

# LAW ON TENDERING

**National Assembly of the Socialist Republic of Vietnam**  
**Legislature XI, Session 8**  
**(from 18 October until 29 November 2005)**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law regulates tendering.

## CHAPTER I

### General Provisions

#### **Article 1** *Governing scope*

This Law regulates tendering activities in order to select contractors for provision of consultancy services, for procurement of goods, and for construction and installation for tender packages belonging to the following projects:

1. Investment and development projects financed by the State as to thirty (30) per cent or more, comprising:
  - (a) New construction and investment projects, and upgrading and expansion of construction projects in which investment has already been made;
  - (b) Investment projects for procurement of assets including equipment and machinery not required to be installed;
  - (c) Projects for planning for regional development, planning for industry development, and planning for construction of urban and rural areas;
  - (d) Projects for scientific research, for development of technology, and for technical assistance;
  - (dd) Other projects for purposes of investment and development.
2. Projects financed by the State for procurement of assets for the purpose of maintaining regular activities of State bodies, political organizations, socio-political organizations, socio-political-occupational organizations, social organizations, socio-occupational organizations and units of the armed forces.
3. Projects financed by the State for procurement of assets for the purpose of renovation or major repairs to equipment, production lines, building works and factories of State owned enterprises in which investment has already been made.

## **Article 2** *Applicable entities*

1. Domestic and foreign organizations and individuals participating in tendering activities for tender packages belonging to the projects stipulated in article 1 of this Law.
2. Organizations and individuals involved in tendering activities for tender packages belonging to the projects stipulated in article 1 of this Law.
3. Organizations and individuals with projects not within the governing scope of this Law may choose to apply this Law.

## **Article 3** *Application of Law on Tendering, related laws, international treaties and international agreements*

1. Tendering activities must comply with the provisions of this Law and other related laws.
2. If there are any special matters on tendering stipulated in any other Law, then such Law shall apply.
3. Tendering for projects using official development aid (abbreviated as ODA) shall be implemented on the basis of provisions in international treaties of which the Socialist Republic of Vietnam is a member or international agreements signed by authorized bodies or organizations on behalf of the Socialist Republic of Vietnam.

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

In this Law, the following terms shall be construed as follows:

1. *Financed by the State* means the use of State Budget funds, credit facilities guaranteed by the State, credit facilities for investment and development of the State, investment and development funds of State owned enterprises, and other capital funds managed by the State.
2. *Tendering* means the process of selecting a contractor who satisfies the requirements set by the party calling for tenders in order to implement a tender package belonging to a project stipulated in article 1 of this Law, on the basis of ensuring competitiveness, fairness, transparency and economic efficiency.
3. *Tendering activities* means activities of the parties involved in the process of selecting a contractor.
4. *Sequence for implementation of tendering* means the steps being preparation for tendering; organization of tendering; assessment of tenders; evaluation and approval of the results of tendering; notification of the results of tendering; and negotiation, finalization and signing of a contract.
5. *Domestic tendering* means the process of selection of a contractor who satisfies the requirements of the party calling for tenders, in which domestic tenderers participate.
6. *International tendering* means the process of selection of a contractor who satisfies the requirements of the party calling for tenders, in which both foreign and domestic tenderers participate.
7. *Project* means a set of proposals for implementing a part or the whole of works aimed at achieving an objective or requirement within a specified period of time and based on a specified financing source.

8. *Authorized person* means the person with the right pursuant to law to make project decisions. In the case of projects financed by the State as to thirty (30) per cent or more, excluding projects financed by the State as to hundred (100) per cent, the authorized person is the board of management or authorized representative of the capital contributing parties.
9. *Investor* means the entity owning the financing capital or the entity assigned responsibility to represent such owner, or the borrower directly managing and implementing any project as defined in clause 7 of this article.
10. *Party calling for tenders* means the investor or a professional organization with sufficient capability and experience in accordance with the law on tendering for the investor to hire in order to hold tendering.
11. *Tenderer* means any eligible organization or individual as stipulated in articles 7 and 8 of this Law.
12. *Head contractor* means a tenderer liable for its participation in tendering which gives its name to a tender, and which signs and implements a contract if selected (hereinafter referred to as a *participating tenderer*). A tenderer participating in tendering independently is referred to as an *independent tenderer*. A tenderer participating in tendering jointly with one or more other tenderers to submit the one tender is referred to as a *partnership tenderer*.
13. *Consultancy tenderer* means a tenderer participating in tendering for the supply of products, who satisfies the requirements on knowledge and professional experience stipulated in clause 34 of this article.
14. *Supply tenderer* means a tenderer participating in tendering for tender packages for the supply of goods as defined in clause 35 of this article.
15. *Construction tenderer* means a tenderer participating in tendering for tender packages for construction and installation as defined in clause 36 of this article.
16. *EPC tenderer* means a tenderer participating in tendering for the performance of an EPC tender package as defined in clause 21 of this article.
17. *Sub-contractor* means a contractor performing part of the work of a tender package on the basis of an agreement or contract signed with the head contractor. A sub-contractor is not a contractor liable for participation in tendering.
18. *Domestic tenderer* means any tenderer established and operating pursuant to the law of Vietnam.
19. *Foreign tenderer* means any tenderer established and operating pursuant to the law of the country of nationality of such tenderer.
20. *Tender package* means a part of a project, and in a number of special cases means the entire project; a tender package may comprise items for the procurement of similar goods for a number of projects or a one-off procurement in recurrent procurement of goods.
21. *EPC tender package* means a tender package which comprises the entire work of design, supply of equipment and materials, and construction and installation.
22. *Pre-qualification invitation documents* means all of the documents stipulating the requirements on capability and experience of tenderers as the legal basis for the party calling for tenders to select a list of tenderers to be invited to submit tenders.

23. *Pre-qualification application* means all of the documents prepared by a tenderer in accordance with the requirements of the pre-qualification invitation documents.
24. *Tender invitation documents* means all of the documents used for open or limited tendering stipulating the requirements for any one tender package and providing the legal basis for tenderers to prepare their tenders and for the party calling for tenders to assess tenders aimed at selection of a winning tenderer; and also providing the basis for negotiation, finalization and signing of a contract.
25. *Tender* means all of the documents prepared by a tenderer in accordance with the requirements of the tender invitation documents and submitted to the party calling for tenders in accordance with the provisions in the tender invitation documents.
26. *Tender package price* means the value of a tender package specified in the tendering plan based on the approved total invested capital, total estimated budget or estimated budget and current regulations.
27. *Tender price* means the price stated by a tenderer in its tender. If a tenderer provides a discount letter, then the tender price is the price after deducting the discount.
28. *Proposed contract sum* means the sum proposed by the party calling for tenders on the basis of the tender price of the tenderer selected to be awarded the contract after errors have been rectified and discrepancies have been adjusted as required by the tender invitation documents.
29. *Winning tender price* means the price approved in the results of selection of contractor as the basis for negotiation, finalization and signing of a contract.
30. *Equal footing price* means the tender price submitted by a tenderer to implement a tender package after errors have been rectified and discrepancies have been adjusted, and after adding all necessary operating and maintenance costs and other costs relating to the schedule, quality and origin of goods or construction works under the tender package for the entire use life. Equal footing prices shall be used to compare and rank tenders and are referred to as the *assessment prices*.
31. *Contract* means the document signed between the investor and the selected contractor based on the agreement reached between the parties. The contract must be in accordance with the decision approving the results of selection of contractor.
32. *Tender guarantee* means the tenderer provides security by one of the methods of paying a deposit, providing collateral or providing a letter of guarantee for a definite term as stipulated in the tender invitation documents, in order to secure the liability of the tenderer for its tender.
33. *Contract performance guarantee* means the tenderer provides security by one of the security methods of paying a deposit, providing collateral or providing a letter of guarantee for a definite term as stipulated in the tender invitation documents, in order to secure the liability of the winning tenderer to perform the contract.
34. *Consultancy services* comprise:
  - (a) Consultancy services on project preparation comprising formulation and assessment of planning reports, charts on overall development, architecture, pre-feasibility and feasibility study reports;

- (b) Consultancy services on project implementation comprising surveying, design, total estimated budgets and estimated budgets, preparation of tender invitation documents, assessment of tenders, and supervision of execution of building and installation of equipment;
  - (c) Consultancy services on project management, arranging finance, training, technology transfer and other consultancy services.
35. *Goods* means machinery, equipment, raw materials, fuel, supplies, consumer goods, and services other than consultancy services.
36. *Construction and installation* comprises work which is part of the process of building and installing equipment in construction works and items of works, and of renovation and major repairs.
37. *Protest regarding tendering* means a request from any tenderer participating in tendering for reconsideration of the results of selection of contractor or regarding any other relevant matter during the tendering process when such tenderer considers his rights and interests have been adversely affected.
38. *National tendering network* means the system applying information technology set up and managed by the State administrative body for tendering in order to uniformly administer information about tendering and to service tendering activities.
39. *Tendering evaluation* means check and assessment by the body or organization in charge of the evaluation of tendering plans, tender invitation documents and results of selection of contractor as the basis for the authorized person to consider and make a decision in accordance with this Law. An evaluation of the results of selection of contractor is not a re-assessment of tenders.

#### **Article 5** *Information on tendering*

1. The following information on tendering must be published in the Tendering Newsletter and on the tendering website of the State administrative body for tendering:
- (a) Tendering plans;
  - (b) Notices inviting pre-qualification applications; results of pre-qualification;
  - (c) Invitations to tender in the case of open tendering;
  - (d) Lists of tenderers invited to participate in tendering;
  - (dd) Results of selection of contractor;
  - (e) Information on how breaches of the law on tendering have been dealt with;
  - (g) Current legal instruments on tendering;
  - (h) Other relevant information.
2. After the information stipulated in clause 1 of this article has been published in the Tendering Newsletter and on the tendering website, it may also be published on other mass media in order to facilitate access by interested organizations and individuals.

The Government shall provide detailed regulations on information on tendering.

## **Article 6** *Tendering plans*

1. The authorized person must provide written approval of a tendering plan after approval of the investment decision, or the tendering plan may be approved at the same time as the investment decision in cases where there are adequate conditions providing a legal basis for the investor to hold selection of a contractor, except for tender packages which must be implemented prior to an investment decision. The person approving a tendering plan shall be liable before the law for his decision.
2. A tendering plan must be formulated for the entire project; in cases where there are inadequate conditions to formulate a tendering plan for the entire project, it shall be permitted to formulate a tendering plan for some tender packages to be implemented in advance, but only when essential.
3. A tendering plan must set out clearly the number of tender packages and the contents of each tender package. The contents of each tender package shall comprise:
  - (a) Name of the tender package;
  - (b) Tender package price;
  - (c) Financing source;
  - (d) Form of selection of contractor; method of tendering;
  - (dd) Scheduled time for selection of contractor;
  - (e) Form of contract;
  - (g) Scheduled period for performance of the contract.
4. Division of the project into different tender packages shall be based on the technical nature of the project and the sequence for its implementation, ensuring unity within the project and that each tender package is of an appropriate size. There shall be only one set of tender invitation documents for any one tender package, and tendering shall only be held once. Each tender package shall be implemented by only one contract, except where a tender package is made up of several independent components in which case it may be implemented by more than one contract.

## **Article 7** *Eligibility of tenderers being organizations*

A tenderer being an organization shall be deemed to be eligible when it satisfies the following conditions:

1. It has a business registration certificate or investment certificate issued pursuant to law, or a decision on establishment in the case of a domestic tenderer which is an organization without business registration. A foreign tenderer must have registration for its operation issued by the competent authority of the country of nationality of the tenderer.
2. It is an independent cost accounting entity.
3. There is no decision by a competent body concluding that the tenderer has an unhealthy financial status; it is not bankrupt or insolvent, and it is not in the process of dissolution.

**Article 8** *Eligibility of tenderers being individuals*

A tenderer being an individual shall be deemed to be eligible when he or she satisfies the following conditions:

1. Having full capacity for civil acts pursuant to the law of the country of which such individual is a citizen;
2. Having lawful registration for operation or an appropriate professional certificate issued by the competent authority;
3. The individual is not subject to investigation for a criminal offence.

**Article 9** *Requirements applicable to a party calling for tenders and to an expert tendering group*

1. Individuals being members of a party calling for tenders must satisfy all the following conditions:
  - (a) Be knowledgeable about the law on tendering;
  - (b) Be knowledgeable about project management;
  - (c) Have professional expertise appropriate to the requirements of the tender package in technical, financial, commercial, administrative and legal fields.
  - (d) Have foreign language skills sufficient to satisfy the requirements for tender packages for which international tendering is held and for tender packages of ODA financed projects.
2. Depending on the nature and complexity of a tender package, the expert tendering group shall include experts in technical, financial, commercial, administrative, legal and other relevant fields. Members of an expert group must satisfy all of the following conditions:
  - (a) Have a certificate of attendance at a training course on tendering;
  - (b) Have professional expertise relevant to the tender package;
  - (c) Be knowledgeable about the specific contents of the tender package;
  - (d) Have at least three years' working experience in fields relating to the economic and technical contents of the tender package.

Members of an expert tendering group do not necessarily have to be members of the party calling for tenders, and vice versa.

3. If an investor has sufficient personnel who satisfy the conditions stipulated in clause 1 of this article, the investor may itself act as the party calling for tenders. If the investor has insufficient personnel or if it has personnel but they fail to satisfy the conditions stipulated in clause 1 of this article, then the investor shall conduct a selection process in accordance with this Law to select a consultancy organization or a professional tendering organization with sufficient capability and experience to represent the investor in acting as the party calling for tenders. In all cases investors shall be liable for the process of selection of contractor and for signing a contract with the winning tenderer after negotiation and finalization of the contract pursuant to the provisions of this Law.

## **Article 10** *Conditions for participation in tendering for any one tender package*

Tenderers participating in tendering for any one tender package must satisfy all the following conditions:

1. Be eligible pursuant to articles 7 and 8 of this Law.
2. Submit only one tender, either as an independent tenderer or in partnership, for each tender package. In the case of a partnership there must be a written agreement between the partners specifying the person heading the partnership and the general and specific responsibilities of each partner with respect to the tender package works.
3. Satisfy the requirements set out in the notice inviting tenders or in the letter inviting tenders from the party calling for tenders;
4. Ensure competitiveness in tendering pursuant to the provisions in article 11 of this Law.

## **Article 11** *Ensuring competitiveness in tendering*

1. Any tenderer who participates in tendering for a tender package belonging to the projects stipulated in article 1 of this Law must satisfy the following requirements on competitiveness:
  - (a) A consultancy tenderer who prepared a feasibility study report shall not be permitted to participate in tendering for the provision of consultancy services to prepare the technical designs of the same project. Any consultancy tenderer who has already participated in the technical designs of a project shall not be permitted to participate in tendering for the subsequent steps, except in the case of an EPC tender package;
  - (b) Any tenderer participating in tendering must be organizationally independent of, financially independent from, and not under the control of the managing body of the consultancy tenderer who prepared the tender invitation documents or who will assess the tenders;
  - (c) A consultancy tenderer who supervises implementation of a contract must be organizationally independent of, financially independent from, and not under the control of the managing body of the consultancy tenderer who performs the contract;
  - (d) Tenderers participating in tendering for tender packages belonging to projects must be organizationally independent of, financially independent from, and not under the control of the managing body of the project investor.
2. The provisions in clause 1 of this article must be implemented at the latest by three years, in accordance with a schedule stipulated by the Government, from the date this Law takes effect.

The Government shall provide detailed regulations on ensuring competitiveness in tendering.

## **Article 12** *Prohibited conduct in tendering*

1. Giving, accepting or requesting any object of value by an individual or organization involved in the process of selection of contractor or of contractual performance, resulting in dishonest or partial behaviour when deciding on selection of contractor or when signing and implementing the contract.
2. Using personal influence to affect or to intervene in, or intentionally making a false or dishonest report about information thus distorting the result of selection of contractor or the signing and implementation of the contract.

3. Collaboration or collusion between the party calling for tenders and tenderers, or between the State administrative body and the party calling for tenders and/or tenderers in order to change tenders; collusion with the evaluating organization or an inspectorate in order to affect the collective or national interest.
4. Participation by an organization or individual in both assessment of tenders and in evaluation of the results of selection of contractor within the same tender package.
5. Imposition of specific requirements regarding brand names and country of origin of goods in tender invitation documents applicable to tendering for procurement of goods, for construction and installation and EPC tender packages.
6. Participation in the capacity of a tenderer in tendering for a tender package for which such participant is also the party calling for tenders.
7. Division of a project into tender packages contrary to the provisions in clause 4 of article 6 of this Law.
8. Participation by a tenderer in tendering for the supply of goods or for construction and installation in a tender package for which such participant has provided consultancy services, except for EPC tender packages.
9. Disclosure of the following data and information regarding tendering:
  - (a) Contents of tender invitation documents prior to the stipulated date for issuance of such documents;
  - (b) Contents of tenders, notebooks and minutes of tender consideration meetings, comments and assessments from experts and consultants regarding each tender prior to the announcement of the results of selection of contractor;
  - (c) Requests for clarification of tenders made by the party calling for tenders and responses of tenderers during the process of tender assessment prior to announcement of the results of selection of contractor;
  - (d) Reports by the party calling for tenders, by the expert group, by consultants or any professional organization involved in the tendering process, or consideration of tenders and evaluation prior to announcement of the results of selection of contractor;
  - (dd) Results of selection of contractor prior to the stipulated time for announcement;
  - (e) Other relevant tendering documents which are stamped "confidential" pursuant to the law on confidentiality.
10. An arrangement by a person so that his or her natural parent, parent-in-law, spouse, natural child, adopted child, son or daughter-in-law or sibling participates in tender packages for which such person is the party calling for tenders, a member the expert tendering group or expert group evaluating the results of selection of contractor or the person approving the results of selection of contractor.

11. Conduct contrary to the regulations on management of capital funds, or causing difficulties during the procedures for capital drawdown or for accounting finalization under any contract signed between an investor and a contractor.
12. An arrangement or collusion between two or more tenderers participating in tendering for the one tender package so that one of the tenderers will be awarded the contract; between the contractor implementing a tender package and the consultant supervising implementation; or between a contractor implementing a tender package with the body or organization assigned the task of check and acceptance of the results of implementation.
13. Provision of one's name as the tenderer for a tender package belonging to a project of an organization or body for which such person worked, within a period of one year from the date on which such person ceased to work for such body or organization.
14. Permitting another tenderer to use one's legal status in order to participate in tendering; or assignment by a contractor who is a winning tenderer of the performance of the contract to another contractor.
15. Using a protest regarding tendering in order to impede the tendering process and the signing of a contract, or to prevent other tenderers from participating in tendering.
16. Application of a form of selection of contractor other than open tendering when the conditions stipulated in articles 19 to 24 inclusive of this Law have not been satisfied.
17. Holding tendering when the financing source for the tender package has not yet been determined, resulting in insolvency of the contractor.

**Article 13** *International tendering*

1. International tendering shall be held in the following cases:
  - (a) Tender packages belonging to projects using ODA in which the donor stipulates that international tendering must be held;
  - (b) Tender packages for procurement of goods where the goods are not yet able to be manufactured domestically;
  - (c) Tender packages in which domestic tenderers are incapable of satisfying the requirements of the party calling for tenders, or in which domestic tendering has been held but without selection of a winning tenderer.
2. In a case where a winning foreign tenderer fails to correctly fulfil undertakings in the partnership agreement or fails to employ a Vietnamese contractor (if any) to perform the volume and value of work assigned to the party being the Vietnamese contractor and as stipulated in the tender, such tenderer shall be rejected.
3. Any foreign tenderer who is a winning tenderer for implementation of a tender package in Vietnam must comply with regulations of the Government of Vietnam on management of foreign contractors.

#### **Article 14** *Preferential treatment in international tendering*

Entities entitled to preferential treatment in international tendering shall comprise:

1. Tenderers being enterprises established and operating in Vietnam pursuant to the *Law on Enterprises* and the *Law on Investment*.
2. Partnership tenderers where one of the partners being an entity prescribed in clause 1 of this article undertakes work valued at over fifty (50) per cent of a tender package for consultancy services or for construction and installation, or of an EPC tender package.
3. Tenderers participating in tendering for tender packages for procurement of goods where the ratio of the domestic manufacturing costs of such goods is thirty (30) per cent or more.

The Government shall provide detailed regulations on preferential treatment in international tendering.

#### **Article 15** *Currency to be used in tendering*

1. The currency to be used in tendering shall be stipulated in the tender invitation documents on the principle of one currency for any one volume offered.
2. During the process of assessment of tenders, the conversion to a common currency for purposes of comparison must be based on the exchange rate between Vietnamese dong and foreign currencies in accordance with the clauses set out in the tender invitation documents.
3. All types of domestic costs must be quoted in Vietnamese dong.

#### **Article 16** *Language to be used in tendering*

The language to be used in tender invitation documents, tenders and data exchanged between the party calling for tenders and tenderers shall be Vietnamese in the case of domestic tendering, and Vietnamese and English in the case of international tendering.

#### **Article 17** *Expenses for tendering*

1. Expenses for preparation of tenders and participation in tendering shall be borne by tenderers.
2. Expenses of the process of selection of contractor shall be included in the total invested capital or total estimated budget of the project.
3. Tender invitation documents may be sold to tenderers.

The Government shall provide detailed regulations on costs of tendering.

## CHAPTER II

### Selection of Contractors

#### SECTION 1

##### Forms of Selection of Contractors

###### **Article 18** *Open tendering*

1. The form of open tendering must be held for the selection of a contractor to implement a tender package belonging to the projects stipulated in article 1 of this Law, except in the circumstances stipulated in articles 19 to 24 inclusive of this Law.
2. In open tendering, the number of participating tenders shall be unrestricted. Prior to issuing the tender invitation documents, the party calling for tenders must publish a notice inviting tenders in accordance with article 5 of this Law so that tenderers will have information about participation. The party calling for tenders must supply tender invitation documents to any tenderer who wishes to participate in the tendering. The tender invitation documents must not include any term or condition aimed at restricting the participation of tenderers or favouring one or more tenderers thereby causing unfair competition.

###### **Article 19** *Limited tendering*

1. Limited tendering shall apply in the following cases:
  - (a) Where a foreign donor providing the financing source for the tender package so requests;
  - (b) Where the tender package has highly technical requirements or technical peculiarities; or in the case of tender packages of a research or experimental nature for which only a limited number of tenderers are capable of satisfying the requirements of the tender package.
2. When limited tendering is held, a minimum of five tenderers considered to have the capability and experience to participate in the tendering must be invited; if in fact there are less than five tenderers, the investor must make a submission to the authorized person for his consideration and decision on permission to continue to hold limited tendering or to apply another form of selection of contractor.

###### **Article 20** *Direct appointment of contractor*

1. Direct appointment of a contractor shall apply in the following cases:
  - (a) In the case of an event of force majeure due to a natural disaster, war or a breakdown which should be immediately dealt with. The investor or the body responsible for managing the building works or assets affected shall be permitted to immediately appoint a contractor to carry out the work. Within a time-limit not to exceed fifteen (15) days as from the date of making a direct appointment, the investor or the body responsible for management of the building works or assets affected must, together with the appointed contractor, carry out the stipulated procedures for appointment of a contractor;
  - (b) Tender packages in which the foreign donor stipulates that there shall be direct appointment of a contractor;

- (c) Tender packages belonging to national confidential projects; and urgent projects in the national interest or for the safety and security of energy as decided by the Prime Minister of the Government when deemed necessary;
  - (d) Tender packages for the procurement of any type of materials and equipment in order to restore, maintain or expand the capacity of equipment and technological production lines which were previously purchased from the one supplier, and in order to ensure compatibility of facilities and technology it is not possible to purchase such materials and equipment from other supply tenderers;
  - (dd) Tender packages for consultancy services with a tender package price of less than five hundred million dong, tender packages for the procurement of goods or for construction and installation with a tender package price of less than one billion dong belonging to projects for investment and development; tender packages for the procurement of goods with a tender package price of less than one hundred million dong belonging to a project or estimated budget for recurrent procurement; however tendering shall still be held when deemed necessary.
- 2. When conducting direct appointment of a contractor, the selection must be of a contractor who is determined as having sufficient capability and experience to satisfy the requirements of the tender package and there must be compliance with the procedures stipulated by the Government for carrying out direct appointment of a contractor.
  - 3. Prior to directly appointing a contractor in the cases stipulated in sub-clauses (b), (c), (d) and (dd) of clause 1 of this article, the estimated budget of the tender package must be approved in accordance with regulations.

**Article 21** *Direct procurement*

- 1. Direct procurement shall apply when a contract was signed for a tender package with similar contents within the previous six (6) months.
- 2. When conducting direct procurement, it shall be permitted to invite the tenderer who was selected via tendering to implement the earlier tender package with similar contents.
- 3. The unit price of the items of a tender package for which the form of direct procurement is applied shall not exceed the unit price of the corresponding items of the previous tender package for which a contract was signed.
- 4. Direct procurement may apply in order to implement a similar tender package belonging to the same or another project.

**Article 22** *Competitive quotation in procurement of goods*

- 1. The form of competitive quotation shall apply in cases which satisfy all the following conditions:
  - (a) The tender package price is less than two billion dong;
  - (b) The items to be purchased are commonly used goods which are readily available on the market, which have standardized technical features and which are similar to each other in quality.

2. When conducting competitive quotation, a request to provide a quotation must be sent to tenderers. Tenderers may send their quotation directly to the party calling for tenders, by fax or via the post office. Each tender package must have a minimum of three quotations from three different tenderers.

**Article 23** *Self-implementation*

1. The form of self-implementation shall apply where the investor is also a contractor with sufficient capability and experience to implement the tender package belonging to the project which such investor manages and uses.
2. The estimated budget for the tender package must be approved in accordance with regulations in order to apply the form of self-implementation. The entity supervising the implementation of the tender package must be organizationally and financially independent of the investor.

**Article 24** *Selection of contractor in special cases*

In the case of a tender package with particular requirements for which the forms of selection of contractor stipulated in articles 18 to 23 inclusive of this Law cannot be applied, the investor shall prepare a plan for selection of contractor which ensures competitiveness and economic effectiveness and submit same to the Prime Minister of the Government for his consideration and decision.

## SECTION 2

### General Provisions on Tendering

**Article 25** *Conditions for issuance of tender invitation documents*

Tender invitation documents shall be issued when the following conditions have been satisfied:

1. The tendering plan has been approved.
2. The tender invitation documents have been approved.
3. The notice inviting tenders or the list of tenderers invited to participate in tendering has been published pursuant to the provisions in article 5 of this Law

**Article 26** *Methods of tendering*

1. The single envelope method of tendering shall apply to the forms of open tendering and limited tendering for tender packages for the procurement of goods and for construction and installation, and to EPC tender packages. A tenderer shall submit his tender in one envelope including his technical and financial proposals in accordance with the requirements set out in the tender invitation documents. There shall only be one opening of tenders.
2. The dual envelope method of tendering shall apply to both open tendering and limited tendering for the provision of consultancy services. A tenderer shall submit his technical proposals and financial proposals in two separate envelopes in accordance with the requirements set out in the tender invitation documents. There shall be two openings of tenders: first the technical proposals shall be opened for assessment, and then the financial proposals of all tenderers whose technical proposals have been assessed as satisfying the requirements shall be opened in order to make an overall assessment. In the case of tender packages with high technical requirements, the financial proposals of the tenderer who is awarded the highest technical score shall be opened for consideration and negotiation.

3. Two-phase tendering shall apply to the forms of open tendering and limited tendering for tender packages for the procurement of goods and for construction and installation, and for EPC tender packages with technical, new technological, complex and diversified requirements. The sequence of two-phase tendering shall be as follows:
  - (a) In the first phase, tenderers shall submit their technical and financial proposals without a tender price, in accordance with the phase one tender invitation documents; the phase two tender invitation documents shall be settled on the basis of discussions held with each tenderer who participated in phase one.
  - (b) In the second phase, in accordance with the phase two tender invitation documents, the tenderers who participated in the first phase shall be invited to submit stage two tenders comprising technical proposals, financial proposals with a tender price, and a method for securing their tender.

#### **Article 27** *Tender guarantee*

1. Tenderers participating in tendering for tender packages for the procurement of goods, for construction and installation and for EPC tender packages must provide a tender guarantee prior to the deadline for tender closing. In cases of two phase tendering, tenderers must provide a tender guarantee during phase two.
2. The specific amount of the tender guarantee shall be stipulated in the tender invitation documents depending on the particular nature of each tender package, but shall not exceed three per cent of the approved tender package price.
3. The term of validity of a tender guarantee shall be equal to the term of validity of the tender plus thirty (30) days.
4. Where it is necessary to extend the period of validity of tenders, the party calling for tenders shall require tenderers to extend the period of validity of their tender guarantees for an equivalent term; in such a case, tenderers shall not be permitted to change the contents of their submitted tenders including tender prices, and tenderers shall then extend the period of validity of their tender guarantees. If any tenderer refuses to extend the period of validity of his tender, the party calling for tenders shall return the tender guarantee to the tenderer.
5. Tender guarantees shall be returned to non-winning tenderers within a time-limit not to exceed thirty (30) days as from the date of notification of results of tendering. The tender guarantee of the winning tenderer shall be returned to such tenderer after provision of a contract performance guarantee pursuant to article 55 of this Law.
6. A tenderer shall not be refunded his tender guarantee in the following cases:
  - (a) Withdrawal of tender after tender closing when the tender still remains valid;
  - (b) Within a period of thirty (30) days from the date of receipt of notification of winning tenderer from the party calling for tenders, the tenderer refuses or fails to negotiate and finalize the contract, or having negotiated and finalized the contract refuses to sign the contract without a legitimate reason;
  - (c) Failure to provide a contract performance guarantee pursuant to article 55 of this Law.

## **Article 28** *Principles for assessment of tenders*

1. Assessment of tenders must be based on the criteria for assessment of tenders and other requirements stipulated in the tender invitation documents, in order to ensure selection of a contractor with adequate capability and experience and with feasible solutions for implementation of the tender package.
2. In addition to the bases stipulated in clause 1 of this article, assessment of tenders must also be based on the submitted tenders and any statements from tenderers clarifying their tenders.
3. The sequence of assessment of tenders shall be implemented in accordance with the provisions in article 35 of this Law.

## **Article 29** *Method of assessment of tenders*

1. The method of assessment of tenders must be conducted in accordance with the assessment criteria stipulated in the tender invitation documents. Criteria of assessment of tenders shall comprise assessment criteria of capability and experience when pre-qualification does not apply, assessment criteria of technical aspects, and overall assessment criteria in the case of a tender package for consultancy services or of items in order to convert prices regarding technical, financial and commercial aspects to an equal footing basis for the purpose of comparing and ranking tenders in the case of tender packages for the procurement of goods, for construction and installation, and EPC tender packages.
2. Technical assessment of tender packages for consultancy services shall be carried out by the method of marking a score. Assessment criteria as formulated in the tender invitation documents must stipulate a minimum technical requirement which shall not be less than seventy (70) per cent of the total points for technical aspects; in the case of a tender package with high technical requirements, the minimum technical requirement must be stipulated as not less than eighty (80) per cent of the total points for technical aspects. The formulation of assessment criteria in order to compare and rank tenders shall be implemented in accordance with the following provisions:
  - (a) In the case of a tender package for consultancy services in which the technical requirements are not high, an overall point score shall be used in order to rank tenders. Points for technical aspects shall not account for less than seventy (70) per cent of the overall points score. The tender of the tenderer with the highest overall points score shall be ranked first;
  - (b) In the case of a tender package for consultancy services with high technical requirements, the tenderer with the tender which is awarded the highest technical points shall be ranked first and thereafter the financial proposals of such tenderer shall be considered.
3. In the case of tender packages for the procurement of goods, for construction and installation and EPC tender packages, technical aspects shall be assessed by using the method of marking a score or by using the criterion of pass or fail. If the overall points score is formulated as the method of assessing technical aspects, it must stipulate a minimum level for technical requirements of not less than seventy (70) per cent of the total points for technical aspects; in the case of high technical requirements, this minimum level for technical requirements must be stipulated as not less than eighty (80) per cent of the total points for technical aspects. The equal footing prices for technical, financial and commercial aspects of tenders which have passed the technical assessment stage shall then be compared and ranked. The tender of the tenderer which has the lowest price on an equal footing basis shall be ranked first.

The Government shall provide detailed regulations on assessment of tenders.

### **Article 30** *Tendering via the internet*

Tendering may be conducted on-line using the internet. The publication of notices inviting tenders, the issuance of tender invitation documents, the submission of tenders, the assessment of tenders and the announcement of results of selection of contractor shall be conducted on the national tendering network set up and uniformly administered by the State administrative body for tendering.

The Government shall provide detailed regulations on application of the form of tendering via the internet.

### **Article 31** *Regulations on time-limits applicable during tendering*

Depending on the nature of each tender package, the authorized person shall make a specific decision on the time-limits applicable during tendering in accordance with the following provisions:

1. The maximum permissible duration for pre-qualification as from the date of issuance of pre-qualification invitation documents up until the date of approved results of pre-qualification shall be thirty (30) days in the case of domestic tendering and forty five (45) days in the case of international tendering.
2. The minimum duration of advertising a notice inviting tenders shall be for ten (10) days prior to the date of issuance of tender invitation documents.
3. The minimum period allowed for preparation of tenders shall be fifteen (15) days as from the date of issuance of tender invitation documents up until the tender closing date in the case of domestic tendering, and thirty (30) days in the case of international tendering.
4. The maximum period of validity of a tender shall be one hundred and eighty (180) days as from the tender closing date; in necessary cases a tenderer may request extension of the period of validity of his tender, but an extension shall not exceed thirty (30) days.
5. The maximum time allowed for assessment of tenders shall be forty five (45) days in the case of domestic tendering and sixty (60) days in the case of international tendering as from the date of tender opening up until the date the investor submits a report on tendering results to the authorized person for his consideration and decision.
6. The maximum time allowed for evaluation shall be twenty (20) days applicable to evaluation of each item in a tendering plan, tender invitation documents, and of the results of selection of contractor. In the case of tender packages for which the Prime Minister of the Government must approve evaluations, the maximum time allowed shall be thirty (30) days for an evaluation of each item in a tendering plan and the results of selection of contractor.

## SECTION 3

### **Sequence for Implementation of Tendering**

## **Article 32** *Preparation for tendering*

### 1. Pre-qualification of tenderers:

Pre-qualification of tenderers shall be conducted in accordance with the following provisions:

- (a) Pre-qualification of tenderers shall be conducted prior to holding tendering in order to select a list of tenderers with the capability and experience required for the tender package in order to invite them to participate in tendering; pre-qualification of tenderers shall be mandatory in the case of tender packages for the procurement of goods and EPC tender packages with a tender package price of three hundred billion dong or more, and in the case of tender packages for construction and installation with a tender package price of two hundred billion dong or more;
- (b) The sequence for conducting pre-qualification of tenderers shall be as follows: Formulation of pre-qualification invitation documents; notice inviting pre-qualification applications; receipt and retention of pre-qualification applications; assessment of pre-qualification applications; submission and approval of pre-qualification results; and notification of results of pre-qualification;
- (c) The criteria for evaluation of pre-qualification applications must be set out in the pre-qualification invitation documents in accordance with the sample pre-qualification invitation documents regulated by the Government and shall include criteria on technical capability, and standards on financial capability and experience.

### 2. Preparation of pre-qualification invitation documents:

Pre-qualification invitation documents shall be formulated in accordance with the sample form regulated by the Government and shall comprise the following contents:

#### (a) Technical requirements:

In the case of tender packages for consultancy services, the technical requirements shall include requirements on the knowledge and professional experience of experts (terms of reference);

In the case of tender packages for procurement of goods, the technical requirements shall include requirements on the scope of supply; on the quantity and quality of goods determined via specifications, technical parameters, technological standards and manufacturing standards; the period of warranty; environmental requirements, and other necessary requirements.

In the case of tender packages for construction and installation, the technical requirements shall include the requirements set out in the technical design file, and shall include cost estimates, technical instructions and other necessary requirements;

- (b) The financial and commercial requirements shall comprise costs for implementing the tender package, the offered price and a detailed price list, delivery terms, method and terms of payment, financing source, tendering currency, and the other clauses and conditions which will be set out in the general and specific provisions of the contract.
- (c) Assessment criteria, important requirements, preferential conditions (if any), tax, insurance and other requirements.

3. Invitation to submit tenders:

Invitations to submit tenders shall be conducted in accordance with the following provisions:

- (a) Notification of invitation to submit tenders in the case of open tendering;
- (b) Sending of letters inviting submission of tenders in the case of limited tendering or in the case of open tendering for which pre-qualification has been conducted.

**Article 33** *Organization of tendering*

1. Issuance of tender invitation documents:

The tender invitation documents shall be issued to all tenderers participating in open tendering, to all tenderers on the list of tenderers to be invited to participate in limited tendering, or to all tenderers who have passed the pre-qualification stage.

If there needs to be an amendment to the tender invitation documents after they have been issued, a notice must be sent to all tenderers who received the tender invitation documents at least ten (10) days prior to the deadline for tender closing.

2. Receipt and retention of tenders:

The party calling for tenders shall accept all tenders which are submitted in accordance with the requirements set out in the tender invitation documents, and shall retain the tenders in accordance with the regime for retention of confidential documents.

3. Tender opening:

All tenders which have been submitted in accordance with the requirements set out in the tender invitation documents shall be opened publicly immediately after the deadline for tender closing.

The main information set out in the tenders of each tenderer must be announced at the tender opening session and must be recorded in the minutes of the tender opening and signed by the representative of the party calling for tenders, the representatives of the tenderers and the representatives of any relevant bodies present.

**Article 34** *Clarification of tender invitation documents*

1. If any tenderer requires clarification of the tender invitation documents, he shall send a written request to the party calling for tenders for the latter's consideration and action.

2. Clarification of tender invitation documents shall be conducted by the party calling for tenders by one of the following methods:

- (a) By sending a letter clarifying the tender invitation documents to all the tenderers who have received tender invitation documents;
- (b) In necessary cases, by holding a pre-tendering meeting in order to discuss the contents of the tender invitation documents which are unclear to tenderers. All issues discussed at the pre-tendering meeting must be recorded in minutes and a letter of clarification of the tender invitation documents must be sent to all tenderers.

3. The letter of clarification of tender invitation documents shall form an integral part of such tender invitation documents.

**Article 35** *Sequence of assessment of tenders*

1. A preliminary assessment of tenders shall be held in order to eliminate tenders which are invalid or which fail to satisfy the important requirements of the tender invitation documents.
2. A detailed assessment of tenders shall be held in accordance with the following provisions:
  - (a) A technical assessment of tenders shall be held in order to confirm which tenders basically satisfy the requirements of the tender invitation documents;
  - (b) In the case of tender packages for procurement of goods, for construction and installation, and EPC tender packages, there shall be a conversion of prices to an equal footing basis as regards technical, financial and commercial aspects in order to compare and rank tenders. In the case of tender packages for provision of consultancy services, an overall assessment shall be made in order to compare and rank tenders; and in the case of tender packages for provision of consultancy services with high technical requirements, the financial proposals of the tenderer who is given the highest technical ranking shall be considered.

**Article 36** *Clarification of tenders*

1. Tenderers shall not be permitted to amend or supplement their tenders after the deadline for tender closing.
2. After opening of tenders, tenderers shall be responsible to clarify their tenders on request from the party calling for tenders. The clarification of a tender may be made either by direct or indirect communication, but must ensure that there is no change to the main substance of the submitted tender and tender price. Any item of clarification of a tender must be made in writing, and the party calling for tenders must retain it as an integral part of the tender.
3. Clarification of tenders shall only be made as between the party calling for tenders and a tenderer who has a tender which needs to be clarified.

**Article 37** *Consideration for recommendation as the winning tenderer in the case of tendering for provision of consultancy services*

A consultancy tenderer who satisfies all the following conditions shall be considered for recommendation as the winning tenderer:

1. Having a valid tender.
2. Having technical proposals comprising capability, experience, solutions and personnel which have been assessed as satisfying the requirements.
3. Having the highest overall score for technical aspects and for financial aspects; in the case of a tender package with high technical requirements, having the highest score for technical aspects.
4. The proposed contract sum does not exceed the approved tender package price.

**Article 38** *Consideration for recommendation as the winning tenderer in the case of tendering for procurement of goods, and for construction and installation*

A supply tenderer, construction tenderer or an EPC tenderer who satisfies all the following conditions shall be considered for recommendation as the winning tenderer:

1. Having a valid tender.
2. The tenderer is assessed as having satisfied the requirements on capability and experience.
3. Having technical proposals which have been assessed as satisfying the requirements pursuant to the method of marking a score or pursuant to the criterion of pass or fail.
4. Having the lowest price on an equal footing basis.
5. The proposed contract sum does not exceed the approved tender package price.

**Article 39** *Submission for approval and evaluation of the results of tendering*

1. The party calling for tenders shall prepare a report on the results of tendering in order for the investor to submit it to the person authorized to consider and make a decision thereon, and also send it to the body or organization responsible to make the evaluation.
2. The body or organization assigned the task of making the evaluation shall be responsible to prepare a report on evaluation of the results of tendering on the basis of the report from the investor, in order to submit it to the authorized person to consider and make a decision thereon.

**Article 40** *Approval of the results of tendering*

1. The authorized person shall be responsible to consider and approve the results of tendering on the basis of the report on results of tendering and the report on evaluation of the results of tendering.
2. Where there is a winning tenderer, the document approving the results of tendering shall include the following particulars:
  - (a) Name of the winning tenderer;
  - (b) Winning tender price;
  - (c) Form of contract;
  - (d) Duration for implementation of contract;
  - (dd) Other items which need to be noted (if any).
3. In a case where there is no winning tenderer the document approving the results of tendering must state this fact, and cancel the tendering in order to conduct selection of contractor in accordance with the provisions in this Law.

**Article 41** *Notification of the results of tendering*

1. The results of tendering shall be notified immediately after there is a decision by the authorized person approving the results of tendering.

2. The notification of the results of tendering shall not include an item explaining the reasons why there were unsuccessful tenderers.

**Article 42** *Negotiation, finalization and signing of the contract*

1. The negotiation and finalization of a contract for signing with the winning tenderer shall be based on the following matters:
  - (a) Approved results of tendering;
  - (b) Sample contract form in which specific information about the tender package has been filled in;
  - (c) Requirements stipulated in the tender invitation documents;
  - (d) Contents of the tender and any clarification provided by the tenderer;
  - (dd) Contractual items which require to be negotiated and finalized as between the party calling for tenders and the winning tenderer.
2. The results of negotiation and finalization of the contract shall be the basis on which the investor and the tenderer shall conduct signing of the contract.
3. If negotiation and finalization of the contract is unsuccessful, the investor must provide a report to the authorized person for his consideration to select the next-ranking tenderer. If the next-ranking tenderer also fails to satisfy the requirements, the investor shall report to the authorized person for his consideration and decision.

## SECTION 4

### **Cancellation of Tendering and Rejection of Tenders**

**Article 43** *Cancellation of tendering*

1. Cancellation of tendering shall apply in any one of the following cases:
  - (a) Alteration of the objectives or scope of the investment stated in the tender invitation documents;
  - (b) There is evidence showing that the party calling for tenders colluded with tenderers;
  - (c) All tenders failed to satisfy the basic requirements of the tender invitation documents;
  - (d) There is evidence to show that all tenderers colluded to adversely effect the interests of the party calling for tenders.
2. Based on the decision of the authorized person, the party calling for tenders shall be responsible for notifying all tenderers who participated in the tendering of the cancellation of the tendering.

**Article 44** *Financial liabilities when tendering is cancelled*

1. In a case of cancellation of tendering not due to the fault of tenderers, the party calling for tenders shall be responsible to compensate tenderers for their costs of participation in the tendering on the

basis of the current State regime and cost levels, except in a case where the tendering was cancelled because no tenderer satisfied the requirements of the tender invitation documents.

2. If the tendering was cancelled because of an alteration of the objective or scope of the investment, the authorized person shall make a decision on compensation for costs which shall be paid from the project budget. If the tendering was cancelled for any other reason due to the fault of the party calling for tenders, individual members of such party calling for tenders shall be liable to pay compensation for costs.
3. If tendering was cancelled due to collusion by the party calling for tenders with one or more tenderers, the individuals responsible for such collusion shall be liable to compensate the other tenderers for their costs.

#### **Article 45** *Rejection of tenders*

Tenders shall be rejected in the following cases:

1. A tender fails to satisfy the important requirements set out in the tender invitation documents.
2. A tender fails to satisfy the technical requirements based on the assessment criteria.
3. A tender contains arithmetical errors with a total absolute value of more than ten (10) per cent of the tender price, except for tender packages for consultancy services or except where a tenderer does not accept the arithmetical error identified by the party calling for tenders.
4. A tender contains discrepancies with a total absolute value of more than ten (10) per cent of the tender price, except for tender packages for consultancy services.

## CHAPTER III

### Contracts

#### **Article 46** *Principles for formulation of contracts*

1. Contracts must comply with the provisions of this Law and other relevant laws.
2. In the case of a partnership tender, the contract signed with the investor must contain the signatures of all partners.
3. The contract sum shall not exceed the winning tender price, except for the case stipulated in clause 4 of this article.
4. In cases where a volume of works or a quantity of goods arises which exceeds the scope of the tender invitation documents leading to the contract sum exceeding the winning tender price, then the authorized person shall consider and make a decision thereon.

#### **Article 47** *Contents of contracts*

1. Subject of the contract.
2. Quantity or volume of the contract.

3. Specifications, quality and other technical requirements.
4. Contract sum.
5. Form of contract.
6. Duration of and schedule for implementation.
7. Terms and conditions on, and method of payment.
8. Terms and conditions on check and acceptance, and on hand-over.
9. Warranty applicable to goods to be procured, or to items to be constructed and installed.
10. Rights and obligations of the parties.
11. Liability for breach of contract.
12. Term of validity of the contract.
13. Other items depending on each form of contract.

**Article 48** *Forms of contract*

1. Lump-sum contract.
2. Unit price contract.
3. Time based contract.
4. Percentage based contract.

**Article 49** *Lump-sum contract*

1. The form of lump-sum contract shall apply to items of works which are clearly definable in terms of quantity or volume.
2. The contract sum shall not be altered throughout the entire duration for implementation of the contract. The investor shall pay the contractor the correct amount being the sum stated in the contract, after the contractor has discharged all his contractual obligations.

**Article 50** *Form of unit price contract*

1. The form of unit price contract shall apply to those items of works which cannot yet be clearly defined in terms of quantity or volume.
2. The investor shall pay the contractor in accordance with the actual quantity or volume of work completed on the basis of the unit price stipulated in the contract or on the basis of the unit price adjusted and approved in accordance with article 57 of this Law.

**Article 51** *Form of time based contract*

1. The form of time based contract shall apply to those items of works being complex research, design consultancy, supervision of execution of building, training and capacity building.
2. The investor shall pay the contractor in accordance with the actual time worked calculated in months, weeks, days and hours on the basis of the expert remuneration rates stipulated in the contract or on the basis of remuneration rates adjusted and approved in accordance with article 57 of this Law.

**Article 52** *Form of percentage based contract*

1. The form of percentage based contract shall apply to common and simple consultancy work.
2. The contract sum shall not be altered throughout the entire duration for implementation of the contract. The contract sum shall be calculated as a percentage of the value of the works or of the volume of works. The investor shall pay the contractor the correct amount being the sum stated in the contract, after the contractor has discharged all his contractual obligations.

**Article 53** *Multiple contractual forms within the one contract*

1. If any one contract contains one or more components being forms of contract stipulated in articles 49 to 52 inclusive of this Law, then the payment principles stipulated in the corresponding articles shall apply.

**Article 54** *Signing of contract*

1. The signing of the contract shall be based on the following documents:
  - (a) Results of negotiation and finalization of the contract;
  - (b) Decision on approval and notice of results of selection of contractor;
  - (c) Tender and any documents clarifying the tender provided by the selected contractor;
  - (d) Tender.
2. The signing of the contract must ensure compliance with the following conditions:
  - (a) The tender of the selected contractor still remains valid;
  - (b) The information on the technical and financial capability of the contractor has been updated as at the date of signing the contract and satisfies the requirements set out in the tender invitation documents.

**Article 55** *Contract performance guarantee*

1. The winning tenderer must provide a contract performance guarantee prior to the date on which the contract takes effect, except in the case of tendering for the provision of consultancy services and except in the case of self-implementation of a contract.
2. The value of a contract performance guarantee shall be stipulated in the tender invitation documents and shall be a maximum of ten (10) per cent of the contract sum; in cases where there is a need to guard against high risks, then the value of the contract performance guarantee shall be higher but

shall not exceed thirty (30) per cent of the contract sum and in such case there must be permission from the authorized person.

3. The term of validity of a contract performance guarantee must extend until the date of transfer of warranty obligations (if any).
4. The contractor shall not be entitled to the return of the contract performance guarantee if the contractor refuses to perform the contract after the date the contract takes effect.

#### **Article 56** *Warranty*

Any contract containing contents being goods to be procured or items to be constructed and installed must contain a warranty provision. The term of the warranty, the amounts payable pursuant to the warranty, and other clauses and conditions of the warranty shall be set out in the contract and must be based on provisions of law.

The Government shall provide detailed regulations on the warranty applicable to contractual contents being goods to be procured or items to be constructed and installed.

#### **Article 57** *Adjustment to contracts*

1. Adjustment to contracts shall only apply to unit price contracts and time based contracts, and shall be carried out as follows:
  - (a) When there is a change in State policy in relation to tax or wages which directly impacts on the contract sum, the contract shall be adjusted in accordance with such policy as from the date the policy take effect;
  - (b) When there are increases or decreases in the volume or quantity of works throughout the process of contractual performance, but such changes are within the scope of the tender invitation documents and are not caused by the fault of the tenderer, then the calculation of the value of such increases or decreases shall be based on the unit price of the contract;
  - (c) When there are major fluctuations in State controlled prices of fuel, supplies and equipment as set out in the contract and such fluctuations directly impact on contractual performance, then such situation must be reported to the authorized person for his consideration and decision.
2. Adjustments to a contract shall only be applied within the period for implementation of the contract as set out in the signed contract and the authorized person must consider and make a decision on any adjustment. The adjusted contract sum shall not exceed the total estimated budget, estimated budget or tender package price set out in the approved tendering plan, unless the authorized person otherwise permits.
3. Where additional work beyond the scope of the tendering invitation documents reasonably arises, the investor shall reach agreement with the contractor who signed the contract on calculation of such additional work and shall report to the authorized person for his consideration and decision. If discussions between the investor and the contractor are unsuccessful, the additional items of work shall be treated as a new tender package for which selection of a contractor shall be conducted in accordance with the provisions in this Law.

**Article 58** *Contract payment*

The contract sum and the specific terms and conditions on payment as set out in the contract shall be the basis on which the investor shall make payment to the contractor.

**Article 59** *Supervision of implementation of contract, check and acceptance, and liquidation of the contract*

1. Supervision of implementation of the contract shall be carried out in accordance with the following provisions:
  - (a) The investor shall be responsible to supervise the contractor throughout performance of the contract;
  - (b) Any individual assigned the task of supervision of implementation of the contract must ensure that he or she is disinterested, honest, objective, capable, experienced and has the professional knowledge necessary to carry out such supervision, and such individual shall be liable before the investor and the law for carrying out the tasks;
  - (c) If any consultant supervising execution of building is irresponsible or colludes with the construction contractor to certify an incorrect quantity or quality of works, then both the consultancy contractor and the construction contractor must pay compensation for loss and damage and shall be dealt with in accordance with article 75 of this Law and other relevant laws;
  - (d) The community of citizens shall participate in supervision of tendering activities in accordance with regulations of the Government.
2. Check and acceptance of the contract shall be implemented in accordance with the following provisions:
  - (a) The acceptance of each part of the contract or of the entire contract must be conducted in accordance with the terms and conditions set out in the signed contract;
  - (b) Any individual assigned the task of supervision of implementation of the contract must ensure that he or she is disinterested, honest, objective, capable, experienced and has the professional knowledge necessary to carry out such supervision, and such individual shall be liable before the investor and the law for carrying out the tasks;
3. Liquidation of the contract shall be completed within a time-limit of forty five (45) days from the date on which the investor and the contractor fully discharge their contractual obligations; in the case of a very complex tender package, it shall be permissible to extend the time-limit for liquidation of the contract but not in excess of ninety (90) days.

## CHAPTER IV

### Rights and Obligations of Parties in Tendering

#### **Article 60** *Responsibilities of the authorized person*

1. To approve the tendering plan.
2. To approve, or to delegate authority to another to approve, the tender invitation documents.
3. To approve, or to delegate authority to another to approve, the results of selection of contractor.
4. To make a decision dealing with any exceptional situation during tendering.
5. To resolve protests regarding tendering.
6. To deal with breaches of the *Law on Tendering* pursuant to article 75 of this Law and other relevant laws.
7. To be legally liable for his or her decisions.

#### **Article 61** *Rights and obligations of investors*

1. To make a decision on items relevant to pre-qualification of tenderers.
2. To approve a list of participating tenderers.
3. To establish an expert tendering group; to select a consultancy organization or a professional tendering organization pursuant to this Law to represent the investor in acting as the party calling for tenders.
4. To approve the list of tenderers who have satisfied the technical requirements, and the list ranking the tenderers.
5. To approve the results of direct appointment of contractor in the cases stipulated in sub-clauses (a) and (dd) of clause 1 of article 20 of this Law.
6. To be responsible to formulate the requirements applicable to a direct appointment tender package.
7. To be liable for the contents of contracts, for signing a contract with the selected contractor, and for fulfilling undertakings set out in the contract signed with the contractor.
8. To be legally liable for the process of selection of contractor pursuant to this Law.
9. To pay compensation for loss and damage to related parties pursuant to this Law if such loss and damage was caused by the investor's fault.
10. To provide information to the Tendering Newsletter and to the tendering website.
11. To resolve protests regarding tendering.
12. To maintain confidentiality of documents on tendering pursuant to the provisions of this Law.

**Article 62** *Rights and obligations of parties calling for tenders*

1. A party calling for tenders shall have the following rights and obligations:
  - (a) To conduct preparations for tendering, to organize tendering, and to assess tenders in accordance with this Law;
  - (b) To request tenderers to clarify their tenders during the process of assessment of tenders;
  - (c) To prepare an overall report on the process of selection of contractor and to provide reports to the investor on both the results of pre-qualification and on the results of selection of contractor;
  - (d) To negotiate and finalize a contract on the basis of the approved results of selection of contractor;
  - (dd) To prepare the contents of the contract in order for the investor to consider such contents and sign the contract;
  - (e) To ensure honesty, objectivity and impartiality throughout the process of tendering;
  - (g) To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the fault of the party calling for tenders;
  - (h) To provide information to the Tendering Newsletter and to the tendering website;
  - (i) To resolve protests regarding tendering;
  - (k) To maintain confidentiality of documents on tendering pursuant to this Law.
2. In a case where the party calling for tenders is concurrently the investor, then in addition to the rights and obligations stipulated in clause 1 of this article the party calling for tenders must also comply with article 61 of this Law.

**Article 63** *Rights and obligations of expert tendering groups*

1. To conduct assessments of tenders correctly in accordance with the requirements and assessment criteria set out in the tender invitation documents.
2. To maintain confidentiality of documents regarding tendering pursuant to this Law throughout the process of implementation of their duties.
3. To reserve their own opinions.
4. To be honest, objective and impartial throughout the process of assessment of tenders and reporting on the results of assessment.
5. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the fault of the expert tendering group.
6. To exercise other rights and to discharge other obligations in accordance with law.

**Article 64** *Rights and obligations of tenderers*

1. To participate in tendering in the capacity of an independent tenderer or a partnership tenderer.
2. To request the party calling for tenders to clarify the tender invitation documents.
3. To fulfil the contractual undertakings provided to the investor and to sub-contractors (if any).
4. To lodge protests, to make complaints and denunciations regarding tendering.
5. To comply with the provisions of the law on tendering.
6. To be honest and accurate during the process of participation in tendering and whilst lodging protests or making complaints and denunciations regarding tendering.
7. To pay compensation pursuant to law for loss and damage to relevant parties, if such loss and damage was caused by the fault of the tenderer.

**Article 65** *Rights and obligations of evaluating bodies or 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 investor and the party calling for tenders 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 exercise other rights and to discharge other obligations in accordance with law.

## CHAPTER V

### **Administration of Tendering Activities**

**Article 66** *Contents of State administration of tendering*

1. Promulgating, disseminating, guiding and organizing implementation of legal instruments and policies on tendering.
2. Training and capacity building for senior personnel engaged in tendering work.
3. Summarizing, assessing and reporting on the status of implementation of tendering activities.
4. Administering on a nationwide basis the tendering information system comprising the Tendering Newsletter, the tendering website and the national tendering network.
5. Conducting international co-operation regarding tendering.

6. Conducting checks and inspections; resolving protests, complaints and denunciations regarding tendering, and dealing with breaches of the law on tendering in accordance with this Law and other relevant laws.

**Article 67** *Responsibilities and powers of the Government and of the Prime Minister of the Government*

1. The Government shall exercise unified administration of tendering throughout the country.
2. The Prime Minister of the Government shall discharge the following responsibilities and exercise the following powers:
  - (a) Direct the work of conducting inspections and of resolving protests about tendering in accordance with this Law and the law on inspections;
  - (b) Regulate which evaluating body and/or organization shall assist the authorized person throughout the process of consideration and approval of tendering issues;
  - (c) In the case of investment projects formulated pursuant to resolutions of the National Assembly, make decisions on the tendering issues stipulated in article 60 of this Law.
  - (d) Discharge other responsibilities and exercise other powers in accordance with this Law and other relevant laws.

**Article 68** *Responsibilities and powers of the Ministry of Planning and Investment*

1. To be responsible before the Government for the exercise of State administration of tendering activities.
2. To evaluate tendering plans and results of selection of contractor in tender packages belonging to projects within the decision-making power of the Prime Minister of the Government and stipulated in sub-clause (c) of clause 2 of article 67 of this Law.
3. To establish and administer the Tendering Newsletter, the tendering website and the national tendering network.
4. To act as the co-ordinator assisting the Government and the Prime Minister of the Government in conducting international co-operation in the tendering sector.
5. To organize training and capacity building for senior personnel engaged in tendering work.
6. To summarize, assess and provide reports on the status of implementation of tendering activities.
7. To resolve, within the scope of its authority, protests regarding tendering.
8. To preside over co-ordination with other relevant bodies in conducting checks and inspection of tendering on a nationwide basis.
9. To implement other duties regarding tendering as assigned to it by the Government.

**Article 69** *Responsibilities and powers of ministries, ministerial equivalent bodies, and all level people's committees*

Ministries, ministerial equivalent bodies and people's committees at all levels shall, within the scope of their respective duties and powers, have the following responsibilities and duties:

1. To exercise administration of tendering work.
2. To organize training and capacity building for senior personnel engaged in tendering work.
3. To summarize and assess the status of implementation of tendering activities.
4. To provide reports on tendering activities pursuant to regulations of the Government.
5. To resolve protests regarding tendering pursuant to this Law.
6. To conduct checks and inspections of tendering.
7. To deal with breaches of the law on tendering by organizations and individuals involved in tendering activities.
8. 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.

**Article 70** *Dealing with exceptional situations in tendering*

1. Exceptional situations in tendering shall be dealt with in compliance with the following principles:
  - (a) Ensuring competitiveness, fairness, transparency and economic efficiency;
  - (b) Acting on the basis of the approved tendering plan, of the contents of the tender invitation documents and of the tenders of the tenderers participating in the tendering;
  - (c) The authorized person shall be the person making a decision on dealing with any exceptional situation in tendering, and shall be responsible before the law for his decision.
2. Categories of exceptional situations shall comprise:
  - (a) Regarding preparation for and organization of tendering: items adjusting a tendering plan, a tender package price or other contents of a tender package; amendments to tender invitation documents; submission of tenders if tenders are submitted out of time or if too few tenders have been submitted; and amendments to the number of participating tenderers;
  - (b) Regarding assessment of tenders: situations in which tender prices exceed the tender package price, and tender prices made up of unusual unit prices;
  - (c) Regarding recommendation of winning tenderer and signing of the contract: situations in which the winning tender price is below fifty (50) per cent of the tender package price or the approved estimated budget; situations in which two tenders are both assessed as the best price and are identical, or where the proposed contract sum exceeds the approved winning tender price;

- (d) Regarding the procedures and sequence for implementation of tendering.

The Government shall provide detailed regulations on dealing with exceptional situations in tendering.

**Article 71** *Tendering Inspectorate*

1. Tendering inspections shall be carried out of organizations and individuals who are involved in tendering activities in order to implement a tender package belonging to any of the projects stipulated in article 1 of this Law.
2. The Tendering Inspectorate shall be the specialized inspectorate for the tendering sector. The organization and operations of the Tendering Inspectorate shall be implemented in accordance with the law on inspections.

**Article 72** *Resolution of protests regarding tendering*

1. Tenderers shall have the right to protest about the results of selection of contractor and about other relevant matters during the tendering process.
2. The entities responsible for resolution of a protest made by a tenderer during the tendering process shall be the party calling for tenders, the investor and the authorized person. The authorized person shall resolve any protest by a tenderer regarding results of selection of contractor on the basis of a report from the Consulting Council for Resolution of Protests pursuant to article 73 of this Law.
3. With regard to protests about relevant matters during the tendering process other than the results of selection of contractor, the time-limit for lodging a protest shall be calculated as from the date the event protested about arose until the date of the notification of results of tendering. The time-limit for lodging a protest about the results of selection of contractor shall be a maximum of ten (10) days after the date of notification of results of tendering.

**Article 73** *Procedures for resolution of protests regarding tendering*

1. The resolution of protests about relevant matters during the tendering process shall be implemented as follows:
  - (a) The party calling for tenders shall be responsible to resolve a protest regarding tendering made by a tenderer within a time-limit of a maximum five (5) working days from the date of receipt of the written protest of the tenderer. If the party calling for tenders is unable to resolve the protest or if the tenderer disagrees with the resolution as made by the party calling for tenders, the tenderer shall have the right to lodge the protest with the investor for the latter's consideration and resolution in accordance with the provisions in sub-clause (b) of this clause.
  - (b) The investor shall be responsible to resolve a protest regarding tendering made by a tenderer within a time-limit of a maximum seven (7) working days from the date of receipt of the written protest of the tenderer. If the investor is unable to resolve the protest or if the tenderer disagrees with the resolution as made by the investor, the tenderer shall have the right to lodge the protest with the authorized person for the latter's consideration and resolution in accordance with the provisions in sub-clause (c) of this clause.
  - (c) The authorized person shall be responsible to resolve a protest regarding tendering made by a tenderer within a time-limit of a maximum fifteen (15) working days from the date of receipt of the written protest of the tenderer. If the authorized person is unable to resolve the protest or if

the tenderer disagrees with the resolution as made by the authorized person, the tenderer shall have the right to institute court proceedings.

2. The resolution of protests about results of selection of contractor shall be implemented as follows:
  - (a) In accordance with the provisions in sub-clause (a) of clause 1 of this article.
  - (b) In accordance with the provisions in sub-clause (b) of clause 1 of this article. If the investor is unable to resolve the protest or if the tenderer disagrees with the resolution as made by the investor, the tenderer shall have the right to concurrently submit the written protest to the authorized person and to the chairman of the Consulting Council for Resolution of Protests for consideration and resolution pursuant to sub-clause (c) of this clause.
  - (c) The Consulting Council for Resolution of Protests (hereinafter referred to as the *Consulting Council*) shall be responsible to request the tenderer, the investor and other bodies involved in the tendering to provide necessary information, data and opinions in order to formulate a report on the results of the tendering work. If necessary, the Consulting Council may work directly with the parties involved in order to clarify issues. The time-limit within which the Consulting Council shall provide its report shall be a maximum twenty (20) days after the date of receipt of the written protest of the tenderer. The chairman of the Consulting Council shall be a representative of the State administrative body for tendering, and members of the Consulting Council shall include a representative of the authorized person and a representative of the relevant occupational organization concerned. The authorized person shall be responsible to issue a decision on resolution of the protest of the tenderer within a time-limit of a maximum five (5) working days after the date of receipt of the report on results of tendering work from the Consulting Council. If the tenderer disagrees with the resolution made by the authorized person, the tenderer shall have the right to institute court proceedings.
3. A tenderer who wishes to make a protest regarding tendering shall have the right to institute court proceedings. If the tenderer chooses not to institute court proceedings, then the protest shall be resolved in accordance with clauses 1 and 2 of this article.

The Government shall provide detailed regulations on resolution of protests and on the operation of the Consulting Council.

#### **Article 74** *Complaints and denunciations about tendering*

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

#### **Article 75** *Dealing with breaches of the law on tendering*

1. Any organization or individual who breaches the law on tendering shall be dealt with by one of the following forms:
  - (a) A warning shall apply to any organization or individual in breach of the provisions of the *Law on Tendering* other than the breaches stipulated in article 12 of this Law;
  - (b) A fine shall be imposed on any organization or individual who acts in breach of the *Law on Tendering* and causes loss and damage to the interests of related parties;
  - (c) The penalty of prohibition from participation in tendering shall apply to any organization or individual who commits a breach being one of the acts stipulated in article 12 of this Law.

2. Any individual who commits a breach of the *Law on Tendering* where such conduct also constitutes a criminal offence shall be dealt with in accordance with the criminal law.
3. Any breach of the *Law on Tendering* by an organization or individual shall, in addition to being dealt with pursuant to the provisions in clause 1 of this article, be listed in the Tendering Newsletter and on the tendering website.

The Government shall provide detailed regulations on dealing with breaches of the law on tendering.

## CHAPTER VI

### Implementing Provisions

#### **Article 76**

The Government shall provide detailed regulations and guidelines for implementation of this Law.

#### **Article 77**

This Law shall be of full force and effect as of 1 April 2006.

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*This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 8<sup>th</sup> Session on 29 November 2005.*

The Chairman of the National Assembly

NGUYEN VAN AN