selection of the bid solicitor;
  - b) To approve dossier of invitation for pre-qualification, result of pre-qualification, bidding dossier, dossier of requirements, result of investor selection;
  - c) To make a decision dealing with any exceptional situation;
  - d) To sign and manage the contract performance;
  - dd) To cancel bid as prescribed at Clause 1 Article 17 of this Law.
  - e) To require the bid solicitor to supply dossiers, documents in order to serve the inspection, supervision, monitoring, settlement of protests, handling of violations on bidding and works defined at Clause 4 and clause 5 of this article;
9. To decide on establishment of the bid solicitor with personnel satisfying the conditions as

prescribed by this Law in case of investor selection for regular procurement: If the personnel fails to satisfy, the competent person must conduct selection of a professional bidding organization to act as the bid solicitor or to perform some of tasks of the bid solicitor.

10. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the competent person's fault

11. To make explanations for observance with provisions in this article at the request of superior agencies, inspection agencies, state management agencies on bidding activities.

12. To perform other tasks as prescribed in this Law.

#### **Article 74. Responsibilities of the investment owner**

1. To approve contents during contractor selection including:

a) Plan on selection of contractors in case where the procurement is performed prior to decision on approving the project;

b) Dossier of invitation for expression of interest, dossier of invitation for pre-qualification, short list;

c) Bidding dossier, dossier of requirements;

d) List of ranked contractors;

dd) Result of selection of contractors.

2. To sign or authorize for signing and manage the contract performance with contractor.

3. To decide on establishment of the bid solicitor with personnel satisfying conditions as prescribed in this Law. If the personnel fail to satisfy, it must conduct selection of a professional bidding organization to act as the bid solicitor or to perform some of tasks of the bid solicitor.

4. To make a decision dealing with any exceptional situation.

5. To resolve protests during selection of contractors.

6. To maintain confidentiality of relevant documents during selection of contractors.

7. To archive relevant information during selection of contractors as prescribed by law on archival and regulations of Government.

8. To report the annual bidding work.

9. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the competent person's fault.

10. To cancel bid as prescribed at Clause 1 Article 17 of this Law.

11. To be legally liable before law and competent person for the process of selection of contractor.

12. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of superior agencies, inspection agencies, state management agencies on bidding activities.

13. If the investment owner currently being the bid solicitor, the investment owner must take

responsibilities specified in Article 75 of this Law.

14. To perform other tasks as prescribed in this Law.

#### **Article 75. Responsibilities of the bid solicitor**

1. For contractor selection to perform procurements of project:

a) To conduct preparations for contractor selection; to organize contractor selection, and to assess dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals;

b) To decide on establishment of expert group;

c) To request bidders to clarify their dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers and dossiers of proposals during the process of dossier assessment;

d) To submit for approval of the result of short list selection and result of contractor selection;

dd) To negotiate and finalize contract with bidder;

e) To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the bid solicitor's fault.

d) To maintain confidentiality of relevant documents during selection of contractors.

h) To ensure honesty, objectivity and impartiality throughout the process of contractor selection.

i) To provide information to the bidding newspaper and to the national bidding website; to provide information and relevant documents and make explanations on observance with provisions in this Clause at the request of competent person, investment owner, inspection agencies, state management agencies on bidding activities;

k) To be legally liable before law and investment owner for the process of selection of contractor.

2. For selection of tenders in regular procurement, apart from provisions at points a, b, c, d, dd, e, g, h and i Clause 1 this Article, the bid solicitor must take the following responsibilities:

a) To approve the bidding dossier, dossier of requirements;

b) To approve the result of contractor selection;

c) To sign and manage the contract performance with contractor;

d) To make a decision dealing with any exceptional situation;

dd) To resolve protests during selection of contractors.

e) To cancel bid as prescribed at Clause 1 Article 17 of this Law;

g) To be legally liable before law and competent person for the process of selection of contractor;

h) To archive relevant information during selection of contractors as prescribed by law on archival and regulations of Government;

i) To provide information to the bidding newspaper and to the national bidding website; to



provide information and relevant documents and make explanations on observance with provisions in this Clause at the request of competent person, investment owner, inspection agencies, state management agencies on bidding activities;

k) To report the annual bidding work.

3. For selection of investors

a) To conduct preparations for investor selection; to organize investor selection; to assess dossiers of pre-qualification participation, bid dossiers, dossiers of proposals in accordance with this Law;

b) To decide on establishment of expert group;

c) To request investors to clarify their dossiers of pre-qualification participation, bid dossiers and dossiers of proposals during the process of dossier assessment;

d) To submit for approval of dossier of invitation for pre-qualification, result of pre-qualification, bidding dossier, dossier of requirements, result of investor selection;

dd) To negotiate contract with investor;

e) To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the bid solicitor's fault;

g) To maintain confidentiality of relevant documents during selection of investors;

h) To archive relevant information during selection of investors as prescribed by law on archival and regulations of Government;

i) To resolve protests during selection of investor;

k) To ensure honesty, objectivity and impartiality throughout the process of investor selection;

l) To provide information to the bidding newspaper and to the national bidding website; to provide information and relevant documents and make explanations on observance with provisions in this Clause at the request of competent person, inspection agencies, state management agencies on bidding activities;

4. To perform other tasks as prescribed in this Law.

#### **Article 76. Responsibilities of the expert groups**

1. To be honest, objective and impartial throughout the process of implementation of tasks.

2. To conduct assessments of dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals correctly in accordance with the requirements.

3. To report the bid solicitor about result of assessing dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals and list of the ranked bidders, investors.

4. To maintain confidentiality of relevant documents during selection of contractors, investors.

5. To reserve their own opinions.

6. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the expert group's fault.

7. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of competent person, the bid solicitor, inspection agencies, state management agencies on bidding activities.

8. To perform other tasks as prescribed in this Law.

#### **Article 77. Responsibilities of the bidders and investors**

1. To request the bid solicitor to clarify dossier of invitation for expression of interest, dossier of invitation for pre-qualification, bidding dossier, dossier of requirements.

2. To fulfill the contractual undertakings provided to the sub-contractors (if any).

3. To lodge protests, to make complaints and denunciations regarding bidding.

4. To comply with the provisions of the law on bidding.

5. To be honest and accurate during the process of participation in bidding and while lodging protests or making complaints and denunciations.

6. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the expert group's fault.

7. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of competent person, the bid solicitor, inspection agencies, state management agencies on bidding activities.

8. To perform other duties in accordance with this Law and other relevant laws.

#### **Article 78. Responsibilities of the evaluating organizations**

1. To act independently and to comply with the provisions of this Law and other relevant laws when conducting evaluations.

2. To request the investment owner and the bid solicitor to provide all relevant documents and data.

3. To maintain confidentiality of documents and data throughout the process of evaluation.

4. To be honest, objective and impartial throughout the process of evaluation.

5. To reserve their own opinion and to bear liability for their evaluation report.

6. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by their fault.

7. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of competent person, the investment owner, the bid solicitor for regular procurement, concentrated procurement, inspection agencies, state management agencies on bidding activities.

8. To perform other tasks as prescribed in this Law.

#### **Article 79. Responsibilities of the bid solicitor in participation in the national bidding network system**

In addition to responsibilities defined in Article 75 of this Law, the bid solicitor participating in the national bidding network system shall have the following responsibilities:

1. To equip an information technology infrastructure which meets requirements of bidding through network;
2. To manage and not disclose secret key of the granted digital certificate. In case where a bid solicitor lost digital certificate or detect the illegal use of digital certificate, it must notify immediately to the provider of digital signature certification service for cancelation and grant of new digital certificate; to expand the term of validity of digital certificate to ensure the digital certificate to be valid during the process of bidding;
3. To be legally liable before law for accuracy and honesty of information registered or published on the national bidding network system when sign in by their digital signature;
4. To check and certify the publishing of their information entered in the national bidding network system;
5. To comply with provisions of this Law and other provisions of relevant legislation.

#### **Article 80. Responsibilities of the bidders and investors participating in the national bidding network system**

In addition to responsibilities defined in Article 77 of this Law, the bidders and investors participating in the national bidding network system also have the following responsibilities:

1. To equip an information technology infrastructure when participating in bidding through network;
2. To manage and not disclose secret key of the granted digital certificate. If users of bidders or investors lost or detect the third party's use of their digital certificate, they must change the secret key of digital certificate, cancel digital certificate under guide of the provider of digital signature certification service; extend the validity term of the digital certificate to ensure the digital certificate to be invalid during the process of participation in bidding;
3. To be legally liable before law for accuracy and honesty of information registered or published on the national bidding network system when sign in by their digital certificate;
4. To be responsible for result when participating in bidding through network in case of having incident due to the network system at the side of bidders or investors which make documents to be not able to be open or not readable;
5. To comply with provisions of this Law and other provisions of relevant legislation.

#### **Chapter 10.**

#### **STATE MANAGEMENT ON BIDDING ACTIVITIES**

#### **Article 81. Content of state management on bidding activities**

1. Promulgating, disseminating, propagating, guiding and organizing implementation of legal documents and policies on bidding.
2. Granting certificates of practicing in bidding operation.
3. Managing the work of training and capacity building on bidding.
4. Summarizing, assessing and reporting on the status of implementation of bidding activities.
5. Administering on a nationwide basis the bidding information system.

6. Monitoring, supervising, checking, inspecting, resolving protests, complaints and denunciations regarding bidding, and dealing with breaches of the law on bidding in accordance with this Law and other relevant laws.

7. Conducting international cooperation on bidding.

### **Article 82. Responsibilities of Government and the Prime Minister**

1. The Government shall exercise unified administration of bidding throughout the country.

2. The Prime Minister shall discharge the following responsibilities:

a) Make decisions on the bidding issues stipulated in article 73 of this Law for projects under his competence;

b) Approve plan on selection of contractors, investors in special cases;

c) Direct the work of conducting inspections and of resolving complaints, denunciation and dealing with breaches of the law on In cases where a minister, head of a ministerial equivalent body or chairman of a people's committee at any level is concurrently the authorized person, then such minister, head or chairman must also discharge the responsibilities stipulated in article 60 of this Law bidding in accordance with this Law and the other relevant law;

d) Discharge other responsibilities in accordance with this Law and other relevant laws.

### **Article 83. Responsibilities of the Ministry of Planning and Investment**

1. To be responsible before the Government for the exercise of unified state administration of bidding activities nationwide as prescribed in Article 81 of this Law.

2. In addition to provision at Clause 1 this Article, the Ministry of Planning and Investment shall have the following responsibilities:

a) To evaluate plans on selection of contractor, investor in projects under the consideration and decision competence of the Prime Minister;

b) To build up, manage, guide use of the national bidding website and bidding newspaper;

c) To perform other tasks on bidding as assigned by Government and the Prime Minister.

### **Article 84. Responsibilities of ministries, ministerial equivalent bodies, and all level people's committees**

Ministries, ministerial equivalent bodies, and all level people's committees shall, within their tasks and powers, have the following responsibilities:

1. To exercise administration of bidding work;

2. Summarizing, assessing and reporting on the status of implementation of bidding activities;

3. To resolve protests regarding bidding;

4. To conduct checks and inspections, resolve complaints, denunciation, and with breaches of the law on bidding;

5. To organize the capacity building of bidding knowledge for cadres, civil servants and public employees engaged in bidding work;

6. In cases where a minister, head of a ministerial equivalent body or chairman of a people's

committee at any level is concurrently the authorized person, then such minister, head or chairman must also discharge the responsibilities stipulated in article 73 of this Law; if being investment owner, he must also discharge the responsibilities stipulated in article 74 of this Law.

#### **Article 85. Responsibilities of the organization operating the national bidding network system**

1. To manage and operate the national bidding network system.
2. To maintain confidentiality of documents and data throughout the process of bidding through net work in accordance with regulations.
3. To supply services to guide investment owners, the bid solicitor, bidders, investors in bidding through network, and registering, publishing information on the national bidding network system.
4. To save information in serve of searching, monitoring, supervising, checking, inspecting and auditing.
5. To publicize conditions on information technology infrastructure of users when participating in bidding through network.

#### **Article 86. Dealing with exceptional situations**

1. Dealing with exceptional situations means settlement of cases arising in bidding which have not yet been stipulated specifically clearly in law on bidding. The person making a decision on dealing with any exceptional situation in bidding shall be responsible before the law for his decision on the basis of ensuring the following principles:

- a) Ensuring competitiveness, fairness, transparency and economic efficiency;
  - b) Acting on the basis of the approved plan on selection of contractor, investor, dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bidding dossiers, dossier of requirements, dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals; result of selection of contractor, investor; the contract signed with selected bidder, investor; practical situation of implementation of procurements and projects.
2. Competencies for dealing with exceptional situations in bidding:
- a) For contractor selection to perform procurements of project, the person making decision to deal with exceptional situations is investment owner. In complex cases, the investment owner may make decision on dealing with exceptional situations after consulting the competent person;
  - b) For selection of tenders in regular procurement, concentrated procurement, the person making decision to deal with exceptional situations is the bid solicitor;
  - c) For investor selection, the person making decision to deal with exceptional situations is competent person.

3. The Government shall detail this Article.

#### **Article 87. Inspection, examination and supervision of bidding activities**

1. Inspection of bidding activities:

a) Bidding inspections shall be carried out and applied to organizations and individuals who are involved in bidding activities specified in this Law;

b) The bidding Inspectorate shall be the specialized inspectorate for the bidding sector. The organization and operations of the bidding Inspectorate shall be implemented in accordance with the law on inspections.

2. Checks of bidding activities:

a) Checks of bidding activities include:

checks of promulgation of documents guiding on bidding of Ministries, sectors, localities and enterprises; checks of training on bidding, checks of formulation and approval of plan on selection of contractor, investor; checks of selection of contractor, investor; conclusion in contracts and other activities involving bidding;

b) Checks of bidding shall be conducted regularly or irregularly under decisions on the heads of agencies competent to check.

3. Supervision of bidding activities:

Supervision of bidding activities is regular work of the competent person aiming to ensure the observance of process of selection of contractor and investor with this Law.

4. The Government shall detail this Article.

#### **Article 88. Complaints and denunciation**

The making of complaints and denunciations and the resolution of such complaints and denunciations on bidding shall be implemented in accordance with the law on complaints and denunciations.

### **Chapter 11.**

#### **BANNED ACTS AND DEALING WITH BREACHES OF BIDDING**

##### **Article 89. Banned acts in bidding**

1. The handing, taking, brokerage of bribes.

2. Taking advantage of positions, powers aiming to interfere illegally in bidding activities.

3. Conclusion with each other in bidding, including the following acts:

a) Agreeing on bidding withdrawal or withdrawal of bidding application already been submitted previously so that one party or parties in agreement win bid;

b) Agreeing to let one or many parties to prepare bid dossier for parties of bidding so that one party may win bid;

c) Agreeing on refusal for goods provision, refusal for signing contract of sub-contractor, or forms which cause other difficulties to parties which refuse to participate in agreement.

4. Fraudulence including the following acts:

a) Providing a wrong presentation intentionally or falsifying information, dossier or documents of a party in bidding with the aim to obtain financial benefits or other benefits or with the aim to avoid any obligation;

b) Individuals who directly assess dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals, evaluate result of selection of short list, result of selection of investor, bidder, intentionally providing wrong report or untrue information falsifying the result of selection of contractors, investors.

c) Bidders, investors intentionally provide dishonest information in dossiers of expression of interest, dossiers of prequalification participation, bid dossiers, dossiers of proposals falsifying the result of selection of contractors, investors.

5. Interference including the following acts:

a) Destroying, cheating, changing, hiding proof or reporting contrary to the truth; threatening, disturbing or suggesting with any party with the aim to prevent the clarification of acts of handing, taking, brokerage of bribes, fraudulence or conclusion with functional agencies, authorized agencies in conducting supervisions, checks, inspections and audit;

b) Acts that impede bidders, investors, competent agencies involving supervision, check, inspection and audit.

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

a) Participation in the capacity of a bidder, investor in a procurement, project for which such participant is also the bid solicitor, investment owner or person executing tasks of the bid solicitor, investment owner;

b) To formulate, concurrently evaluate dossier of invitation for expression of interest, dossier of invitation for pre-qualification, bidding dossier, dossier of requirements for a same procurement, project;

c) To evaluate bid dossiers, dossier of proposals, concurrently evaluate result of selection of contractor, investor for a same procurement, project;

d) To be an individual of the bid solicitor, investment owner but directly participate in the process of selection of contractor, investor or participate in expert groups, evaluation groups for result of selection of contractor, investor or be the head of competent state agency, investment owner, the bid solicitor for procurements, projects in which his or her natural parent, parent-in-law, spouse, natural child, adopted child, son or daughter-in-law or sibling participates give their name in bidding or are representatives in law of bidders, investors participating in bid;

dd) Participation by a bidder in bidding for goods procurement, construction and installation in a procurement for which such participant previously has provided consultancy services;

e) Provision of one's name as the bidder for a procurement belonging to a project of an organization or body for which such person worked, within a period of 12 months from the date on which such person ceased to work for such body or organization;

g) To be advisory bidder for supervision concurrently provide the verification advisory for the procurement which is under supervision of bidder;

h) Application of a form of selection of contractor, investor other than open bidding when the conditions stipulated in this Law have not been satisfied;

i) Imposition of specific requirements regarding brand names and country of origin of goods in bid invitation documents applicable to procurement for procurement of goods, for construction

and installation and mixture procurements when applying forms of open bidding, limited bidding;

k) Division of a project, estimate for procurement into procurements contrary to the provisions in this Law with the aim to apply direct appointment of contractor or limit participation of bidders.

7. Disclosure, receipt of the following data and information regarding selection of contractor, investor, except for cases defined at point b clause 7 and point e clause 8 article 73, clause 12 Article 74, point i Clause 1 Article 75, Clause 7 Article 76, Clause 7 Article 78, point d Clause 2 and point d clause 4 Article 92 of this Law:

a) Contents of dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bid invitation documents prior to the stipulated date for issuance of such documents;

b) Contents of dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals, notebooks and minutes of bid consideration meetings, comments and assessments regarding each dossier of expression of interest, dossier of pre-qualification participation, dossier of proposals prior to the announcement of the short list, results of selection of contractor, investor;

c) Requests for clarification of bid dossiers, dossiers of proposals made by the bid solicitor and responses of bidders, investors during the process of assessment of bid dossiers, dossiers of proposals prior to announcement of the results of selection of contractor, investor;

d) Reports by the bid solicitor, by the expert group, evaluation report, report of advisory bidder, report of relevant specialized agencies during the process of selection of contractor, investor prior to announcement of the results of selection of contractor, investor;

dd) Result of selection of contractor, investor prior to the stipulated time for announcement;

e) Other documents during the process of selection of contractor, investor which are stamped "confidential" as prescribed by law.

8. Bid transfer including the following acts:

a) Contractor transfer to other contractor a part of work under procurement at value of 10% or more of less than 10% but over 50 billion VND (after deducting part of work under responsibilities of sub-contractors calculated on the signed contractual price;

b) The investment owner or supervision advisory accepts for contractor to transfer work under duty of contractor, deducted part of work under duty of sub-contractors as stated in contract.

9. Holding selection of contractor when the financing source for the procurement has not yet been determined, resulting in insolvency of the contractor.

## **Article 90. Dealing with violations**

1. Any organization or individual who breaches the law on bidding and other relevant law shall, depending on the nature and seriousness of violation, be disciplined, sanctioned administratively or liable to criminal prosecution; in case where violation of law on bidding causes damages to benefits of state, the lawful rights and benefits of organizations and individuals, the offender must pay compensation as prescribed by law.

2. In addition to being dealt with pursuant to the provisions in clause 1 of this article, depending



on the nature and seriousness of violation, organizations and individuals breaching law on bidding shall be also banned participation in bidding activities and put into list of infringing contractors on the national bidding network system.

3. Competence of banning participation in bidding activities is prescribed as follows:

a) The competent persons shall issue decisions on banning participation in bidding activities for projects, estimate of procurement under their management; case of serious violation, they may suggest the Ministers, Heads of ministerial-level agencies, chairpersons of the provincial/municipal People's Committees to issue decision on banning participation in bidding activities within management of Ministries, sectors and localities or suggest the Minister of Planning and Investment to issue decisions on banning participation in bidding activities nationwide;

b) The Ministers, Heads of ministerial-level agencies, chairpersons of provincial/municipal People's Committees shall issue decisions on banning participation in bidding activities within management of their Ministries, sectors and localities for cases suggested by the competent persons as prescribed at point a this Clause;

c) The Minister of Planning and Investment shall issue decisions on banning participation in bidding activities nationwide for cases suggested by the competent persons as prescribed at point a this Clause.

4. Disclosure of dealing with violations:

a) Decisions on dealing with violations must be sent to the dealt organizations and individuals, the relevant agencies and organizations, concurrently be sent to the Ministry of Planning and Investment for monitoring and summing up;

b) Decisions on dealing with violations must be published on bidding newspaper, the national bidding network system.

5. The Government shall detail this Article.

## **Chapter 12.**

### **RESOLUTION OF PROTESTS AND DISPUTES IN BIDDING**

#### **SECTION 1. RESOLUTION OF PROTESTS REGARDING BIDDING**

##### **Article 91. Resolution of protests regarding bidding**

1. When consider that lawful rights and benefits are severely affected, the contractors and investors have rights:

a) To make protests to the bid solicitor, investment owner, competent person about matters during selection of contractor, investor; result of selection of contractor, investor according to the process of resolution of protests specified in Article 92 of this Law;

b) To institute court proceedings at any time, including time of resolution of protests or after having result of resolution of protests.

2. In case where contractors, investors instituted court proceedings, they are not entitled to send protest to the bid solicitor, investment owner, or the competent person. If in the process of resolution of protests, contractors, investors instituted court proceedings, the resolution of

protests shall be terminated immediately.

## **Article 92. The process of resolution of protests**

1. The process of resolution of protests regarding matters during selection of contractors shall be implemented as follows:

a) A contractor may send a written protest to the investment owner for project; the bid solicitor for regular procurement, concentrated procurement since happening matters and prior to having notice of result of contractor selection;

b) The investment owner, the bid solicitor shall be responsible to have a document to resolve a protest made by a bidder within a time-limit of a maximum 07 working days from the date of receipt of the written protest of the bidder;

c) If the investment owner, the bid solicitor has no document to resolve the protest or if the bidder disagrees with the result of resolution of protest, the bidder shall have the right to lodge the protest with the authorized person within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by investment owner, the bid solicitor;

d) The authorized person shall be responsible to resolve a protest made by a bidder within a time-limit of a maximum 15 working days from the date of receipt of the written protest of the bidder.

2. The process of resolution of protests regarding result of selection of contractors shall be implemented as follows:

a) A bidder may send a written protest to the investment owner for project; the bid solicitor for regular procurement, concentrated procurement in period of 10 days after having notice of result of contractor selection;

b) The investment owner, the bid solicitor shall be responsible to have a document to resolve a protest made by a bidder within a time-limit of a maximum 07 working days from the date of receipt of the written protest of the bidder;

c) If the investment owner, the bid solicitor has no document to resolve the protest or if the bidder disagrees with the result of resolution of protest, the bidder shall have the right to lodge the protest with the authorized person and the Consulting Council for resolution of protests within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by investment owner, the bid solicitor. The Minister of Planning and Investment shall establish a Consulting Council for Resolution of Protests at central level; the Ministers, Deputy Ministers of Ministerial agencies shall establish the Councils at ministerial level; the heads of state management agencies on bidding at localities shall establish the Councils at local level;

d) When receiving written protest, the Consulting Councils for Resolution of Protests shall be entitled to request the bidders, investment owners, the bid solicitor and relevant agencies for information provision in order to consider and have written report to the competent person about the plan and content or replying protest within 20 days, after receiving the written protest made by the bidder;

dd) In necessary case, the Consulting Councils for Resolution of Protests shall, based on the

written protest made by the bidder, suggest the competent person to consider for temporary suspension of the bid. If accepting, within 05 working days, after receiving the document of the Consulting Council for Resolution of Protests, the competent person shall issue a written notice about temporary suspension of the bid. The document of temporary suspension of the bid must be sent to the investment owner, the bid solicitor, bidder within 03 working days after issuing the written notice about temporary suspension of the bid. Duration of temporary suspension of the bid shall be calculated from the date the investment owner, the bid solicitor receive the notice of temporary suspension until the competent person issues a document to resolve protest;

e) The competent person shall issue decision on resolution of protest regarding result of selection of contractor within 05 working days, after receiving the written opinion of the Consulting Council for Resolution of Protests.

3. The process of resolution of protests regarding matters during selection of investors shall be implemented as follows:

a) The investor may send a written protest to the bid solicitor as from happening events and prior to having notice of result of selection of investor;

b) The bid solicitor shall be responsible to have a document to resolve a protest made by an investor within a time-limit of a maximum 15 days from the date of receipt of the written protest of the investor;

c) If the bid solicitor has no document to resolve the protest or if the investor disagrees with the result of resolution of protest, the investor shall have the right to lodge the protest with the authorized person within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by the bid solicitor;

d) The authorized person shall be responsible to resolve a protest made by an investor within a time-limit of a maximum 05 working days from the date of receipt of the written protest of the investor.

4. The process of resolution of protests regarding result of selection of investor shall be implemented as follows:

a) An investor may send a written protest to the bid solicitor in period of 10 days after having notice of result of investor selection;

b) The bid solicitor shall be responsible to have a document to resolve a protest made by an investor within a time-limit of a maximum 15 days from the date of receipt of the written protest of the investor;

c) If the bid solicitor has no document to resolve the protest or if the investor disagrees with the result of resolution of protest, the investor shall have the right to lodge the protest with the authorized person and the Consulting Council for resolution of protests within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by the bid solicitor;

d) When receiving written protest, the Consulting Councils for Resolution of Protests shall be entitled to request the investors, the bid solicitor and relevant agencies for information provision in order to consider and have written report to the competent person about the plan and content or replying protest within 30 days, after receiving the written protest made by the investor;

dd) In necessary case, the Consulting Councils for Resolution of Protests shall, based on the written protest made by the investor, suggest the competent person to consider for temporary suspension of the bid. If accepting, within 10 days, after receiving the document of the Consulting Council for Resolution of Protests, the competent person shall issue a written notice about temporary suspension of the bid. The document of temporary suspension of the bid must be sent to the bid solicitor, investor within 05 working days after issuing the written notice about temporary suspension of the bid. Duration of temporary suspension of the bid shall be calculated from the date the bid solicitor receives the notice of temporary suspension until the competent person issues a document to resolve protest;

e) The competent person shall issue decision on resolution of protest regarding result of selection of investor within 10 days, after receiving the written opinion of the Consulting Council for Resolution of Protests.

5. If a bidder or investor sends a written protest directly to the competent person without observance with the processes of resolution of protests specified in this Article, such written protest shall not be considered for settlement.

6. The Government shall detail this Article.

## **SECTION 2. RESOLUTION OF DISPUTES IN BIDDING BY COURTS**

### **Article 93. The principles of resolution**

Resolution of disputes in bidding by courts shall comply with law on civil procedures.

### **Article 94. The right to request Court for application of temporary emergency measures**

When instituting, parties have the right to request the Court for immediate temporary suspension of bid disclosure; approval of short list; approval of result of selection of contractor, investor; conclusion in a contract; performance of contract, and other temporary emergency measures as prescribed by law.

## **Chapter 13.**

### **IMPLEMENTATION PROVISIONS**

#### **Article 95. Effect**

1. This Law takes effect on July 01, 2014.
2. The bidding Law No. 61/2005/QH11 shall cease to be effective on the effective date of this Law.
3. To annul section 1 Chapter VI of the Construction Law No. 16/2003/QH11 and Article 2 of the Law amending and supplementing a number of articles of the laws concerning capital construction investment No. 38/2009/QH12.

#### **Article 96. The detailed provision**

The Government shall detail Articles, Clauses as assigned in this Law.

This Law was passed by Legislature XIII of the National Assembly of the Socialist Republic of Vietnam at its 6th Session on 26 November 2013.

**THE CHAIRMAN OF THE NATIONAL  
ASSEMBLY**

**Nguyen Sinh Hung**