

GOVERNMENT  
No. 58-2008-ND-CP

SOCIALIST REPUBLIC OF VIETNAM  
Independence - Freedom - Happiness

Hanoi, 5 May 2008

**DECREE**  
**ON TENDERING**  
**Making detailed provisions for implementation of the**  
**Law on Tendering and for selection of construction**  
**contractors pursuant to the Law on Construction**

**The Government**

Pursuant to the *Law on Organization of the Government* dated 25 December 2001;

Pursuant to the *Law on Tendering* No. 61-2005-QH11 dated 29 November 2005 and the *Law on Construction* No. 16-2003-QH11 dated 26 November 2003 of the National Assembly;

Having considered the proposal of the Minister of Planning and Investment and the Minister of Construction;

**Decrees:**

**CHAPTER I**  
**General Provisions**

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

1. This Decree provides detailed guidelines for implementation of the *Law on Tendering* dated 29 November 2005 and on selection of construction contractors pursuant to the *Law on Construction* dated 26 November 2003, both passed by the National Assembly.
2. The selection of contractors for tender packages funded by Official Development Aid (ODA) shall be implemented in accordance with article 3.1 of the *Law on Tendering*. The procedures and authority for approval of contents of the tendering plan and results of selection of a contractor for ODA projects shall be implemented in accordance with this Decree.

**Article 2**  
**Interpretation of terms**

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

1. Financed by the State as defined in article 1.1 of the Law on Tendering includes payment of expenses by way of purchase, lease or hire-purchase. A determination of whether or not the State finances a total of thirty (30) per cent or more of the total investment amount or total investment capital of an approved project shall be made for each project, and shall not be determined in accordance with the percentage State capital portion of the total registered capital of the enterprise.
2. Set of requirements means all of the documents used for the forms of direct appointment of contractor, competitive quotation, direct procurement, and selection of a contractor in special cases, and shall include and set out the requirements for any one tender package providing the legal basis for tenderers to prepare their sets of proposals and for the party calling for tenders to assess the sets of proposals, aimed at selection of a contractor who satisfies the requirements set out in the set of requirements; and also providing the basis for negotiation, finalization and signing of a contract. The investor shall be responsible for deciding the contents of the set of requirements.
3. Set of proposals means all of the documents prepared by a tenderer in accordance with the requirements set out in the set of requirements and submitted to the party calling for tenders in accordance with the provisions stipulated in such set of requirements.
4. Results of selection of contractor means the results of tendering when using open tendering or limited tendering or the results of selection when using other forms of selection.
5. Breach of the law on tendering means any act of non-compliance with or failure to fully comply with the law on tendering.
6. Participation in tendering means a tenderer takes part in open tendering or limited tendering.
7. Tender package for selection of a general construction contractor comprises selection of a general contractor for an engineering package (E); for a construction package (C); for a design and construction package (EC); for a design, supply of equipment and materials, and construction and installation package (EPC); and for a project preparation, design, supply of equipment and materials, and construction package (turnkey contract).

### **Article 3**

#### **Ensuring competitiveness in tendering**

Items ensuring competitiveness and the schedule for implementing them shall be regulated as follows:

1. The requirements on competitiveness stipulated in article 11.1(a) of the Law on Tendering shall be implemented as follows:
  - (a) The contractor who prepared the feasibility report (for an investment project) shall be permitted to participate in tendering for preparation of technical design, design of drawings for execution of the works, and design of technology [for the same project] prior to 1 April 2009. In this case, the party calling for tenders must supply tender invitation documents containing complete relevant information and data including the feasibility study report (for the investment project) and must allow sufficient time so that all tenderers have the same conditions to prepare their tenders, ensuring fairness during the tendering.
  - (b) The contractor/s who prepared the technical design, design of drawings for execution of the works [and/or] design of technology for a tender package shall not be permitted to participate in tendering for construction and installation or for procurement of goods for such tender package as from the date on which this Decree takes effect, except for an EPC tender package. However any contractor/s who prepared the technical design, design of drawings for execution of the works [and/or] design of technology for a tender package shall be permitted to participate in tendering for consultancy for preparation of tender invitation documents, assessment of tenders [and/or] for contract supervision applicable to such tender package.
2. Any tenderer participating in tendering and the consultancy tenderer who prepared the tender invitation documents [and/or] assessed tenders; and the tenderer performing the contract and the consultancy tenderer for supervision of implementation of the contract shall be deemed to be organizationally independent of each other, not under the control of the same managing body, and financially independent as stipulated in sub-clauses (b) and (c) of article 11 of the Law on Tendering when they satisfy both the following conditions:
  - (a) They do not both belong to the same State body or unit of the people's armed forces which issued their decision on establishment, except for tenderers being enterprises which have converted to operate pursuant to the 2005 Law on Enterprises;
  - (b) They do not have shareholding or capital contribution in each other above 30%. This provision shall be implemented as from 1 April 2009.
3. Investors and tenderers participating in tendering for tender packages belonging to the same project shall be deemed to be independent of each other, not under the control of the same managing body, and financially independent as stipulated in clause 1(d) of article 11 of the Law on Tendering when they satisfy both the following conditions:

- (a) They do not have shareholding or capital contribution in each other above 50%.
- (b) A tenderer being an organization operates pursuant to the 2005 Law on Enterprises. This provision shall be implemented as from 1 April 2009.

#### **Article 4**

##### **Preferential treatment in international tendering**

1. Preferential treatment in international tendering pursuant to article 14 on the Law on Tendering shall be regulated as follows:
  - (a) In the case of tender packages for consultancy services, seven point five (7.5) per cent of the total points of a tenderer eligible for preference shall be added to the tender of such tenderer; and in the case of tender packages for consultancy services with high technical requirements, seven point five (7.5) per cent of the technical points of a tenderer eligible for preference shall be added to the technical points of such tenderer.
  - (b) In the case of tender packages for construction and installation, the assessment price of the tender of any tenderer ineligible for preference shall be increased by a sum equal to seven point five (7.5) per cent of the tender price after errors have been rectified and discrepancies have been adjusted for such tenderer.
  - (c) In the case of tender packages for the procurement of goods, the assessment price of the tender of any tenderer ineligible for preference shall be increased by a sum equal to the stipulated import duties and import related fees and charges but such [additional] sum shall not exceed fifteen (15) per cent of the price of the goods. Preferential treatment shall not apply to goods for which payment of import duties and import related fees and charges is required pursuant to regulations.
  - (d) In the case of tender packages for the selection of a general design contractor, preferences shall be implemented as stipulated in sub-clause (a) above. In the case of tender packages for the selection of other general construction contractors, preferences shall be implemented in accordance with sub-clause (b) above.
2. Where tenders of foreign tenderers are ranked equally, preference shall be granted to the tenderer proposing the higher level of domestic costs. Where tenders of a domestic tenderer and a foreign tenderer are ranked equally after implementing preferences in accordance with clause 1 of this article, preference shall be granted to the domestic tenderer.

## **Article 5**

### **Professional training on tendering**

1. Applicable entities

- (a) Individuals directly participating in tendering activities must possess a certificate of having attended a course on professional training on tendering, except for tenderers;
- (b) Other individuals who request to attend training courses.

2. Administration of training activities

The Ministry of Planning and Investment shall be responsible to organize training activities in accordance with article 68.5 of the Law on Tendering, specifically as follows:

- (a) To provide an overall report on the status of training conducted by training establishments via the annual reports on tendering activities provided by ministries, branches and localities;
- (b) To establish an information database on training establishments on the basis of the information supplied by such establishments.

3. Conditions for establishments to hold training activities

- (a) Having a business registration certificate, or a decision on establishment in the case of establishments without a business registration certificate;
- (b) Having lecturers qualified to provide training on tendering.

4. Conditions for issuing certificates on tendering

- (a) Certificates shall be issued to trainees who attended the whole of a training course on tendering and who passed the exam;
- (b) Training courses on tendering must be held for a minimum of three (3) days to satisfy the condition for issuance of a certificate on tendering.

5. Responsibilities and obligations of establishments providing training on tendering

- (a) To be responsible for the quality of training; and to provide information on the training establishment for the database stipulated in clause 2(b) of this article;

- (b) To hold training courses and to issue certificates to attendees in accordance with the regulations;
- (c) To provide annual reports to the Ministry of Planning and Investment and to ministries, branches or localities in order for the latter to monitor and summarize such reports.

## **Article 6**

### **Fees for tendering**

1. An investor shall decide the selling price (tax inclusive) of tender invitation documents depending on the scale and nature of the tender package but the price shall not exceed one million (1,000,000) Dong for domestic tendering. The selling price in the case of international tendering shall be in accordance with international practice for international tendering.
2. The costs for evaluation of results of selection of a contractor, including a case where no tenderer is selected, shall be point zero one (0.01) per cent of the tender package price but shall be a minimum of five hundred thousand (500,000) and a maximum of thirty million (30,000,000) dong.
3. The costs of the Consulting Council for Resolution of Protests when resolving the protest of a tenderer about the results of selection of contractor shall be point zero one (0.01) per cent of the tender price of the protesting tenderer but shall be a minimum of two million (2,000,000) and a maximum of thirty million (30,000,000) dong.

Management and use of the costs stipulated in clauses 1 and 2 of this article shall be implemented in accordance with current regulations.

## **Article 7**

### **Tendering Newsletter and the tendering website**

1. The publication of information on tendering as stipulated in article 5 of the Law on Tendering shall be implemented free of charge for bodies and organizations supplying such information for publication.
2. Entities and bodies responsible to publish and manage the Tendering Newsletter and the tendering website shall be revenue-receiving professional entities.
3. The Tendering Newsletter shall be published daily.
4. Supply of information on tendering

(a) Responsibility to supply information

- Ministries, ministerial equivalent bodies and other central level bodies and all level people's committees shall be responsible to supply the information stipulated in subclauses (g) and (h) of clause 1 of article 5 of the Law on Tendering.
- Investors and parties calling for tenders shall be responsible to supply the information stipulated in sub-clauses (a) to (e) inclusive and in sub-clause (h) of clause 1 of article 5 of the Law on Tendering.

(b) Time-limit for supply of information

The time-limit for supply of information shall be at least five days prior to the proposed date of publishing the information, applicable to notices inviting pre-qualification applications, notices inviting tenders, notices inviting expressions of interest and notices inviting competitive quotations. With respect to the remaining information stipulated in article 5.1 of the Law on Tendering, the time-limit for supply of information shall be no later than ten (10) days from the date of signing the document.

The supply of information and the schedule for publishing it in the Tendering Newsletter and on the tendering website shall be implemented in accordance with guidelines of the Ministry of Planning and Investment.

## **Article 8**

### **Provision on the various time-limits applicable during tendering**

1. The various time-limits applicable during tendering as stipulated in article 31 of the Law on Tendering shall be specifically regulated as follows:
  - (a) The investor, or the person delegated with authority by the investor, shall be responsible to approve the tender invitation documents within a maximum of ten (10) days from the date of receipt of the submission requesting approval from the party calling for tenders or from the date of receipt of the report evaluating the tender invitation documents (if there is any such report).
  - (b) The person making the investment decision, or the person delegated with authority to make the investment decision, shall be responsible to approve the tender invitation documents within a maximum of ten (10) days from the date of receipt of the evaluation report from the evaluating body or organization; and to approve, or to provide an opinion on dealing with, results of selection of contractor for tender packages within a maximum of fifteen (15) days from the date of receipt of the evaluation report from the evaluating body or organization.

Time- limits shall be as stipulated in working rules of the Government for tender packages for which the Prime Minister of the Government provides approval.

- (c) The period of validity of a tender must be specifically stipulated in the tender invitation documents, and must be a maximum of one hundred and eighty (180) days as from the tender closing date. In necessary cases a tenderer may request, on one or more occasions, extension of the period of validity of his tender, but total extensions shall not exceed thirty (30) days as stipulated in article 31.4 of the Law on Tendering.
2. During the process of conducting tendering, the following items may be conducted simultaneously: pre-qualification of tenderers and preparation of the tender invitation documents; approval of the tender invitation documents and the notice calling for tenders; announcement of results of tendering, and negotiation and finalization of the contract.

## **CHAPTER II**

### **Tendering Plans**

#### **Article 9**

##### **Bases for formulation of tendering plans**

1. The bases for formulation of a tendering plan shall be the investment decision and the documents which served as the bases for the investment decision, the business registration certificate and the investment certificate. In the case of work being project preparation, the basis shall be the decision of the head of the body preparing the project.
2. In the case of projects funded by ODA the bases shall be international treaties or international agreements.
3. Approved design, and approved budget (if any).
4. Financing source for the project.
5. Other relevant legal documents (if any).

#### **Article 10**

##### **Contents of each tender package set out in a tendering plan**

Division of a project into different tender packages shall be implemented in accordance with article 6.4 of the Law on Tendering, ensuring that the scale of each tender package is not so

small or large that it restricts the participation of tenderers. The contents of each tender package shall comprise:

1. Name of the tender package

The name of a tender package must express the nature, contents and scope of the work involved in the tender package, and must be consistent with the project contents. In a case where there are adequate conditions and grounds being the particular nature of the project, then the tender package may include items of work being preparation of the pre-feasibility study report, preparation of the feasibility study report and technical design. If a tender package contains a number of distinct [separate] sections (a number of lots), then the name of the tender package in the tendering plan must set out the name of each such section.

2. Tender package price

The tender package price (including contingencies) shall be based on the approved total level invested capital, total invested capital [and/or] estimated budget (if any) and current regulations. The tender package price of packages for consultancy services for preparation of the pre-feasibility study report [and/or] feasibility study report shall be fixed on the basis of the following information, namely the average price according to statistics on relevant projects already implemented in the same industry within a certain fixed period; the estimated total invested capital pursuant to the fixed investment rates of projects in each sector of the specialized branch; and the preliminary total invested capital.

3. Financing source

Each tender package must specify the financing source or the plan for arranging finance in order to make payment to contractors. ODA financed projects must specify the name of the donor and the financing structure (foreign or domestic).

4. Form of selection of contractor and form of tendering

Each tender package must specify the form of selection of contractor (domestic tendering or international tendering, and pre-qualification if any) in accordance with articles 18 to 24 inclusive of the Law on Tendering and article 97 of the Law on Construction, and must specify the form of tendering in accordance with article 26 of the Law on Tendering. The person making the investment decision must stipulate the following eventualities in the tendering plan: if it is necessary to apply prequalification of tenderers for tender packages other than those prescribed in article 32.1 of the Law on Tendering; if it is necessary to apply procedures for selection of a list of tenderers in order to invite their participation in tendering for consultants; and if it is necessary to select a consultant being an individual.

5. Time-limit for selection of contractor

The time-limit for holding selection of the contractor to implement the tender package must be specified in order to ensure the time schedule for implementation of the tender package.

6. Form of contract

Each tender package must specify the form of contract applicable, which shall depend on the nature of the package in accordance with articles 49 to 53 inclusive of the Law on Tendering and article 107 of the Law on Construction.

7. Scheduled time-limit for contractual performance

The scheduled time-limit for contractual performance must ensure that the tender package will be implemented in conformity with the schedule for the implementation of the project.

## **Article 11**

### **Submission of the tendering plan for approval**

1. Responsibility to submit the tendering plan for approval

The investor shall submit the tendering plan to the person who made the investment decision or the person delegated with authority to make such investment decision for his consideration and approval, and at the same time shall send it to the evaluating body or organization; in a case where the tendering plan must be submitted to the Prime Minister of the Government, the investor must also send it to the ministry managing the industry for the latter to provide its written opinion to the Prime Minister of the Government for his consideration and approval.

In the case of tender packages for consultancy services to be provided before there is an investment decision, the investor or the entity which is assigned the task of preparing the project must submit the tendering plan to the person heading such entity (i.e. the person who assigned the task) for his consideration and approval. In such case, the person heading the relevant entity must appoint a subsidiary unit to organize evaluation of the tendering plan before such person approves it.

2. Application file for approval

(a) A submission for approval of a tendering plan shall comprise the following documents:

- Works already performed including work relating to project preparation, specifying the value of the items completed and the legal basis for their implementation.
- Items of work for which it is not possible to apply one of the forms of selection stipulated in articles 18 to 24 inclusive of the Law on Tendering and in article 97 of the Law on Construction.
- Items of work in the tendering plan comprising work forming tender packages to be implemented by one of the forms of selection of contractor stipulated in articles 18 to 24 inclusive of the Law on Tendering and in article 97 of the Law on Construction, including bomb and mine sweeping, construction of resettlement zones, construction insurance and training.

The basis for dividing the project into tender packages must be specified. Each tender package must include all the contents stipulated in article 10 of this Decree. If open tendering is not to be applied, the reasons for same must be specified.

The total value of the items of work already implemented and of items of work for which forms of selection of contractor are inapplicable, and items of work belonging to the tendering plan must not exceed the total invested capital of the project.

The contents stipulated in this clause must also be included in the submission for approval of a tendering plan for one or more tender packages to be implemented in advance as referred to in article 6.2 of the Law on Tendering.

- (b) Documents to accompany the submission for approval of the tendering plan

The investor must also submit copies of the documents which served as the basis for formulating the tendering plan as stipulated in article 9 of this Decree.

## **Article 12**

### **Evaluation and approval of the tendering plan**

#### 1. Evaluation of the tendering plan

- (a) Evaluation of the tendering plan means conducting a review and assessing contents in accordance with articles 9 to 11 inclusive of this Decree.
- (b) Evaluating bodies and organizations shall prepare a report on the results of their evaluation of the tendering plan in compliance with article 65 of the Law on Tendering and submit such report for approval to the person making the investment decision.

2. Approval of the tendering plan

The person making the investment decision or the person delegated with authority to make such investment decision shall approve the tendering plan within a time-limit not to exceed ten (10) days from the date of receipt of the report from the evaluating body or organization. For any tendering plan within the approval authority of the Prime Minister of the Government, this process shall be implemented in accordance with the working rules of the Government.

**CHAPTER III**  
**Pre-qualification of Tenderers**

**Article 13**

**Application of pre-qualification**

1. Pre-qualification of tenderers shall be conducted in accordance with clause 1(a) of article 32 of the Law on Tendering.
2. In cases requiring application of pre-qualification of tenderers for tender packages other than those covered by clause 1 of this article, the person making the investment decision shall include his decision to hold pre-qualification in the tendering plan.

**Article 14**

**Sequence for holding pre-qualification of tenderers**

1. Preparation of pre-qualification invitation documents  
The party calling for tenders shall prepare the pre-qualification invitation documents and submit them to the investor for approval. Pre-qualification invitation documents shall comprise instructions for the tender package and the following requirements applicable to tenderers:
  - (a) Requirements on technical capability;
  - (b) Requirements on financial capability;
  - (c) Requirements on experience.

The criterion for assessment of pre-qualification applications shall be the criterion of pass or fail which must be set out in the pre-qualification invitation documents and which must include criteria applicable to each requirement on technical capability, financial capability and experience.

For construction and installation packages and packages for selection of a general construction contractor (but not a general design contractor), the criteria for assessment of pre-qualification applications must also comply with the requirements on capability applicable to each type and level of construction works as stipulated in the Law on Construction.

2. Notice inviting pre-qualification applications

A notice inviting pre-qualification applications shall be in the standard form issued by the Ministry of Planning and Investment and must be published in three (3) consecutive editions of the Tendering Newsletter and on the tendering website; in the case of international tendering, the notice must also be published in an English newspaper which is widely circulated. After the afore-mentioned publications have been completed, a notice may also be published on other mass media. Prequalification application documents shall be provided free of charge to tenderers after ten (10) days have expired from the date of the first publication of the notice inviting pre-qualification applications and up until the deadline for submission of pre-qualification applications (pre-qualification closure).

3. Receipt and management of pre-qualification applications

The time-limit of seven (7) days shall apply for preparation of pre-qualification applications during domestic tendering and fifteen (15) days during international domestic tendering, as from the first day of issuance of the notice inviting pre-qualification applications. The party calling for tenders shall receive pre-qualification applications from tenderers and shall manage the applications in accordance with the regime for management of confidential files. Prequalification applications lodged correctly in accordance with the requirements set out in the notice inviting pre-qualification applications shall be opened publicly after the deadline for submission of such applications. Pre-qualification applications lodged after the deadline for submission shall not be opened and shall be returned unopened to tenderers by the party calling for tenders.

4. Assessment of pre-qualification applications

The party calling for tenders shall carry out an assessment of pre-qualification applications in accordance with the assessment criteria set out in the pre-qualification invitation documents.

5. Submission and approval of results of pre-qualification

The party calling for tenders shall make a submission to the investor to approve the pre-qualification results.

6. Notification of pre-qualification results

After the investor has approved the pre-qualification results, the party calling for tenders shall provide written notice of pre-qualification results to the participating tenderers in order to invite qualified tenderers to participate in tendering.

**CHAPTER IV**  
**Open Tendering and Limited Tendering**  
**Applicable to Tender Packages for Consultancy Services**

**Section 1**  
**Provisions Applicable to Tenderers which are Organizations**

**Article 15**

**Preparation for tendering**

1. Selection of the list of tenderers to invite to participate in tendering

Depending on the nature and specific conditions of each tender package, an investor conducting open tendering may immediately put out his notice inviting submission of tenders as stipulated in Clause 4 of this article or apply the procedures for selection of a list of consultants to invite to participate in the tendering, but the person making the investment decision must approve such items in the tendering plan. The procedures for selecting a list of consultants to invite to participate in tendering shall be conducted as follows:

(a) Applicable to open tendering

- The investor shall approve the request for expressions of interest with the following contents, namely requirements on capability and number of experts; requirements on financial capability, and requirements on experience.
- The criteria for assessment of expressions of interest shall be formulated on the basis of the criterion of pass or fail which must be set out in the request for expressions of interest, and shall include criteria applicable to the requirements on expertise and number of experts, and criteria on experience.
- A notice inviting expressions of interest must be published in three (3) consecutive editions of the Tendering Newsletter and on the tendering website; in the case of international tendering, the notice must also be published in an English newspaper which is widely circulated. After the afore-mentioned publications have been completed, a notice may also be published on other mass media.

- The request for expressions of interest shall be provided free of charge by the party calling for tenders to tenderers wishing to participate, from the date of first publication of the request for expressions of interest until the day before expiry of the deadline for submitting expressions of interest.
- The minimum time-limit for tenderers to prepare expressions of interest shall be fifteen (15) days in the case of domestic tendering and twenty (20) days in the case of international tendering, from the date of the first publication of the notice inviting expressions of interest.
- The party calling for tenders shall evaluate expressions of interest on the basis of the assessment criteria and submit a list of tenderers to be invited to participate in the tendering to the investor for approval.

(b) Applicable to limited tendering

The party calling for tenders shall select a minimum of 5 tenderers deemed to have sufficient capability and experience (in accordance with article 19 of the Law on Tendering) and who wish to participate in the tendering, and submit such list to the investor for his approval before inviting the tenderers to participate. If in fact there are less than 5 tenderers, then the investor shall report to the person making the investment decision or to the person delegated with authority to make the investment decision to decide to either immediately invite the tenderers who are in fact on the list, or to extend the time in order to seek other interested tenderers. If the time is extended but it is still impossible to find other interested tenderers, then the investor shall invite the present tenderers to participate in the tendering.

2. Preparation of tender invitation documents

(a) Bases for formulation of tender invitation documents

- The investment decision and the documents which served as the bases for the investment decision; the business registration certificate, and the investment certificate.
- The approved tendering plan.
- Provisions of the law on tendering and other relevant laws; international treaties or international agreements (if any) in the case of ODA financed projects.
- State policies on tax, wages, and preferences in international tendering or other relevant provisions.

If a tender package requires to be implemented before there is an investment decision, then the organization assigned the task of project preparation shall rely on the relevant documents in order to prepare the tender invitation documents and submit them to the head of the organization preparing the project for his approval.

(b) Contents of tender invitation documents

The tender invitation documents shall contain the items stipulated in article 32.2 of the Law on Tendering and shall be on the standard form issued by the Ministry of Planning and Investment, and must include the important requirements (pre-requisites) in order to eliminate tenders, specifically as follows:

- Any tenderer whose name is not on the list of tenderers who purchased tender invitation documents or who does not satisfy the conditions stipulated in article 17.2 of this Decree.
- Any tenderer who does not satisfy the conditions on eligibility stipulated in articles 7 and 8 of the Law on Tendering.
- Any tenderer who does not satisfy the conditions on capability stipulated in the Law on Construction.
- Any tenderer who does not provide original documents in its tender.
- Any tender submitted on an invalid tender form.
- Any tender in which the period of validity of the tender does not satisfy the requirements stipulated in the tender invitation documents.
- Any tenderer whose name appears in two or more tenders as the principal contractor (either as an independent contractor or as a member of a joint venture).
- Any tenderer who conducts a prohibited act as stipulated in article 12 of the Law on Tendering.
- Other important requirements particular to the tender package.

Any tenderer who breaches one of the pre-requisites set out in the tender invitation documents shall be eliminated and its tender shall not be considered further.

3. Approval of tender invitation documents

The person authorized to make the investment decision shall approve or authorize the investor to approve the tender invitation documents in accordance with article 60 of the Law on Tendering on the basis of the evaluation report from the evaluating body or organization.

4. Invitation to submit tenders

(a) Notice inviting submission of tenders

If the procedures for selecting a list of consultants to invite to participate in tendering are not applied, then the investor shall issue a notice inviting submission of tenders in the standard form issued by the Ministry of Planning and Investment and publish it in three (3) consecutive editions of the Tendering Newsletter and on the tendering website; in the case of international tendering, the notice must also be published in an English newspaper which is widely circulated. In addition to the afore-mentioned publications, the notice may also be published on other mass media.

(b) Sending a letter inviting tenders

The party calling for tenders shall send a letter inviting submission of tenders to all tenderers on the list of tenderers invited to participate in the tendering as stipulated in clause 1 above.

The contents of the letter inviting submission of tenders shall be in accordance with the standard form set out in Appendix I issued with this Decree. The time-limit from the date of sending the letter inviting submission of tenders until the date of issuance of the tender invitation documents shall be a minimum of five (5) days in the case of domestic tendering and seven (7) days in the case of international tendering.

**Article 16**

**Criteria for assessment of tenders**

1. In the case of tender packages for consultancy services including construction consultancy services in accordance with the Law on Construction without high technical requirements:

(a) Assessment criteria of the following technical matters shall be carried out by the method of marking a points score (100 points, 1,000 points or so forth) in order to formulate assessment criteria of the following items:

- Experience and capability of the tenderer. The percentage of this item shall be stipulated as from ten (10) to twenty (20) per cent of the total points.
- Solution and methodology to be applied to the requirements of the tender package. The percentage of this item shall be stipulated as from thirty (30) to forty (40) per cent of the total points.
- Personnel of the tenderer who will perform the tender package. The percentage of this item shall be stipulated as from fifty (50) to sixty (60) per cent of the total points.

Assessment criteria as stipulated in the tender invitation documents must stipulate a level of minimum technical requirements which shall not be less than seventy (70) per cent of the total points. Any tender which scores technical points not less than the minimum required technical points shall be deemed technically responsive.

(b) Assessment criteria of financial matters

Assessment of financial matters shall be carried out by the method of marking a score (100, 1,000, ...) in uniformity with the criteria for assessing technical matters. The financial score of each tender shall be determined as follows:

$$\begin{array}{l} \text{Financial score} \\ \text{(of the tender under consideration)} \end{array} = \frac{\text{Lowest P x (100, 1,000 ... )}}{\text{P in question}}$$

In which:

- + Lowest P means the tender price of all tenderers who have been deemed technically responsive after errors have been rectified and discrepancies have been adjusted.
- + P in question means the tender price of the tender in question after errors have been rectified and discrepancies have been adjusted.

(c) Criteria for overall assessment

- The criteria for an overall assessment shall be stipulated on the basis of the criteria for assessment of technical matters and the criteria for assessment of financial matters, in which the weight of technical points shall be stipulated as not less than seventy (70) per cent of the total points and the weight of financial points shall be stipulated as no higher than thirty (30) per cent of the total points.

- The overall points of any one tender shall be determined in accordance with the following formula:

$$\text{Overall points} = D \text{ technical} \times (K\%) \times D \text{ financial} \times (G\%)$$

In which:

- + K% is the weight of technical points (stipulated in the criteria for the overall assessment);
  - + G% is the weight of financial points (stipulated in the criteria for the overall assessment);
  - + D technical means the points awarded to the tender and determined at the stage of technical assessment in accordance with sub-clause (a) above;
  - + D financial means the points awarded to the tender and determined at the stage of financial assessment in accordance with sub-clause (b) above.
2. For tender packages for consultancy services including tender packages for construction consultancy services in accordance with the Law on Construction with high technical requirements:

The assessment criteria of technical matters shall be stipulated in accordance with clause 1(a) of this article in which the minimum requirement on technical matters shall be stipulated as no lower than eighty (80) per cent of the total technical points.

## **Article 17**

### **Holding tendering**

1. Issuance of tender invitation documents
  - (a) The party calling for tenders shall sell the tender invitation documents, up until the deadline for [closure of] submission of tenders, to all tenderers who wish to participate in open tendering in a case of not applying procedures to select a list of tenderers to be invited to participate in tendering), or to the tenderers on the list of tenderers invited to participate in either open tendering or limited tendering, at the price stipulated in article 6.1 of this Decree. In the case of a joint venture tender, it shall be acceptable for only one member of the joint venture to purchase the tender invitation documents.
  - (b) Any amendment to or clarification of the tender invitation documents shall be made in accordance with articles 33.1 and 34 of the Law on Tendering.
2. Preparation of tender invitation documents

Tenderers shall prepare and submit their tenders in accordance with the requirements set out in the tender invitation documents. If any tenderer needs to change its status (name) to participate in the tendering from its name when it purchased the tender invitation documents, such tenderer must provide written notice to the party calling for tenders who shall only consider such notice if:

- Applicable to open tendering, he approves the change of status on receipt of the written notice thereon from the tenderer prior to the closing of tenders;
- Applicable to limited tendering, [if the change is notified] after the stage of selection of a list of tenderers to participate in tendering then depending on the specific case, the party calling for tenders shall consider the proposed change of name and report to the investor to make a decision on accepting or not accepting the change of status of the tenderer prior to closing of tenders, but ensuring competitiveness, fairness and transparency during tendering.

3. Receipt and management of tenders

The party calling for tenders shall receive tenders which have been submitted and shall treat them as confidential. Any tender submitted to the party calling for tenders after the deadline for submission of tenders shall be deemed ineligible and shall be returned to the tenderer unopened. Any document amending or supplementing the tender which is submitted by a tenderer after the deadline for submission of tenders shall be deemed invalid.

4. Amendment or withdrawal of tenders

Any tenderer wishing to amend or withdraw its submitted tender must provide written notice to the party calling for tenders, and the latter shall only accept such notification if it is received prior to the deadline for submission of tenders. Any request for withdrawal of a tender must be submitted separately from the tender.

5. Opening of technical proposals

- (a) The opening of technical proposals shall be conducted publicly, immediately after expiry of the deadline for submission of tenders and on the date and time and at the place stipulated in the tender invitation documents, and shall be witnessed by persons present irrespective of the presence or absence of invited tenderers. The party calling for tenders may invite representatives of relevant bodies to the opening.
- (b) The party calling for tenders shall open the technical proposal of each tenderer in alphabetical name order and in accordance with the following sequence:

- Check the sealing up of the tender;
- Open the technical proposal and read out and record in minutes the following basic information:
  - + Name of the tenderer;
  - + Number of originals and copies of the tender;
  - + Validity period of the tender;
  - + Any written request for amendment of the tender;
  - + Other relevant information.

The minutes of opening of tenders shall be signed by representatives of tenderers, the representative of the party calling for tenders, and representatives of relevant bodies which are present.

After opening, the party calling for tenders shall sign each page of the original technical proposal of each tender and shall treat them as confidential. Assessment of technical proposals shall be carried out using copy documents. Tenderers shall be responsible for the accuracy of and consistency between copies and original documents, and also for the sealing up of their tenders.

## **Article 18**

### **Assessment of tenders**

Assessment of tenders for tender packages for consultancy services including tender packages for construction consultancy services in accordance with the Law on Construction shall be based on the criteria for assessment of tenders and other requirements stipulated in the tender invitation documents and on the principles stipulated in article 28 of the Law on Tendering, and shall be conducted in the sequence stipulated in article 35 of the Law on Tendering as follows:

#### 1. Preliminary assessment

- (a) A check that the technical proposals are valid in terms of the requirements set out in the tender invitation documents.
- Validity of tender form: The tender form must be completed in full and bear the signature of the legal representative of the tenderer in accordance with the requirements set out in the tender invitation documents. The tender form of a joint venture tenderer must be signed by the legal representative of each member of the joint venture, or only by the leading member if the joint venture agreement stipulates that all members of the joint venture authorize the leading member to sign tender forms.

- Validity of the joint venture agreement: A joint venture agreement must specify the responsibilities, powers and quantity of work to be implemented by each member of the joint venture and the corresponding value of such work, must specify the leading member of the joint venture and the responsibilities of such member, and the agreement must be signed and sealed (if any) by members of the joint venture.
  - There must be one of the following valid documents as required by the tender invitation documents: business registration certificate, investment certificate, decision on establishment; certificate of lawful registration of operation; and appropriate professional [practising] certificates.
  - Number of originals and copies of the technical proposal.
  - Appendices and documents attached to the tender.
- (b) Elimination of tenders which fail to satisfy the important requirements (pre-requisites) set out in the tender invitation documents pursuant to article 15.2(b) of this Decree.

## 2. Detailed assessment

- (a) For tender packages for consultancy services including tender packages for construction consultancy services in accordance with the Law on Construction without high technical requirements:

- Technical assessment

A technical assessment of tenders shall be held in order to confirm which tenders satisfy the requirements of the tender invitation documents. The investor shall approve a list of the tenderers satisfying the technical requirements in order to conduct an assessment of financial matters.

- Financial assessment

There shall be a public opening of the financial proposals of the tenderers who satisfied the technical requirements in the sequence stipulated in article 17.5(b) of this Decree. The minutes of opening of technical proposals shall include the following basic information:

- + Name of the tenderer;
- + Number of originals and copies of the tender;

- + Tender price stipulated in the tender form;
- + Technical points of tenders which satisfied the minimum requirements;
- + Other relevant information.

After opening tenders, the party calling for tenders shall sign each page of the original financial proposal of each tender and shall treat the tenders as confidential. Assessment of financial proposals shall be carried out using copy documents. Tenderers shall be responsible for the accuracy of and consistency between copies and original documents, and also for the sealing up of their financial proposals. Assessment of financial proposals shall be based on the criteria for assessment of financial proposals stipulated in the tender invitation documents.

- Overall assessment

An overall assessment shall be conducted of technical and financial matters in accordance with the criteria for the overall assessment stipulated in the tender invitation documents. The party calling for tenders shall propose to the investor that the tenderer with the highest overall points be ranked first and be invited to negotiate a contract in accordance with article 19 of this Decree.

- (b) For tender packages for consultancy services including tender packages for construction consultancy services in accordance with the Law on Construction with high technical requirements:

Assessment of technical matters shall be conducted in accordance with the criteria stipulated in the tender invitation documents and in accordance with clause 2(a) above. Tenders with technical points no lower than the minimum required points shall be assessed as technically responsive and ranked by the party calling for tenders for approval by the investor. The first ranked tenderer shall be invited to witness the opening of the financial proposal and to negotiate a contract as stipulated in article 19 of this Decree.

## **Article 19**

### **Negotiation of the contract**

1. Based on the decision of the investor, the party calling for tenders shall invite the first ranked tenderer to negotiate the contract.
2. Contents of contract negotiation
  - (a) Tasks of the consultancy contractor and detailed items of work the consultancy contractor is required to implement;

- (b) Items on technology transfer and training;
- (c) Work plan and allocation of staff;
- (d) Schedule;
- (dd) Resolution of changes (if any) of staff;
- (e) Arrangement of working conditions;
- (g) Consultancy fees;
- (h) Any other necessary matters.

If negotiation of the contract is unsuccessful, the party calling for tenders shall provide a report to the investor for the investor to consider and decide on inviting the next ranking tenderer to conduct negotiations.

#### **Article 20**

##### **Submission for evaluation, approval and notification of the results of tendering**

1. Submission for evaluation of the results of tendering for consultancy services packages shall be implemented in accordance with articles 37 and 39 of the Law on Tendering and articles 71 and 72 of this Decree.
2. Approval of the results of tendering shall be implemented in accordance with article 40 of the Law on Tendering.
3. Notification of the results on tendering shall be implemented in accordance with article 41 of the Law on Tendering and more specifically, immediately after there is a decision approving the results of tendering, the party calling for tenders shall provide written notification of the results of tendering to all participating tenderers, and must also send the plan for negotiation and finalization of the contract to the winning tenderer.

#### **Article 21**

##### **Negotiation, finalization and signing of the contract**

1. The negotiation, finalization and signing of the contract shall be implemented in accordance with article 42 and Chapter III of the Law on Tendering, and Section II of Chapter IV on the Law of Construction.

2. If negotiation and finalization of the contract is unsuccessful, the investor shall report to the person making the investment decision to rescind the decision approving the results of tendering and to consider and make a decision to select the next ranking tenderer to negotiate a contract in accordance with article 19 of this Decree, and in such case there may be a requirement that the tenderer extend the validity of its tender. The subsequent steps shall be implemented in accordance with articles 20 and 21 of this Decree.

## **Section 2**

### **Provisions Applicable to Tenderers who are Individual Consultants**

#### **Article 22**

##### **Selection of a consultant contractor who is an individual**

Depending on the nature, contents and scope of the consultancy work, the investor may consider an individual expert consultant who is able to accept work independently without requiring a number of experts or without requiring expert assistance from some other individual or organization, or where use of an individual consultant would be advantageous, and then the investor shall report to the person making the investment decision to approve such item in the tendering plan. Selection shall be carried out as follows:

1. The party calling for tenders shall formulate draft terms and conditions for reference and a draft contract for the necessary consultancy position and submit same to the investor for his consideration and approval. The draft terms and conditions for reference shall comprise:
  - (a) A summarized description of the project and of the consultancy work;
  - (b) Requirements on the scope, quantity and volume of work and time for performing same;
  - (c) Requirements on capability and expertise of the consultant;
  - (d) Conditions and location for providing the consultancy work and any other necessary items.
2. The party calling for tenders shall select at least three scientific curriculum vitae of three consultants who would comply with the requirements set out in the draft terms and conditions, and submit them to the investor for his approval; if in fact there are less than three proposed consultants, then this should also be reported to the investor for his decision.
3. The party calling for tenders shall assess the scientific curriculum vitae of the proposed consultants on the basis of the items set out in the draft terms and conditions for

reference in order to select an expert who satisfies the requirements and then submit same to the investor for his decision.

4. The party calling for tenders shall conduct negotiations with the consultant proposed to be selected on the basis of the draft contract, the draft terms and conditions for reference, and other relevant information.
5. The investor shall, on the basis of the report received from the party calling for tenders, approve the results of selection and sign a contract with the selected consultant.

**CHAPTER V**  
**Open Tendering and Limited Tendering Applicable to**  
**Tender Packages for Procurement of Goods, and for Construction and Installation**

**Section I**  
**One-Phase Tendering**

**Article 23**

**Preparation for tendering**

1. Pre-qualification shall be implemented in accordance with Chapter III of this Decree.
2. Preparation of tender invitation documents
  - (a) Bases for formulation of tender invitation documents
    - The investment decision and the documents which served as the bases for the investment decision; business registration certificate; investment certificate;
    - Approved tendering plan;
    - Design data enclosing the approved estimated budget (in the case of a tender package for construction and installation);
    - In the case of projects funded by ODA, regulations of the law on tendering and other relevant laws, and international treaties or international agreements (if any);
    - Policies of the State on tax, wages, preferences in domestic tendering or other relevant regulations.
  - (b) Contents of tender information documents

- Tender invitation documents must comprise the items stipulated in article 32.2 on the Law on Tendering and shall be on the standard form issued by the Ministry of Planning and Investment. In the case of a tender package for which pre-qualification has been conducted, the tender invitation documents need not include criteria for assessment of experience and capability of the tenderer, but must stipulate a requirement that tenderers reconfirm information on their capability and experience which was declared in their prequalification applications.
  
- Tender invitation documents should not stipulate requirements on brand names and country of origin of goods in accordance with article 12.5 of the Law on Tendering. In special cases where it is necessary to mention the brand name or catalogue of a certain manufacturer or that goods originate from a certain country for purposes of reference and illustration of the technical requirements of the goods, the words "or similar" must be added after the stipulated brand name, catalogue or origin of goods, and the concept of "similar" must be defined so that goods have similar technical specifications and usage as the mentioned goods. In the case of special or complex goods, there shall be a requirement that tenderers submit sales authorizations within the copyright of manufacturers.
  
- The tender invitation documents must include important requirements (pre-requisites) in order to eliminate tenders on the following specific grounds:
  - + Any tenderer whose name does not appear on the list of tenderers purchasing tender invitation documents or who does not satisfy the provisions stipulated in article 28.2 of this Decree.
  
  - + Any tenderer who does not satisfy the eligibility requirements stipulated in articles 7 and 8 of the Law on Tendering.
  
  - + Any tenderer who has not provided a tender guarantee or who has provided an invalid guarantee, for example at a lower value or not in the currency stipulated, or with a shorter period of validity than that stipulated, or where the guarantee was not lodged at the address and within the time-limit stipulated in the tender invitation documents, or where the guarantee is not in the name of the tenderer (in cases referred to article 32 of this Decree), or where the guarantee is not an original document or bears ineligible signatures (in the case of a letter of guarantee from a bank or credit institution).
  
  - + There is no original of the tender.
  
  - + The tender form is invalid.

- + The period of validity of the tender does not satisfy the requirements in the tender invitation documents.
- + The tender fails to include a fixed tender price, or makes offers at different unit prices or with conditional prices which are disadvantageous to the investor.
- + Any tenderer with its name on two or more tenders as the principal tenderer (both as an independent tenderer and as a member of a joint venture).
- + Any tenderer who fails to satisfy the requirements on capability in accordance with article 7 of the Law on Construction.
- + Any tenderer who conducts a prohibited act as stipulated in article 12 of the Law on Tendering.
- + Failure to satisfy other important requirements particular to the tender package.

Any tenderer in breach of one of the pre-requisites stipulated in the tender invitation documents shall be eliminated and its tender shall not be considered further.

### 3. Approval of tender invitation documents

Approval of tender invitation documents shall be implemented in accordance with article 15.3 of this Decree.

### 4. Invitation to submit tenders

#### (a) Notice inviting submission of tenders

A notice inviting submission of tenders in the case of open tendering without pre-qualification must be published, on the standard form issued by the Ministry of Planning and Investment, in three (3) consecutive editions of the Tendering Newsletter and on the tendering website; in the case of international tendering, the notice must also be published in an English newspaper which is widely circulated. In addition to the afore-mentioned publications, the notice may also be published on other mass media.

#### (b) Sending of letters inviting submission of tenders

Applicable to limited tendering and to open tendering for which pre-qualification has been conducted, letters inviting submission of tenders shall be sent on the

standard form in Appendix I issued with this Decree to tenderers on the list of tenderers invited to participate in limited tendering or on the list of tenderers who have pre-qualified. The time-limit from the date of sending letters inviting submission of tenders until the date of issuance of tender invitation documents shall be a minimum of five (5) days in the case of domestic tendering and seven (7) days in the case of international tendering.

## **Article 24**

### **General provisions on assessment criteria on technical matters**

#### 1. Use of a point score

- (a) A maximum point score (100, 1,000 or so forth) shall be formulated as the assessment criteria of technical matters. The contents of the assessment criteria of technical matters in the case of a tender package for procurement of goods or for construction and installation shall be as stipulated in articles 25.2 and 26.2 of this Decree. The minimum points for technical matters shall be stipulated depending on the nature of each tender package but must be not less than seventy (70) per cent of the total points for technical matters, and in the case of tender packages with high technical requirements must be not less than eighty (80) per cent of the total points for technical matters.

In the case of a tender package for the selection of a general construction contractor (but not for selection of a general design contractor) there shall also be a requirement that the minimum points for each item of work shall not be less than seventy (70) per cent of the corresponding total points.

- (b) In the case of tender packages for procurement of goods or for construction and installation, tenders shall be deemed technically responsive when they gain points not lower than the minimum required points for technical matters.

In the case of a tender package for the selection of a general construction contractor (but not for selection of a general design contractor) a tender shall be deemed technically responsive when it has been assessed for each item of work at not lower than the corresponding required minimum points and when its overall points for all items are not lower than the required minimum points for technical matters of the whole tender package.

#### 2. Use of the pass and fail criterion

- (a) Assessment criteria

The contents of the criterion for assessment of technical matters of tender packages for procurement of goods or for construction and installation shall be as stipulated in articles 25.2 and 26.2 of this Decree. The level of requirement applicable to each content shall depend on the nature of the tender package. Only the criterion of pass and fail may be used for contents deemed to be basic requirements of the tender invitation documents. With respect to items which are not basic requirements, in addition to the pass and fail criterion, it shall be permitted to use the "acceptable" criterion but this may not exceed thirty (30) per cent of the total requirements in the assessment criterion.

- (b) A tender shall be evaluated as technically responsive when all basic requirements are assessed as "pass", and the other non-basic requirements are assessed as either "pass" or "acceptable".

## **Article 25**

### **Assessment criteria of tenders in the case of tender packages for procurement of goods**

The criteria for assessing tenders in a tender package for procurement of goods shall comprise assessment criteria of the capability and experience of the tenderer, and assessment criteria of technical matters and the method for determining equal footing prices (assessment prices), specifically as follows:

1. The criteria for assessing the capability and experience of tenderers applicable to tender packages in which pre-qualification is not conducted, comprising:
  - (a) Experience implementing similar packages in Vietnam and in foreign countries; and experience in activities in the main manufacturing and business sectors;
  - (b) Capability for manufacture and business, technical infrastructure, and standard of expertise of personnel;
  - (c) Financial capability being total assets, total payable debts, liquid capital, revenue, profit, value of contracts currently being performed and other criteria.

A determination of the level of the specific requirements of each criterion stipulated in sub-clauses (a), (b) and (c) hereof shall depend on the requirements of each tender package.

The criterion for assessment of the items stipulated in this clause shall be the criterion of pass or fail and a tenderer who achieves a pass for all three (3) items stipulated in sub-clauses (a), (b) and (c) above shall be assessed as responsive in terms of capability and experience.

2. Assessment of technical matters

Assessment criteria of technical matters shall be formulated in accordance with article 24 of this Decree and shall include criteria on ability to satisfy requirements on quantity and quality of the goods set out in the tender invitation documents, specifically:

- (a) Special characteristics and technical specifications of the goods, manufacturing standards and other matters;
- (b) The rationality and economic efficiency of technical solutions, and of the method organized for supplying the goods;
- (c) Capability to install equipment and the qualifications of technical personnel;
- (d) Level of responsiveness regarding the warranty requirement;
- (dd) Capability to adapt to the geographical location;
- (e) Impact on the environment and the method for resolving same;
- (g) Capability to provide finance (if so required);
- (h) Other factors regarding commercial and financial conditions, time for implementation, and training on technology transfer (if any).

3. Determination of assessment price

Making a determination of the assessment price means making a determination of an equal footing price on the same technical, financial and commercial grounds and other factors in order to compare and rank the tenders. The method for determination of assessment prices must be stipulated in the tender assessment criteria. Making a determination of the assessment price shall be implemented in the following order:

- Determination of tender price;
- Rectification of errors;
- Adjustment of discrepancies.
- Conversion of the tender price (after rectification of errors and adjustment of discrepancies) to a common currency (if any) as a basis for determination of the assessment price;

- Putting costs on an equal footing to determine the assessment price, including:
  - + Technical conditions such as implementation schedule; output and efficiency of machinery and equipment; level of consumption of electricity, fuel and raw materials; costs of operation and maintenance; lifespan of goods and other technical requirements depending on the particular package;
  - + Financial and commercial conditions;
  - + Preferences in international tendering (if applicable);
  - + Other factors.

A determination of the factors constituting the assessment price shall depend on the nature of the particular package. Tenders shall be ranked in order of their assessment prices and the tender with the lowest assessment price shall be ranked first.

## **Article 26**

### **Assessment criteria of tenders in the case of tender packages for construction and installation**

The criteria for assessing tenders in a tender package for construction and installation shall comprise assessment criteria of capability and experience of the tenderer, and assessment criteria of technical matters and the method for determining assessment prices, specifically as follows:

1. The criteria for assessing capability and experience of tenderers applicable to tender packages in which pre-qualification is not conducted, comprising:
  - (a) Experience implementing similar packages in Vietnam and in areas with similar geographical and site conditions;
  - (b) Technical capability including the number and qualifications of senior personnel and technicians who will directly perform the work, and the number of items of construction equipment available and the capability to mobilize other construction equipment to carry out the work;
  - (c) Financial capability being total assets, total payable debts, liquid capital, revenue, profit, value of contracts currently being performed and other criteria.

A determination of the level of the specific requirements of each criterion stipulated in sub-clauses (a), (b) and (c) hereof shall depend on the requirements of each tender package.

The criterion for assessment of the items stipulated in this clause shall be the criterion of pass or fail and a tenderer who achieves a pass for all three items stipulated in sub-

clauses (a), (b) and (c) above shall be assessed as responsive in terms of capability and experience.

2. Assessment of technical matters

Assessment criteria of technical matters shall be formulated in accordance with article 24 of this Decree and shall include criteria on ability to satisfy requirements on technical design and accompanying bills of quantity, specifically:

- (a) The reasonableness and feasibility of technical solutions and methods for implementing construction consistent with the proposals on the construction schedule.

The tender invitation documents should stipulate if a tenderer is permitted to propose alternative construction execution methods from those stipulated in the tender invitation documents, except in a case where due to the nature of the tender package the tenderers must all strictly comply with the execution method set out in such documents. The tender invitation documents should also stipulate the criteria for assessing the proposals from tenderers on alternative construction execution methods.

- (b) Ability to ensure environmental hygiene and other conditions such as fire prevention and fire fighting, and labour safety.
- (c) The level of responsiveness to requirements on providing a warranty.
- (d) Quality control measures.
- (dd) Construction schedule.
- (e) Other contents (if any).

Use of either the criterion for assessment of the above-mentioned technical matters being pass or fail, or the method of awarding points, shall depend on the nature and specific conditions of each tender package. If it is desired to allow tenderers to submit replacement or additional methods and to make creative suggestions which may be more effective for the tender package, then this must be specified in the tender invitation documents which must also specify the criteria and methods for assessing such alternative proposals including the tender price.

If it is necessary to speed up the process of assessing tenders for a tender package for construction and installation with simple technical requirements, then the tender invitation documents may specify that assessment shall be conducted by way of

simultaneous consideration of technical items, of tender prices of tenderers, and of the schedule for performing the package as proposed by the tenderers.

3. Determination of assessment price

Making a determination of the assessment price means making a determination of an equal footing price on the same technical, financial and commercial grounds and other factors in order to compare and rank tenders. The method for determining assessment prices must be stipulated in the assessment criteria. Determination of an assessment price shall be implemented in the following order:

- Determination of tender price;
- Rectification of errors;
- Adjustment of discrepancies.
- Conversion of the tender price (after rectification of errors and adjustment of discrepancies) to a common currency (if any) as a basis for determination of the assessment price;
- Putting costs on an equal footing to determine the assessment price, including:
  - + Technical conditions such as implementation schedule; management fees; costs of operation and maintenance; lifespan of goods and other technical requirements depending on the particular package;
  - + Financial and commercial conditions;
  - + Preferences in international tendering (if applicable);
  - + Other factors.

A determination of the factors comprising the assessment price shall depend on the nature of the particular tender package. Tenders shall be ranked in order of their assessment prices and the tender with the lowest assessment price shall be ranked first.

**Article 27**

**Assessment criteria of tenders in the case of tender packages for selection of a general construction contractor (but not for selection of a general design contractor)**

The criteria for assessing tenders in the case of a tender package for the selection of a general construction contractor (but not for selection of a general design contractor) shall comprise the criteria for each item of work stipulated in articles 16.1(a), 24, 25 and 26 of this Decree.

## **Article 28**

### **Holding tendering**

#### 1. Issuance of tender invitation documents

- (a) The party calling for tenders shall, up until closure of tenders, sell the tender invitation documents to all tenderers on the list of those who have pre-qualified, to all tenderers invited to participate in limited tendering, or to all tenderers who wish to participate in open tendering at the selling price stipulated in article 6.1 of this Decree. In the case of a joint venture tender, it shall be acceptable for only one member of the joint venture to purchase the tender invitation documents.
- (b) Any amendment to or clarification of the tender invitation documents shall be implemented in accordance with articles 33.1 and 34 of the Law on Tendering.

#### 2. Preparation and receipt of, and amendment to or withdrawal of tenders

These items shall be implemented in accordance with clauses 2, 3 and 4 of article 17 of this Decree.

If any tenderer needs to change its status (name) to participate in the tendering as compared to its name when it purchased the tender invitation documents, such tenderer must provide written notice to the party calling for tenders. The party calling for tenders shall only consider such change if:

- Applicable to open tendering, he approves the change of status on receipt of the written notice thereon from the tenderer prior to the closing of tenders;
- Applicable to limited tendering or to open tendering after pre-qualification, depending on the specific case, the party calling for tenders shall consider the proposed change of name and report to the investor to make a decision on accepting or not accepting the change of status of the tenderer prior to closing of tenders, but ensuring competitiveness, fairness and transparency during tendering.

#### 3. Opening of tenders

- (a) The opening of tenders shall be conducted publicly, immediately after expiry of the deadline for submission of tenders and on the date and time and at the place stipulated in the tender invitation documents, and shall be witnessed by persons present irrespective of the presence or absence of invited tenderers. The party calling for tenders may invite representatives of relevant bodies to the opening.
- (b) The party calling for tenders shall open, one at a time, the tender of each tenderer whose name appears on the list of tenderers purchasing the tender invitation

documents and who submitted a tender prior to the deadline for submission of tenders, in alphabetical name order and in the following sequence:

- Check the sealing up of the tender;
- Open the tender and read out and record in minutes the following basic information;
  - + Name of the tenderer;
  - + Number of originals and copies of the tender;
  - + Validity period of the tender;
  - + Tender price recorded on the tender form and any price reductions;
  - + Value and validity period of the tender guarantee;
  - + Any written request for amendment of the tender;
  - + Other relevant information.

The minutes of opening of tenders shall be signed by the representative of the party calling for tenders, representatives of tenderers, and representatives of relevant bodies which are resent.

After opening, the party calling for tenders shall sign each page of the original tender of each tenderer and shall treat the tenders as confidential. Assessment of tenders shall be carried out using copy documents. Tenderers shall be responsible for the accuracy of and consistency between copies and original documents, and also for the sealing up of their tenders.

## **Article 29**

### **Assessment of tenders**

Assessment of tenders shall be conducted on the basis of the criteria stipulated in the tender invitation documents and on the basis of other requirements stipulated in such documents, on the principles for assessment of tenders stipulated in article 28 on the Law on Tendering and in the sequence stipulated in Article 35 on the Law on Tendering, specifically as follows:

#### 1. Preliminary assessment

##### (a) A check that the tenders are valid

- Validity of tender form: The tender form must be completed in full and bear the signature of the legal representative of the tenderer in accordance with the requirements set out in the tender invitation documents. The tender form of a joint venture tenderer must be signed by the legal representative of each member of the joint venture, or by the leading member if the joint venture agreement stipulates

that all members of the joint venture authorize the leading member to sign tender forms.

- Validity of the joint venture agreement: A joint venture agreement must specify the responsibilities, powers and quantity of work to be implemented by each member of the joint venture and the corresponding value of such work, and who is the leading member of the joint venture and the responsibilities of such member, and the agreement must be signed and sealed (if any) by the members of the joint venture.
  - There must be one of the following valid documents as required by the tender invitation documents: business registration certificate, investment certificate, decision on establishment or certificate of lawful registration of operation; and sales authorization from manufacturers with copyright (if required).
  - Number of originals and copies of the tenders.
  - Validity of the tender guarantee.
  - Appendices and documents attached to the tender.
- (b) Elimination of tenders which fail to satisfy the pre-requisites set out in the tender invitation documents pursuant to article 23.2(b) of this Decree.
- (c) An assessment of the capability and experience of tenderers in accordance with the criteria set out in the tender invitation documents, in the case of tender packages in which prequalification is not conducted. Depending on the conditions of each tender package, assessment of the capability and experience of tenderers may be conducted at the stage of preliminary assessment of all tenderers who have submitted a valid tender and who are not in breach of the prerequisites; or else an assessment of the capability and experience may be conducted after determining the assessment prices and if so, must be stipulated in the tender invitation documents. Only the tenders of tenderers who are assessed as having satisfied the requirements on capability and experience as set out in the tender invitation documents shall be considered during the following stages.

## 2. Detailed assessment of tenders

### (a) Assessment of technical matters

The assessment criteria for technical matters must be stipulated in the tender invitation documents. During the process of assessment, the party calling for tenders shall have the right to request a tenderer to explain or clarify unclear or

unusual items in its tender. Only those tenders which the investor has approved as satisfying technical requirements shall be eligible for further assessment in accordance with sub-clause (b) below.

During the process of considering and approving the list of tenderers who satisfy the requirements on technical matters, in necessary cases the investor may request the party calling for tenders to re-assess the technical items of tenders which have [only] been awarded with points approximately equal to the minimum required points, but which have a low tender price and which could render the project more efficient.

(b) Determination of assessment prices

Determination of assessment prices shall be implemented in accordance with articles 25.3 and 26.3 of this Decree.

3. Ranking of tenders based on the assessment prices

The tender with the lowest assessment price shall be ranked first. In a case of conducting preliminary assessment or in the case where the capability and experience of tenderers has not yet been assessed at the preliminary stage, then after the investor approves the list ranking all the tenderers in accordance with their assessment prices, the party calling for tenders may assess the ability and capability of the first ranked tenderer. If the capability and experience of the first ranked tenderer does not satisfy the requirements, then such an assessment should be conducted of the next ranked tenderers.

In the case of a complex package, if deemed necessary, the party calling for tenders may report to the investor to permit the first ranked tenderer to conduct preliminary contractual negotiations in order to facilitate negotiation and finalization of the contract after there is a result on the winning tenderer.

**Article 30 - Rectification of errors and adjustment of discrepancies**

1. Rectification of errors

Rectification of errors means correcting mistakes in tenders including arithmetical errors and other errors, which shall be implemented in accordance with the following principles:

(a) For arithmetical errors due to an inaccurate plus, minus, multiplication or division calculation

- If there is an inconsistency between a unit price and a sub-total price, then the unit price shall be taken as the legal basis for correction;
  - If there is an inconsistency between an overall price list and a detailed price list, then the detailed price list shall be taken as the legal basis for correction.
- (b) For other errors
- If a sub-total price is filled in without a corresponding unit price, then the unit price shall be identified by dividing the sub-total by the numerical quantity;
  - If there is a unit price but the sub-total is not filled in, then the sub-total price shall be identified by multiplying the unit price by the numerical quantity;
  - If any of the items have unit prices and sub-totals but no quantity, then the quantity shall be identified by dividing the sub-total by the corresponding unit price. If the quantity stipulated in this way is different from the quantity required by the tender invitation documents, such difference shall be deemed a discrepancy in scope of supply and shall be adjusted in accordance with clause 2 of this article;
  - If there is a decimal error in that "," (comma) is used instead of "." (full stop) or vice versa, then this error shall be corrected in accordance with Vietnamese writing practice.

Arithmetic shall be calculated in accordance with total absolute values, irrespective of the increase or decrease of the tender price after rectification.

After making rectification in accordance with the above principles, the party calling for tenders shall notify the tenderers of such changes and tenderers shall be required to accept such changes in writing. If any tenderer does not accept the rectifications, its tender shall be eliminated.

## 2. Adjustment of discrepancies

Adjustment of discrepancies means the adjustment of insufficient or excess contents in terms of the requirements of the tender invitation documents, and adjustment of differences between parts of a tender, between technical and financial proposals, between numbers and writing, and between contents of the tender form and other parts of the tender. The adjustment shall be implemented as follows:

- (a) In a case where there is a deviation in scope of supply, then the insufficient content shall be added or the excess content shall be deducted in accordance with

the principle that if the tender price of the tenderer in question cannot be separated then take the highest offering price of that content (in the case of an insufficient offer) or the lowest offering price of that content (in the case of an excessive offer) of other tenders assessed as technically responsive. If there is only one tenderer assessed as technically responsive, then take the price of such tenderer or the price in the approved budget.

- (b) If there is a discrepancy between the technical proposal and the financial proposal, then the contents of the technical proposal shall be the legal basis for adjustment.
- (c) If there is inconsistency between numbers and writing, the writing shall be the legal basis for adjustment.
- (d) If there is any difference between the price in the tender form (exclusive of discount) and the price in the general price list, this shall be deemed a discrepancy and adjustment shall be based on the price in the general price list after rectification of errors and adjustment of discrepancies in the detailed price list.

### **Article 31**

#### **Submission, evaluation, approval and notification of results of tendering; and negotiation, finalization and signing of the contract**

1. Submission, evaluation, approval and notification of results of tendering shall be implemented in accordance with articles 38 and 39 of the Law on Tendering and articles 20.2, 20.3, 71 and 72 of this Decree.
2. Negotiation, finalization and signing of the contract
  - (a) Negotiation, finalization and signing of the contract shall be implemented in accordance with the provisions in article 42 in Chapter III of the Law on Tendering and in Section 2 of Chapter VI of the Law on Construction.
  - (b) If negotiation and finalization of the contract is unsuccessful, the investor must provide a report to the person making the investment decision or to the person delegated with authority to make a decision rescinding the results of tendering and to consider and make a decision selecting the next ranking tenderer as the winning tenderer in order to provide the basis for negotiation and finalization of the contract; in such a case, there shall be a requirement for the tenderer to extend the validity of its tender and tender guarantee if necessary.

## **Article 32**

### **Tender guarantee**

1. Tenderers participating in tendering must provide a tender guarantee in accordance with article 27 of the Law on Tendering. Joint tenderers participating in tendering for tender packages for the procurement of goods, for construction and installation, and for selection of a general contractor (but not a general design contractor) must provide a tender guarantee in accordance with the requirement set out in the tender invitation documents, in either of the following two forms:
  - (a) Each member of the joint venture must provide a separate tender guarantee for a total sum not less than the amount stipulated in the tender invitation documents; and if the tender guarantee of any one such member is deemed invalid, then the tender of the joint venture shall be eliminated in accordance with the pre-requisite conditions set out in the tender invitation documents.
  - (b) All joint venture members may agree on one member being liable to provide the tender guarantee on behalf of the joint venture, and such guarantee may be provided in the name of the joint venture or in the name of the member liable to provide such guarantee, but the total value of the guarantee must not be less than the level stipulated in the tender invitation documents.
2. In a case where the tender invitation documents stipulate that the tender guarantee must be provided in the form of a letter of guarantee from a bank or credit institution, then the validity of such tender guarantee shall be considered on the basis of the regulations on delegation of authority to sign and issue letters of credit by the particular bank or credit institution concerned.

## **Article 33 - Selection of a contractor applicable to small scale packages**

1. In the case of tender packages for the procurement of goods, or for construction and installation, or for selection of a general construction contractor (but not a general design contractor) with a price below three billion dong, either open tendering or limited tendering shall be conducted in the order as stipulated in section 1 of Chapter V of this Decree, but the tender invitation documents need not specify criteria for providing equal footing prices in order to arrive at assessment prices; and further, it shall not be necessary to arrive at assessment prices during the process of assessing the tenders.

A tenderer shall be considered and proposed as the winning tenderer when it satisfies all the following conditions:

- (a) It has a valid tender.

- (b) It is assessed as satisfying the requirements on capability and experience.
  - (c) It has proposals on technical matters which are assessed as satisfying the requirements in accordance with the pass or fail criterion.
  - (d) The tender price is the lowest after rectification of errors and adjustment of discrepancies.
  - (e) The proposed winning tender price does not exceed the approved tender package price.
2. The various time-limits applicable to tendering for small scale packages shall be regulated as follows:
- (a) Tender invitation documents shall be issued as from the date of notice of invitation to tenderers up until closing of tenders.
  - (b) The time-limit for preparation of tenders shall be a minimum of ten (10) days as from the date of issuing the tender invitation documents. If the party calling for tenders needs to amend the tender invitation documents, he must notify the tenderers three days prior to the date for closure of tenders so that they will have sufficient time to prepare their tenders.
  - (c) The time-limit for assessing tenders shall be a minimum of twelve (12) days as from the date of opening tenders up until the date on which the investor notifies the results of tendering to the authorized person for his consideration and decision.
3. The value of the tender guarantee shall be one per cent (1%) of the tender package price in the case of small scale packages, and the value of the contract performance guarantee shall be three per cent (3%) of the contract value.

#### **Article 34**

##### **Provision on selection of a contractor applicable to insurance and auditing packages and on selection of investment partners**

1. The same procedures as for selection of a contractor for a tender package for procurement of goods shall apply to selection of a contractor for an insurance tender package.
2. The same procedures as for selection of a contractor for a tender package for consultancy services shall apply to selection of a contractor for an auditing tender package.

3. The procedures for conducting tendering to select investment partners to implement a project stipulated in article 54 of the Law on Investment<sup>2</sup> shall be conducted in accordance with guidelines of the Ministry of Planning and Investment.

## **Section 2**

### **Two-Phase Tendering**

#### **Article 35**

##### **Preparation for phase 1 tendering**

1. Pre-qualification of tenderers shall be implemented in accordance with Chapter III of this Decree.
2. Preparation of phase 1 tender invitation documents
  - (a) The bases for formulation of tender invitation documents is stipulated in article 23.2(a) of this Decree.
  - (b) The contents of phase 1 tender invitation documents shall be as stipulated in article 23.2(b) of this Decree, but excluding the requirements for tenderers to submit a tender price and tender guarantee.
3. Approval of tender invitation documents shall be implemented in accordance with article 15.3 of this Decree.
4. Invitations for submission of phase 1 tenders shall be implemented in accordance with article 23.4 of this Decree.

#### **Article 36**

##### **Holding phase 1 tendering**

1. Issuance of tender invitation documents
  - (a) The party calling for tenders shall sell the tender invitation documents at the price stipulated in article 6.1 of this Decree to tenderers on the list of tenderers who passed the pre-qualification stage, or to tenderers invited to participate in limited tendering, or to all tenderers wishing to participate in open tendering, up until the deadline for submission of tenders. In the case of a joint venture tender, only one member of the joint venture need purchase the tender invitation documents.
  - (b) Any amendment to or clarification of the tender invitation documents shall be implemented in accordance with articles 33.1 and 34 of the Law on Tendering.

2. Receipt and management of phase 1 tenders

The party calling for tenders shall receive tenders which have been submitted and shall treat them as confidential.

3. Opening of tenders

Opening of tenders shall be implemented in accordance with article 28.3 of this Decree. The minutes of opening of tenders shall not contain information on tender prices and tender guarantee.

4. Discussions on phase 1 tenders

Based on the requirements stipulated in the tender information documents, the party calling for tenders shall hold discussions with each tenderer aimed at elucidating the requirements on technical matters of the tender package. The contents of discussions must be recorded by the party calling for tenders in minutes, in order to provide the basis for formulation of the phase 2 tender invitation documents.

**Article 37**

**Preparation for and holding phase 2 tendering**

1. Formulation of phase 2 tender invitation documents

The phase 2 tender invitation documents shall clearly stipulate the detailed technical requirements and detailed financial requirements including tender prices and commercial requirements as well as requirements on the method for providing a tender guarantee.

Approval of phase 2 tender invitation documents shall be implemented in accordance with article 15.3 of this Decree.

2. Holding tendering

Phase 2 tender invitation documents shall be sold to the tenderers who submitted tenders during phase 1 at the price stipulated in article 6.1 of this Decree, and the tendering shall be held in accordance with the provisions in article 28 of this Decree.

**Article 38**

**Assessment of phase 2 tenders**

Assessment of phase 2 tenders shall be implemented in accordance with article 29 of this Decree.

**Article 39**

**Submission for approval, evaluation, approval and notification of the results of tendering; negotiation, finalization and signing of the contract**

Submission for approval, evaluation, approval and notification of the results of tendering; and negotiation, finalization and signing of the contract shall be implemented in accordance with article 31 of this Decree.

**CHAPTER VI**

**Direct Appointment of Contractor**

**Article 40**

**Direct appointment of contractor**

Application of the form of direct appointment of contractor must be approved in the tendering plan on the basis of compliance with article 20 of the Law on Tendering and article 101 of the Law on Construction.

Special cases in which there may be direct appointment of a contractor are stipulated in article 101.1(dd) of the Law on Construction and comprise:

1. The cases stipulated in Decision 49-2007-QD-TTg of the Prime Minister of the Government dated 11 April 2007.
2. Tender packages for consultancy services, for assessment of strategic reports [and/or] for zoning where the investor must be able to prove that there is one sole contractor capable of satisfying the requirements of the package, and in such case the investor shall be liable for his decision.
3. Tender packages for consultancy for the preparation of a feasibility study report [and/or] investment report.
4. Tender packages for consultancy for the preparation of a feasibility study report [and/or] investment report in an urgent case where the investor must ensure he is able to confirm the capability and experience of a contractor who satisfies the requirements of the tender package. Tendering must be held in non-urgent cases.
5. Tender packages for the construction of statues, monuments or art works associated with copyright, from the creative stage up until the construction stage.
6. Tender packages belonging to the program of projects with national objectives and the 135 Program, in which case if local resident communities wish to undertake such work

then it may assigned to them for implementation. If there are a number of mass organizations within a locality which wish to participate, then once such organization must be selected to provide the most effective implementation plan. The Ministry of Planning and Investment shall co-ordinate with relevant bodies to provide guidelines on appointment of a contractor in this case.

7. The Prime Minister of the Government shall approve a list of important and urgent projects in the national interest or for the safety and security of energy as stipulated in article 20.1(c) of the Law on Tendering on the basis of a proposal from a minister, head of a ministerial equivalent body or other central body, chairman of a provincial people's committee or board of management of a State enterprise, and on the basis of a written evaluation of the list of these projects provided by the Ministry of Planning and Investment. Any of the above-mentioned persons or entities in authority which has a project within the category mentioned in this clause may approve, and shall be responsible for, appointment of a contractor to implement the project in accordance with the Law on Tendering.
8. Other special cases as decided by the Prime Minister of the Government on the bases of a proposal from the relevant ministry, industry, locality or enterprise which has the project, and of an evaluation report from the Ministry of Planning and Investment.

#### **Article 41**

##### **Procedures for direct appointment of contractor**

1. The procedures for directly appointing a contractor to implement any one tender package (except for a package with a price below one hundred and fifty billion dong) shall be as follows:
  - (a) Issuance of set of requirements;
  - (b) Preparation of set of proposals;
  - (c) Assessment of set of proposals and negotiations on the tenderer's set of proposals;
  - (d) Submission, evaluation and approval of the results of direct appointment;
  - (dd) Negotiation, finalization and signing of the contract.
2. Set of requirements
  - (a) The party calling for tenders shall prepare the set of requirements, in which it shall not be necessary to stipulate criteria for an overall assessment in the case of tender packages for consultancy services. In the case of tender packages for the

procurement of goods or for construction and installation, or for selection of a general construction contractor (but not for selection of a general design contractor) it shall not be necessary to stipulate the factors for determination of assessment prices. Specific requirements should be specified in the set of requirements depending on the nature and scale of the particular tender package, but the following items must be specified:

- A tender package for consultancy services must stipulate the requirements on the criteria for capability and number of experts, the experience of the contractor; requirements on items, scope and quality of work; requirements on duration and location for performance; requirements on proposals regarding price, requirements on time-limits for preparing and lodging the set of proposals, on the period of validity of the set of proposals, and other necessary items.
  - Tender packages for the procurement of goods or for construction and installation, or for selection of a general construction contractor (but not for selection of a general design contractor) must specify the requirements on experience and capability; on technical items such as the quantity of goods and the scope and volume of work, and the technical criteria and technical solutions; the quality of the work, and the duration for performing it; requirements regarding the price which must be proposed in the set of proposals; the duration for preparation and the time-limit for lodging the set of proposals; the term of validity of the set of proposals and other necessary items, without requiring a tender guarantee.
  - The set of requirements must stipulate that the assessment of technical items will be made in accordance with the pass or fail criterion.
- (b) The investor shall be responsible to approve the set of requirements in accordance with article 2.2 of this Decree in order for the party calling for tenders to send the set of requirements to the contractor proposed to be directly appointed, in order for the latter to prepare a set of proposals.

### 3. Set of proposals

The proposed contractor for direct appointment shall prepare a set of proposals with contents similar to those of a tender, and including technical proposals, financial and commercial proposals.

### 4. Assessment of set of proposals and negotiations on the tenderer's set of proposals

- (a) The party calling for tenders shall conduct an assessment of the set of proposals and negotiate the proposals with the tenderer in accordance with the requirements stipulated in the set of requirements. During the process of assessment, the party

calling for tenders may request the tenderer to negotiate, explain, clarify, amend or supplement necessary information in its set of proposals in order to prove it satisfies the requirements on capability and experience, the schedule, quality, technical solutions and measures for organizing construction as set out in the set of requirements.

(b) The tenderer shall be proposed as the winning tenderer when its set of proposals fully satisfies the following conditions:

- It has adequate capability and experience in accordance with the set of requirements;
- Its proposals on technical matters are assessed as satisfying the requirements stipulated in the set of requirements pursuant to the assessment criteria;
- The proposed price for appointment of contractor does not exceed the approved tender package estimated budget (tender package price).

5. Submission, evaluation and approval of results of direct appointment of contractor

(a) Based on the report on results of direct appointment of contractor and the evaluation report, the person making the investment decision shall approve, or delegate authority to approve, the results of direct appointment of contractor in the case of a tender package for consultancy services with a price of five hundred million (500,000,000) dong or more, or a tender package for procurement of goods or for construction and installation or for selection of a general construction contractor (but not for selection of a general design contractor) with a tender package price of one billion (1,000,000,000) dong or more. The investor shall approve the results of direct appointment of contractor in the case of tender packages for consultancy services with a tender package price below five hundred million (500,000,000) dong and for procurement of goods or for construction and installation with a tender package price below one billion (1,000,000,000) dong in the case of tender packages belonging to projects stipulated in clauses 1 and 3 of article 1 on the Law on Tendering.

(b) In the case of direct appointment of contractor for the projects stipulated in article 20.1(c) of the Law on Tendering, the investor shall submit the report on results of direct appointment of contractor to the authorized person, or to the person delegated with such authority, as stipulated in article 40.7 of this Decree.

6. Negotiation, finalization and signing of the contract

On the basis of the decision approving the results of direct appointment of contractor, the party calling for tenders shall conduct negotiations and finalize the contract with the appointed contractor in order for the investor to sign the contract.

7. In the case of an event of force majeure due to a natural disaster, war or a breakdown which should be immediately dealt with as stipulated in article 20.1(a) of the Law on Tendering, direct appointment of a contractor shall not be implemented in accordance with clauses 1 to 6 of this article; but 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 procedures for determining the volume and value of works in order for the two parties to sign a contract as the basis for performance of the works and for payment of the works.
8. In a case where it is permitted to apply the form of direct appointment of contractor for a tender package to be performed prior to there being an investment decision, the organization assigned the duty to prepare the project shall prepare, and arrange for approval, the estimated budget of the tender package in accordance with article 20.3 of the Law on Tendering. In such a case, the estimated budget means the equivalent price for the volume of works approved by the head of the body preparing the project.
9. In the case of 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 major renovation or repairs of State owned enterprises referred to in article 3.1 of the Law on Tendering, direct appointment of a contractor may be applied when deemed necessary but must be implemented in accordance with clauses 1 to 6 of this article, except for the case stipulated in clause 10 of this article.
10. When the form of direct appointment of contractor is applied to a tender package with a tender package price below one hundred and fifty million dong, the appointment shall be made in accordance with the following sequence:
  - (a) The party inviting the contractor shall, based on the objectives and scope of the work and the tender package price all of which have been approved in the tendering plan, formulate and send a draft contract to the contractor whom it is proposed to appoint. The draft contract should contain the following items namely the requirements on scope and contents of the work to be performed, the duration for performance, and the quality of the work, services and goods and their corresponding values.

- (b) The party inviting the contractor and the proposed contractor shall, based on the draft contract, conduct negotiations and finalize the contract as the basis for signing the contract.
- (c) On completion of negotiation and finalization of the contract, the party inviting the contractor shall make a submission to the investor to approve the results of direct appointment of the contractor, and shall then sign a contract with such contractor.

## **CHAPTER VII**

### **Other Forms of Selection of Contractor**

#### **Article 42**

##### **Direct procurement**

Application of the form of direct procurement must be approved in the tendering plan on the basis of compliance with article 21 on the Law on Tendering and shall apply to contracts previously signed with contractors via open tendering or limited tendering. The period "within the previous 6 months" shall be calculated from the time of signing the [previous] contract up until the date on which the results of the [current] direct procurement are approved.

Procedures for direct procurement shall be implemented as follows:

1. The investor shall approve the contents of the set of requirements as the basis for the tenderer to prepare its set of proposals.
2. The following items in the set of proposals shall be assessed:
  - (a) A check of the contents of the technical matters and unit prices;
  - (b) Update of capability of the tenderer;
  - (c) An assessment of the schedule for performance;
  - (d) Other items (if any).
3. Submission, evaluation and approval of the results of direct procurement

On the basis on the report on the results of direct procurement and the evaluation report, the person making the investment decision shall approve or authorize another entity to approve the results of direct procurement.

## **Article 43**

### **Competitive quotation in procurement of goods**

Application of the form of competitive quotation in procurement of goods must be approved in the tendering plan on the basis of compliance with article 22 of the Law on Tendering. Procedures for competitive quotation in procurement of goods shall be implemented as follows:

1. Set of requirements for competitive quotation

The investor shall approve the contents of the set of requirements for competitive quotation which must include technical requirements such as quantity, standards, technical specifications, time-limit for supply, validity period of the quotation, and deadline for submission of the quotation; requirements on warranty, maintenance, training, handover and other necessary contents, excluding the requirement for submitting a tender guarantee. The criterion for assessment of technical requirements [of quotations] shall be the criterion of pass or fail which must be set out in the set of requirements for competitive quotation.

2. Holding tendering in the form of a competitive quotation

(a) The party calling for tenders shall publish a notice inviting quotations, on the standard form issued by the Ministry of Planning and Investment, in three consecutive editions of the Tendering Newsletter and on the tendering website in order for interested tenderers to participate. The notice may also be published on other mass media. The set of requirements for the competitive quotation shall be issued by the party calling for tenders no earlier than five days from the date of the first publication of the notice.

(b) The party calling for tenders shall send the set of requirements to the interested tenderers ensuring that at least three competitive quotations from three different tenderers are received.

The time-limit in which tenderers must submit their quotations shall be a minimum of three (3) days.

(c) Tenderers shall send their quotations to the party calling for tenders by direct delivery, or by post or by fax. Each tenderer may only send one quotation.

(d) The party calling for tenders shall be responsible for maintaining confidentiality of information in quotations. Immediately after expiry of the deadline for submitting quotations, the party calling for tenders shall prepare minutes of receipt of quotations with the following contents: names of the tenderers, offering

prices, after-sale conditions and period of validity of the quotations. The party calling for tenders shall then send the minutes to all tenderers who submitted quotations.

3. Assessment of quotations

- (a) The party calling for tenders shall carry out an assessment of technical matters in the submitted quotations in accordance with the criteria set out in the set of requirements. A quotation shall be evaluated as technically responsive when all technical requirements are assessed as "pass".
- (b) The party calling for tenders shall compare the offering prices in all technically responsive quotations in order to determine the quotation with the lowest offering price. The tenderer with the lowest offering price after errors have been rectified and discrepancies have been adjusted, and on condition such price does not exceed the tender package price, shall be proposed for selection.

4. Approval of the results of competitive quotation and signing of a contract

- (a) On the basis of the report submitted by the party calling for tenders on the results of competitive quotation and the evaluation report, the person making the investment decision or the person delegated with authority to make the investment decision shall approve the results for a tender package with a tender package price of one billion (1,000,000) dong or more, while the investor shall approve the results for a tender package with a tender package price of less than one billion (1,000,000) dong.
- (b) The party calling for tenders shall notify the results of competitive quotation to all participating tenderers, and shall conduct negotiation and finalization of the contract with the selected contractor in order for the investor to sign the contract.

**Article 44**

**Self-implementation**

Application of the form of self-implementation must be approved in the tendering plan on the basis of compliance with article 23 on the Law on Tendering, and with clause 1(a) in each of articles 41, 50, 57, 75 and 89 of the Law on Construction and in compliance with article 45.2(b) on the Law on Construction as follows:

- 1. The investor shall select, in accordance with the Law on Tendering, a consultant supervising contractor who is organizationally and financially independent of the investor as stipulated by law.

The investor must provide the documents essential for the supervising contractor to carry out the tasks stipulated in clause 2 of this article.

2. The supervising contractor shall have the following tasks:
  - (a) To supervise implementation of the tender package of the investor correctly in accordance with the plan and implementing solutions provided by the investor;
  - (b) To check all types of goods, materials and equipment used for the tender package;
  - (c) To test and accept all volumes of work implemented by the investor in order to provide the basis for payment.
3. When applying the form of self-implementation, the investor must select a supervisory consultant to supervise those items of work which the specialized branch law requires be supervised. However, a consultant need not be hired to supervise tender packages for major renovation or repairs of manufacturing equipment or production lines. If in a case of application of the form of self-implementation a specialized branch law requires supervision but there are no independent consultants who express an interest or it is impossible to select such a consultant because the tender package is to be implemented in a remote area, and the tender package price is less than one million dong, then the investor must abide by supervision by the community in accordance with the law on supervision of investment by the community.
4. When applying the self-implementation form, the investor must ensure he has sufficient capability and experience to conduct all of the work belonging to the tender package, must ensure that his selfimplementation would benefit the project more than selection of another contractor, and must also satisfy the following conditions:
  - (a) His function, duties, operational sector and business line (in accordance with his business registration certificate and decision on establishment) is consistent with the requirements of the tender package;
  - (b) He has sufficient key personnel, senior staff and technicians employed (except for ordinary workers) for his tender package; and he has sufficient machinery and equipment to use for execution of construction which belong to such investor or which the investor can prove he is able to mobilize in order to satisfy the requirements of the schedule for implementing the tender package.
5. If during the process of implementation the investor is discovered to have transferred a volume of work with a total monetary amount more than ten per cent (10%) of the value of the work to be selfimplemented, then the investor shall be deemed not to have

sufficient capability for selfimplementation of the tender package and to have breached article 12.14 of the Law on Tendering.

#### **Article 45**

##### **Selection of a consultant contractor for architectural design for construction of works**

The selection of a consultant contractor for architectural design for construction of works via a competition as stipulated in article 97.3 of the Law on Construction shall be implemented in accordance with article 102 of the Law on Construction.

#### **Article 46**

##### **Selection of contractor in special cases**

1. Based on the special characteristics of a tender package for which the forms of selection of contractor stipulated in articles 18 to 23 inclusive of the Law on Tendering and in article 97 of the Law on Construction 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. The investor must also send the plan to the Ministry of Planning and Investment and to the ministry managing the industry for these ministries to provide their written opinions to the Prime Minister of the Government for his consideration and approval.
2. If there are any special matters on tendering stipulated in any other Law, then the Decree providing guidelines for implementation of such other Law shall apply.

### **CHAPTER VIII**

#### **Regulations on Contracts**

#### **Article 47**

##### **Components of the contract**

1. Components of the contract mean the data which form and make up the contract in order to regulate the responsibilities and obligations of the investor and of the contractor. The components of the contract and the order of their legal priority shall be as follows:
  - (a) Written contract (enclosing Appendices including price lists and any other items);
  - (b) Minutes of negotiation and finalization of the contract;
  - (c) Decision approving the results of selection of contractor;
  - (d) Specific conditions (if any) of the contract;

- (dd) General conditions (if any) of the contract;
  - (e) Tender or set of proposals and documents clarifying them (if any) from the selected contractor;
  - (g) Tender invitation documents or set of requirements and data amending them (if any);
  - (h) Any other enclosed data.
2. In the case of a contract for construction and installation, the price list must be formulated on the basis of the minutes of negotiation and finalization of the contract, the decision approving results of selection of contractor, the tender or set of proposals from the selected contractor based on detailed items of work set out in the bill of quantities of the tender invitation documents or set of requirements.
- If the authorized person has permitted addition to or adjustment of the volume of work prior to signing the contract, then the price list must also include such additional or adjusted volume of work.
3. If an additional Appendix to the contract is signed in accordance with article 52.2 of this Decree, then such Appendix shall also be one of the components of the contract.

## **Article 48**

### **Form of lump sum contract**

1. The principles for payment applicable to a lump sum contract as stipulated in article 49 of the Law on Tendering shall be specifically regulated as follows:
- (a) The contract sum shall not be altered throughout the duration of implementation of the contract, except for a case of force majeure pursuant to a term [clause] in the contract (namely an event actually occurring outside the control or foreseeability of the investor and the contractor, and unrelated to any breach by or negligence on the part of the investor or contractor, such as a war, rebellion, strike, fire, natural disaster, flood, epidemic, quarantine or embargo). Payment may be made on a number of occasions or may be one payment on completion of the contract. The total amount payable by the investor shall be the correct sum stipulated in the contract when the contractor has discharged all his contractual obligations. If an event of force majeure occurs, then payment shall be made in accordance with the contractual term (if any) on force majeure.

If a lump sum contract of a tender package contains two or more sections of work such as formulation of a pre-feasibility study, of a feasibility study report [and/or] of technical design, then the contract must stipulate the method of payment for each section, including specific provisions on the following: if the pre-feasibility study report is not approved, then the contractor shall only be paid for his work being preparation of the pre-feasibility study report; if the feasibility study report is not approved, then the contractor shall only be paid for his work being preparation of the pre-feasibility study report and of the feasibility study report.

- (b) Where a contractor is selected by other forms of selection than direct appointment, payment must be based on the contract sum and contractual terms [clauses] on payment, and shall not be based on the estimated budget or any current State regulations and guidelines on price rates and unit prices; nor shall it be based on unit prices set out in financial invoices for input items of the contractor such as materials, machinery, equipment and other input items.
2. For work being construction and installation, the parties must, prior to signing the contract, re-check the list of the volume of work required to be done pursuant to the approved design, and if the contractor (including a directly appointed contractor) or the investor discover that such list of the volume of work required to be done is inaccurate in terms of the design, then the investor should report to the authorized person to make a decision on supplementing such work to ensure that it conforms with the design. It shall not be necessary for the investor to report to the authorized person if the volume of work needs to be reduced for compliance with the design. In such a case, after signing a lump sum contract, the volume of work which the contractor actually completes in accordance with the design (irrespective of whether it is more or less than the volume stipulated in the contract) shall not have any impact on the amount payable to the contractor, and payment to the contractor shall be implemented in accordance with clause 1 of this article.

The investor shall be responsible for the accuracy of the quantity and volume of work, and if there is any loss arising due to an inaccurate calculation of such volume or quantity, then the individual or organization belonging to the investor which made the mistake shall be liable to compensate and shall be dealt with in accordance with law. If there is a term on dealing with incorrect calculations of the volume and quantity of work in a contract between an investor and a consultant for preparation of tender invitation documents, set of requirements or estimated budget, then the investor must pay compensation in accordance with such term in the contract signed with the consultant.

## **Article 49**

### **Form of unit price contract**

The principles for payment applicable to a unit price contract as stipulated in article 50 of the Law on Tendering shall be specifically regulated as follows:

1. The payment price shall be calculated by taking the unit price (or the unit price as adjusted) stipulated in the contract and multiplying it by the actual volume and quantity of work completed by the contractor.
2. If in the case of construction and installation the actual volume of work completed by the contractor in order to comply with the design is less than the volume stipulated in the contract, then the contractor shall only be entitled to payment for the volume of work completed. If however the volume of work actually completed for compliance with the design is more than the volume stipulated in the contract, then the contractor shall be entitled to payment for such difference.

The investor, the consultant supervisor and the contractor shall be responsible to certify in the minutes of check and acceptance, the volume of work completed in order to provide the basis for payment to the contractor.

3. Payment must be based on the payment terms stipulated in the contract, and when conducting payment the investor and the paying organization must comply with article 53 of this Decree.

## **Article 50**

### **Form of time based contract**

Payment to a contractor pursuant to the form of a time based contract shall be implemented as follows:

1. Expert remuneration rates means expenses paid to experts and calculated by taking the basic salary and related expenses as agreed by the investor and the contractor and set out in the contract or as adjusted pursuant to article 57 of the Law on Tendering, multiplied by the actual time worked calculated in months, weeks, days and hours.
2. Expenses of the expert outside those stipulated in clause 1 above including travelling expenses, investigation [prospecting] expenses, working office rent and other expenses shall be paid by the methods stipulated in the contract. The contract must stipulate the method of payment for each of the above-mentioned expenses, namely payment based on actual expenses incurred and set out in invoices and valid accounting source documents which the contractor presents, and/or payment on the basis of a unit price agreed in the contract.

The total of all sums paid to a contractor pursuant to clauses 1 and 2 of this article must not exceed the total value stipulated in the contract.

## **Article 51**

### **Form of percentage based contract**

The contract sum shall be calculated as a percentage either of the value of the work or of the volume of the work. After the contractor has discharged all his contractual obligations, the investor shall pay the contractor an amount of money equal to the percentage certified in the contract, multiplied by the value or volume of the completed work.

## **Article 52**

### **Adjusting contract sums and adjusting contracts**

#### 1. Adjustments of the contract sum

- (a) Adjustment to a contract sum shall apply to the forms of unit price contracts and time based contracts. These contracts must specify the adjustable items, the method and time-limit for calculating adjustments, and the input database for calculating adjusted prices.

Adjustment of sums shall be implemented via adjustment of the volume of work as stipulated in article 49.2 of this Decree; [and] adjustment of unit prices or adjustment of the contract sum as a result of inflation

- (b) The method of adjusting the sum [or prices] stipulated in the contract must be consistent with the nature of the work stipulated in the contract. Similarly, the input database for calculating price adjustments must be consistent with the items of work. In the case of expenses originating overseas, the contract must stipulate the use of quotations [and/or] price indices of local or central authorities or of independent specialist bodies of such foreign country.
- (c) When there are major fluctuations in State controlled prices of fuel, supplies and equipment as set out in the contract which directly impact on contractual performance, and the contract contains a term on adjustment of such prices, then adjustment shall be implemented in accordance with article 57.1(c) of the Law on Tendering on the principle that the new price as announced by the State authority shall apply to sections of work carried out at the time of such price fluctuation.
- (d) When there is a change in State policy on tax or wages which directly impacts on the contract sum, then the contract sum [or prices] shall be adjusted pursuant to article 57.1(a) of the Law on Tendering.

2. Adjusting contracts:

Where additional work beyond the scope stipulated in the contract reasonably arises without changing the investment objective or the total invested capital (for construction and installation work applying the lump sum contract form this means additional work must be implemented to conform with the design; and for construction and installation work applying the unit price contract form this means more work than that stipulated in the contract must be implemented), then an adjustment shall be made pursuant to article 57.3 of the Law on Tendering. The investor and the contractor must sign an additional Appendix to the contract for the additional work on the following principles:

- Where the amount of additional work is less than twenty per cent (20%) of the volume stipulated in the contract and the contract contains a unit price, then such unit price shall be used for payment purposes;
- If the volume of additional work is twenty per cent (20%) or more than the volume stipulated in the contract or if the additional work does not have an applicable unit price stipulated in the contract, then the investor and contractor shall reach agreement on a new unit price on the principle stipulated in the contract as applicable to [additional] volumes of work arising.

In the case of any section of work being construction and installation, prior to signing an additional contractual Appendix, there must be approval of an estimated budget for the [additionally] arising volume of work in accordance with law.

**Article 53**

**File on payment**

The file on payment as stipulated in the contract shall comprise:

1. Applicable to that section of construction and installation applying the form of unit price:
  - (a) Minutes of check and acceptance of the volume of work implemented during the payment stage as certified by the representative of the contractor, the investor and the consultant supervisor (if any);
  - (b) Certification of the volume of work increased or reduced in comparison with the contract, and certified by the representative of the contractor, the investor and the consultant supervisor (if any);
  - (c) List calculating values requested for payment on the basis of the volume of work completed and certified and unit prices set out in the contract;

- (d) Request for payment from the contractor stipulating the volume of work completed and its value, the value of any increase or reduction compared to the contract, any value for which payment was made in advance, and the value requested to be paid within the payment stage.
2. Applicable to that section of construction and installation work applying the form of lump sum:
- (a) Minutes of check and acceptance of the work implemented during the payment stage, as certified by the representative of the contractor, the investor and the consultant supervisor (if any). Minutes certifying the volume of work namely certifying completion of what items, and that the completed work complies with the design, without requiring certification of the details of the completed volume of work.
  - (b) Other data pursuant to sub-clauses (b), (c) and (d) of clause 1 of this article.
3. Applicable to procurement of goods:

The file on payment should be stipulated [in the contract] depending on the nature of the goods, to include such data as invoice from the contractor, list of package goods, transportation vouchers, insurance policies, certificates of quality, minutes of check and acceptance of the goods, certificates of country of origin, and other relevant data and source vouchers.

4. Applicable to work applying the form of time based contract and/or percentage based contract: The file on payment to be stipulated [in the contract] shall depend on the nature of the consultancy work, and should include such data as minutes of check and acceptance of the results of the consultancy work, data certifying the schedule of contractual performance, and other relevant data and source documents.

In the case of construction and installation or procurement of goods, unless the contractual terms on adjustment of the contract sum specify that the investor and contractor agree to apply unit prices in input invoices (for machinery, materials, equipment and other inputs) as the basis for adjusting the sum [or prices], then the requirement that the contractor present input invoices only signifies a requirement to certify origin [of goods] or other relevant information; the unit prices in invoices shall not be used as the basis for payment to the contractor. Payment shall be based on the contract sum [or contract prices] and the payment terms in the contract, and shall not be based on the estimated budget or on current State regulations and guidelines on fixed norms [limits] and unit prices, except in the case of directly appointed contractors.

**CHAPTER IX**  
**Decentralization of Responsibilities for**  
**Evaluation and Approval in Tendering**

**Article 54**

**Responsibilities of the Prime Minister of the Government:**

1. For projects for which the Prime Minister of the Government directly makes the investment decision:
  - (a) To approve the tendering plan;
  - (b) To approve or to delegate authority to approve results of selection of contractor;
  - (c) To approve or to delegate authority to approve exceptional cases in tendering, to resolve protests in tendering and to deal with breaches of the law on tendering.
2. To approve or to delegate authority to approve the tendering plan and results of direct appointment of contractor for tender packages belonging to national confidential projects, and urgent projects in the national interest or for the safety and security of energy as stipulated in article 20.1(c) of the Law on Tendering.
3. To approve or to delegate authority to approve a plan for selection of a contractor in a special case as stipulated in article 24 of the Law on Tendering.

**Article 55**

**Responsibilities of ministers, heads of ministerial equivalent bodies and other central bodies, and chairmen of people's committees of provinces and cities under central authority**

1. For projects and tender packages directly approved by the Prime Minister of the Government:
  - (a) To provide written opinions on the tendering plan and on results on selection of contractor;
  - (b) To approve the tender invitation documents;
  - (c) To approve other tendering items when so authorized by the Prime Minister of the Government.
2. For projects for which such ministers make the investment decision:

- (a) To approve the tendering plan;
- (b) To approve or to delegate authority to approve the tender invitation documents, and the results of selection of contractor for all tender packages of such projects, except for results of direct appointment of a contractor for the tender packages which are within the responsibility of the Prime Minister to directly approve as stipulated in article 54.2 of this Decree.

3. Provision on delegation of authority during tendering

The authorized person shall be responsible to approve the tendering plan. However, it shall depend on the special conditions of the ministry or locality whether the authorized person directly approves or delegates authority to approve tender invitation documents, results of selection of contractor, and a decision on dealing with an exceptional situation during tendering.

**Article 56**

**Responsibilities of chairmen of people's committees of communes, wards, townships, districts, provincial towns and provincial cities, and of heads of other local bodies:**

1. To approve tendering items when so authorized.
2. To approve tendering plans and to approve or delegate authority to approve tender invitation documents and results of selection of contractor for tender packages belonging to projects for which such chairman or head make the investment decision.

**Article 57**

**Responsibilities of boards of management or directors of enterprises:**

1. For projects for which the Prime Minister of the Government made the investment decision and for which the board or the director acts as investor:
  - (a) To approve the contents of tender invitation documents for tender packages for which the Prime Minister of the Government directly approves results of selection of contractor.
  - (b) To approve other tendering items when delegated with authority by the Prime Minister of the Government.
2. For projects for which such board or director makes the investment decision:
  - (a) To approve the tendering plan;

- (b) To approve or to delegate authority to approve the tender invitation documents, and the results of selection of contractor for all tender packages of such projects, except for results of direct appointment of a contractor for the tender packages which are within the responsibility of the Prime Minister to directly approve as stipulated in article 54.2 of this Decree.

#### **Article 58**

##### **Responsibilities of the board of management of a joint venture enterprise, shareholding company and legal representative of parties to a business co-operation contract**

1. To approve the tendering plan and results of selection of contractor for all tender packages belonging to projects for which they make the investment decision.
2. To approve or to delegate authority to approve the contents of the tender invitation documents.

#### **Article 59**

##### **Responsibilities of evaluating bodies and organizations**

1. The Ministry of Planning and Investment shall be responsible to evaluate the following items:
  - (a) Tendering plans within the approval authority of the Prime Minister of the Government;
  - (b) Results of selection of contractor for tender packages within the direct approval authority of the Prime Minister of the Government;
  - (c) Plans for selection of contractor in special cases within the direct approval authority of the Prime Minister of the Government;
2. The Department of Planning and Investment shall be responsible to evaluate the following items:
  - (a) Tendering plans and results of selection of contractor for tender packages of projects within the direct approval authority of the chairman of the people's committee of the province or city under central authority;
  - (b) Tender invitation documents for tender packages for which the Prime Minister of the Government delegates approval authority to the chairman of the people's committee of the province or city under central authority, or for which such chairman has approval authority in which case the Department of Planning and

Investment and the Department for the specialized industry shall jointly preside over the evaluation;

- (c) Results of selection of contractor for tender packages for which the Prime Minister of the Government delegates approval authority to the chairman of the people's committee of the province or city under central authority.
3. Evaluating bodies and organizations shall be responsible to evaluate the following items when they are assigned evaluating duties by a minister, head of a ministerial equivalent body or other central body, board of management or director of an enterprise:
    - (a) Tendering plans, tender invitation documents and results of selection of contractor for all tender packages of projects within the investment decision-making authority of such minister, head of a ministerial equivalent body or other central body, board of management or director of the enterprise;
    - (b) Tendering plans and results of selection of contractor for tender packages for which the Prime Minister of the Government delegates approval authority to such minister, head of a ministerial equivalent body or other central body, board of management or director of the enterprise.
  4. The planning and finance division shall evaluate items throughout the tendering process in projects within the investment decision-making authority of the chairman of the people's committee of a commune, ward, township, district, provincial town or provincial city.
  5. The relevant assisting division shall evaluate items throughout the tendering process for projects within the investment decision-making authority of the chairman of the people's committee of a commune, ward, township, district, provincial town or provincial city, of the head of any other local body, or of the board of management of a joint venture enterprise, shareholding company or legal representative of business co-operation parties.
  6. In the case of tender packages for which the person making the investment decision authorizes another person to approve the results of selection of contractor, such authorized person shall be responsible to appoint an entity to evaluate the tender invitation documents and the results of selection of contractor.

## **CHAPTER X**

### **Resolution of Protests in Tendering**

#### **Article 60**

##### **Conditions for consideration and resolution of protests**

1. The protestor must be a tenderer participating in tendering.
2. The protest application must be signed by the person who signed the tender form or the representative of the tenderer, and must be sealed (if there is a seal).
3. The person responsible to resolve protests must receive protests within the time-limit stipulated in article 72.3 of the Law on Tendering.
4. The contents of a protest must not be the subject matter of any legal proceeding instituted by the tenderer.
5. When a tenderer lodges a protest about results of selection of contractor with the person making the investment decision, the protestor must pay a fee as stipulated in article 6.3 of this Decree to the standing committee of the Consulting Council as stipulated in the tender invitation documents; if the conclusion is that the protest was correct, then this fee shall be refunded to the tenderer by the individual or organization found to be liable.

#### **Article 61**

##### **Resolution of protests**

1. The time-limit for the resolution of a protest as stipulated in article 73 of the Law on Tendering shall be calculated from the date of receipt of the protest by the administrative section of the person/entity responsible to resolve the protest.
2. If a protest does not satisfy the conditions stipulated in article 60 of this Decree, the person responsible to resolve the protest shall provide written notice to the tenderer that the protest will neither be considered nor resolved.
3. A tenderer shall have the right to withdraw a protest during the process of its resolution, but such withdrawal must be made in writing.

#### **Article 62**

##### **Consulting Council for Resolution of Protests**

1. Chairman of the Consulting Council

- (a) The chairman of the central level Consulting Council shall be an authorized representative of the Ministry of Planning and Investment. The central level Consulting Council shall be responsible to provide advice on protests regarding tender packages within the direct approval authority of the Prime Minister of the Government, or when so requested by the Prime Minister of the Government.
- (b) The chairman of the Consulting Council at the level of a ministry, ministerial equivalent body, Governmental body or other central body (hereinafter referred to as a ministerial level Consulting Council) shall be an authorized representative of the entity allocated by such ministry to administer tendering. A ministerial level Consulting Council shall be responsible to provide advice on protests regarding all tender packages of projects within the investment decision-making authority of such ministry or of projects managed by such ministry as the line ministry, except for tender packages stipulated in sub-clause (a) of this clause.
- (c) The chairman of the Consulting Council at the local level shall be an authorized representative of the Department of Planning and Investment. A local level Consulting Council shall be responsible to provide advice on protests regarding all tender packages of projects within the investment decision-making authority of such locality or of projects managed by such locality, except for tender packages stipulated in sub-clause (a) of this clause.

## 2. Members of the Consulting Council

Depending on the nature of each tender package and in emergency cases, the chairman of the Consulting Council may invite other individuals to participate as members of the Consulting Council in addition to those stipulated in article 73.2 of the Law on Tendering. A member of the Consulting Council may not be a relative (parent, parent-in-law, spouse, natural or adopted child, son or daughter-in-law or sibling) of the signatory of the protest or of an individual directly participating in assessment of tenders as a party calling for tenders, of the investor, of an individual evaluating results of selection or of the person approving results of selection of contractor.

## 3. Activities conducted by the Consulting Council

- (a) The chairman of the Consulting Council shall issue a decision establishing a council within a maximum time-limit of five (5) days from the date of receipt of a protest from a tenderer. The Consulting Council shall act on an ad hoc basis.
- (b) The Consulting Council shall operate as a collective group on the principle of decision making by a majority of votes, and shall submit a report on the results of its work to the person making the investment decision for his consideration and

decision. Each member of the council shall have the right to reserve his opinion, and shall be legally liable for his opinion.

4. Standing committee of the Consulting Council

- (a) The standing committee of the Consulting Council means the body or organization assigned with evaluation work during tendering, but shall not include as a member any individual who directly participated in evaluation of the tender package about which the tenderer is protesting.
- (b) The standing committee of the Consulting Council shall carry out administrative tasks delegated to it by the chairman of the Consulting Council and shall collect and manage fees paid by protesting tenderers in accordance with article 60.5 of this Decree.

## **CHAPTER XI**

### **Dealing With Breaches of the Law on Tendering**

#### **Article 63**

##### **Principles for dealing with breaches**

1. Any organization or individual who acts in breach of the Law on Tendering shall, depending on the seriousness of the breach, be subject to a disciplinary penalty or one or more of the following penalties: a warning, a fine, and prohibition from participating in tendering activities. Any State employee who breaches the Law on Tendering shall be dealt with in accordance with the law on State employees.
2. The principles and procedures for dealing with breaches and the procedures for enforcement of penalty decisions shall be implemented in accordance with law.
3. A decision imposing a penalty must be sent to the organization or individual subject to the penalty, to the Ministry of Planning and Investment and to other relevant bodies and organizations.
4. A penalty decision to be implemented in any one locality or within any one industry shall be of full force and effect throughout the entire country and within all industries.
5. Any organization or individual subject to a penalty for a breach of the Law on Tendering shall have the right to institute court proceedings.

## **Article 64**

### **Jurisdiction to deal with breaches of the Law on Tendering**

1. The person making the investment decision shall be responsible to deal with breaches of the Law on Tendering in projects for which he made the investment decision pursuant to article 60 of the Law on Tendering. If the person making the investment decision breaches the Law on Tendering, such person shall be dealt with in accordance with law.
2. The Ministry of Planning and Investment shall be responsible to monitor dealing with breaches of the Law on Tendering and to make decisions prohibiting participation in tendering activities applicable to any organization or individual who is subject to a warning on five (5) or more consecutive occasions in accordance with article 66.4 of this Decree.

## **Article 65**

### **Forms of penalty**

Depending on the seriousness of the breach, any organization or individual in breach of the Law on Tendering as stipulated in article 75.1(b) of the Law on Tendering shall be subject to the following fines:

1. A fine of from five million (5,000,000) to twenty million (20,000,000) dong for one of the following breaches:
  - (a) Formulating, evaluating or approving tender invitation documents or a set of requirements not in conformity with the Law on Tendering and leading to the tendering having to be rescinded;
  - (b) Assessing a tender or set of proposals, or evaluating or approving results of selection of contractor other than on the basis of the requirements in the tender invitation documents and set of requirements and other than on the relevant assessment criteria, leading to an incorrect result of selection of contractor or leading to the tendering having to be rescinded;
  - (c) Signing a contract which fails to comply with the law, leading to loss to the interests of the State;
  - (d) Other acts resulting in the tendering having to be re-held such as holding tendering without an approved tendering plan, approved tender invitation documents or approved set of requirements.
2. A fine of from twenty million (20,000,000) to fifty million (50,000,000) dong for one of the following breaches:

- (a) Making an arrangement or collusion as between tenderers; as between a tenderer and the investor, the party calling for tenders, the expert tendering group, or the consultant preparing the tender invitation documents, the evaluating body or organization and/or the person approving the results of selection of contractor in order to provide an incorrect result of selection of contractor, leading to the tendering having to be rescinded or resulting in selection of a contractor who fails to satisfy the conditions on capability as stipulated in article 10.3 of the Law on Construction.
  - (b) A contractor performing a contract for supply of goods or for construction and installation colludes with the consultant supervising contractor or with the body or organization carrying out test and acceptance in order to incorrectly certify the quality and quantity of the works or goods.
3. In addition to causing loss to the interests of relevant parties stipulated in clauses 1 and 2 of this article, any other consequences causing loss or any other conduct in breach shall also be subject to a fine in accordance with the relevant law.

#### **Article 66**

##### **The form of penalty of prohibition from participating in tendering activities**

Prohibition from participating in tendering activities shall be applied depending on the seriousness of the breach, and specifically as follows:

1. Prohibition from participating in tendering for a period of from six (6) months to one year for any one of the following breaches:
  - (a) A breach of article 12.4 of the Law on Tendering;
  - (b) A breach of article 12.5 of the Law on Tendering, and specifically if the organization or individual preparing, evaluating or approving tender invitation documents for a tender package for the procurement of goods, or for construction and installation, or for selection of a general construction contractor includes in such tender invitation documents a requirement on a specific brand name or country of origin of goods;
  - (c) An individual belonging to the investor, the party calling for tenders, the expert tendering group, the tendering consultant or the evaluating body or organization breaches article 12.9 of the Law on Tendering;
  - (d) A breach of article 12.6 of the Law on Tendering;

- (dd) A breach of article 12.7 of the Law on Tendering, and specifically if the person making the investment decision permits division of a project into tender packages contrary to the provisions in article 6.4 of the Law on Tendering in order to conduct direct appointment of a contractor or to enable only a limited number of tenderers to participate;
- (e) A breach of article 12.8 of the Law on Tendering, and specifically if the investor or party calling for tenders accepts and proposes the winning tender of a tenderer participating in tendering for the supply of goods, or for construction and installation in a tender package belonging to a project for which such tenderer previously supplied consultancy services except for an EPC tender package, or a tender package for the selection of a general design and construction contractor, or for a general turn-key contractor;
- (g) A breach of article 12.10 of the Law on Tendering, and specifically if an individual directly participates in tendering or in the assessment of tenders when such individual belongs to the investor, the party calling for tenders, is a member of the expert tendering group, is a tendering consultant; or is an individual directly participating in evaluation of results of selection of contractor and belongs to the evaluating body or organization or is the person who signed the decision on results of selection of contractor, and fails to withdraw from such assigned task when the person who signed a tender form was a relative of such individual (a natural parent, parent-in-law, spouse, natural or adopted child, son or daughter in law, or sibling);
- (h) A breach of article 12.11 of the Law on Tendering, and specifically any organization or individual belonging to the party calling for tenders, the investor, the State Treasury, the financial management body, the bank or the body conducting test and acceptance who causes difficulty during procedures for capital drawdown or accounting finalization pursuant to a contract signed between an investor and a contractor;
- (i) A breach of article 12.13 of the Law on Tendering, and specifically any person who signs a tender form 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; or any person who makes a decision on the winning tender awarded to a tenderer when the person who signed the tender form belonged to one of the above-mentioned bodies or organizations and a period of one year has not expired since the signatory received the decision on termination of work from such body or organization;

- (k) A breach of article 12.16 of the Law on Tendering, and specifically approval of the form of selection of contractor in the tendering plan other than open tendering when the conditions stipulated in articles 19 to 24 inclusive of the Law on Tendering and in articles 100 and 101 of the Law of Construction have not been satisfied;
- (l) A breach of article 12.17 of the Law on Tendering when the person making the investment decision approves a tendering plan permitting the holding of tendering when the financing source for the tender package has not yet been determined; or the person making the investment decision approves results of selection of contractor without a credit undertaking in cases where the tendering plan permits tenderers to arrange their own financing sources.

2. Prohibition from participation in tendering for a period of from one to three years applicable to one of the following breaches:

- (a) A breach of article 12.2 of the Law on Tendering, specifically an individual using his or her rights or influence to compel the investor, party calling for tenders, expert tendering group, tendering consultants, or body or organization evaluating results of selection of contractor to propose a winning tender inconsistent with the requirements set out in the tender invitation documents and the assessment criteria stipulated in such tender invitation documents;

An individual directly assessing a tender or evaluating results of selection of contractor who deliberately makes a false report or provides untruthful information resulting in an incorrect result of selection of contractor, and incorrect signing and performance of the contract;

Any tenderer who deliberately provides false information in its tender resulting in an incorrect result of selection of contractor, and incorrect signing and performance of the contract.

- (b) A breach of article 12.14 of the Law on Tendering, and specifically:

A tenderer who uses its name, signature or seal to legalize a tender in artificial tendering aimed at allowing another tenderer to win the tendering;

A tenderer who permits another tenderer to use the former's name, signature or seal; a tenderer who uses the name, signature or seal of another tenderer in order to create a joint venture tender but after winning the tendering fails to implement the terms of the joint venture agreement; but excluding cases where the contract contains some other provision;

A tenderer transfers ten (10) per cent or more of the contracted work (after deducting the work to be undertaken by sub-contractors) to another tenderer, except in a case where there is a reasonable reason for doing so and the person making the investment decision so permits;

The investor or the consultant supervising contractor agrees to a tenderer transferring contracted work without permission from the person making the investment decision, except for the work which is the responsibility of sub-contractors as declared in the contract.

- (c) A breach of article 12.15 of the Law on Tendering.
3. Prohibition from participating in tendering for a period of from three to five years in the case of any one of the following breaches:
- (a) A breach of article 12.1 of the Law on Tendering;
  - (b) A breach of article 12.3 of the Law on Tendering;
  - (c) A breach of article 12.12 of the Law on Tendering.
4. Any organization or individual subject to five consecutive warnings shall be prohibited from participation in tendering for a period of six (6) months. If such organization or individual continues to commit a further breach of the Law on Tendering on a further two occasions, the offender shall be prohibited from participation in tendering activities for one, two or three years.

## **CHAPTER X**

### **Other Issues**

#### **Article 67**

##### **Standard forms of tendering documents**

1. Standard forms shall be stipulated for the following tendering documents: pre-qualification invitation documents applicable to tender packages for construction and installation; tender invitation documents and reports on assessment of tenders in tender packages for consultancy services, procurement of goods, and construction and installation; tendering plans; evaluation report on results of tendering, and for [some] other cases.
2. The Ministry of Planning and Investment shall be responsible for issuing standard tendering forms.

## **Article 68**

### **Warranty**

1. A contractor shall be responsible to provide a warranty for works in the case where the contract between the investor and the contractor contains construction items, and shall be responsible to provide a goods warranty in accordance with current regulations in a case where the contract between the investor and the contractor has contents regarding procurement of goods.
2. The contract must stipulate the items warranted, the term of the warranty, the relevant costs and expenses and the responsibilities of the parties (the investor and the contractor).

## **Article 69**

### **Professional tendering organizations**

A professional tendering organization as stipulated in article 9.3 of the Law on Tendering means an organization which is established and operates pursuant to the law on enterprises, the law on tendering and other relevant laws.

## **Article 70**

### **Dealing with exceptional situations in tendering**

Exceptional situations in tendering as stipulated in article 70 of the Law on Tendering shall be dealt with as follows:

1. If there are reasons requiring adjustment of the price or contents of a tender package, then the investor must conduct procedures to amend the tendering plan in accordance with law prior to the time for opening tenders, except for the case stipulated in clause 6 of this article.
2. If the estimated budget of a tender package is approved at a lower or higher sum than the approved tender package price, then the estimated budget shall replace the tender package price and provide the basis for consideration of results of selection of contractor without having to conduct procedures to adjust the tender package price in the approved tendering plan; if the estimated budget of a tender package approved by an investor is higher than the tender package price approved by the authorized person in the tendering plan, then the investor must ensure that the higher price is within the approved total invested capital of the project, otherwise an adjustment must be made to the total invested capital in accordance with law.
3. If after the deadline for submitting tenders, pre-qualification applications, expressions of interest or sets of proposals in the case of competitive quotations there are less than three tenderers who have lodged such documents, then the party calling for tenders must

immediately provide notification (directly, by telephone, by email or by written notice) to the higher level authority to resolve the issue, within a maximum of 4 hours, in one of the following ways:

- (a) By reporting to the person making the investment decision or to the person delegated with authority to make the investment decision (except in the case of competitive quotations for a package with a price below one billion dong as stipulated in sub-clause (b) below) to permit an extension of the deadline for submitting tenders, or to immediately open the tenders or equivalent documents already submitted in order to conduct an assessment of prices;
- (b) By reporting to the investor to agree to extend the deadline for submission in the hope of attracting more tenderers, or to immediately open the sets of proposals in the case of a competitive quotation for a tender package with a price less than one billion dong in order to conduct an assessment of prices.

In a case of extending the deadline, there must be clear stipulations on the new deadline and on other corresponding time-limits to enable tenderers to amend or supplement their tenders, pre-qualification applications, expressions of interest or sets of proposals in accordance with the new requirements.

In the case of a tender package within the approval authority of the Prime Minister, the authority to make the decision in the above-mentioned case shall be the minister, head of the ministerial body or other central body, or chairman of the provincial people's committee related to the project. If the investor makes his report by telephone or directly, then thereafter the investor must complete the written procedures within ten (10) days after expiry of the deadline for submitting tenders, pre-qualification applications or so forth.

- 4. If a tender package is divided into a number of sections, then the tender invitation documents must specify the conditions for tenderers to make offers for them, and the methods and value of the tender guarantee for each or all of the sections of the package, and the methods for assessing prices for each or all of the sections, in order to enable tenderers to calculate their own methods of making offers depending on their capability.

An assessment of tender prices and approval of the winning tender shall be based on the principle that the total assessment price of a tender package is the lowest, and that the winning price for the entire tender package does not exceed the approved tender package price, without making any comparisons of the estimated costs of each section of the package.

If one or more sections of a tender package do not attract any participating tenders or if no tenderer satisfies the technical requirements, then the investor shall report to the

person making the investment decision to make an adjustment to the tendering plan by separating such section or sections with the tender package price being the total estimated costs for such section/s; selection of a contractor for any such section and assessment of prices and satisfaction of technical requirements must still ensure that the total assessment price of such section is the lowest offered, and that the winning price for such section does not exceed the total estimated expenses for such section, without making a comparison with the estimated expenses of each section.

5. If a tender contains an abnormal unit price which puts the investor calling for tenders at a disadvantage, the party calling for tenders shall request the tenderer to provide a written explanation and clarification of such abnormal unit price. If the explanation provided by the tenderer is unclear or unconvincing, it shall be deemed to be a discrepancy and shall be adjusted as such in accordance with article 30 of this Decree the same as applicable to the adjustment of tender contents which are insufficient or excessive as compared to the requirements in the tender invitation documents. In the case of a tender package using ODA funds where the donor stipulates that the unit prices offered by tenderers may not be adjusted, if the party calling for tenders determines that unit prices in fact offered are abnormal and may affect the feasibility of performance of the contract, then the investor shall report to the person making the investment decision or the person delegated with authority to do so, to require the tenderer to increase the value of the guarantee for contractual performance to an amount of thirty per cent (30%) of the contract sum.
  
6. Applicable to tender packages for the procurement of goods, construction and installation, or for the selection of a general construction contractor (but not for selection of a general design contractor), if all the tender prices of tenderers exceed the approved tender package price after errors have been rectified and discrepancies adjusted, then the investor shall report to the person making the investment decision or the person delegated with authority to do so, to deal with the issue in one of the following ways:
  - (a) To permit the tenderers to make another offer on their tender prices;
  
  - (b) If necessary, at the same time as permitting tenderers to make another offer on their tender prices, to reconsider the approved tender package price and the contents of the tender invitation documents.

In the case referred to in sub-clause (a) above, the investor must specify time-limits for preparation and lodging new offers (within a maximum of 10 days) and specify provisions on opening of the new offers similar to the provisions on opening tenders in article 28.3 of this Decree. If it is necessary to adjust the tender package price in the approved tendering plan, then this must also be done within a maximum time-limit of 10 days from the date of receiving the report from the

investor, and ensuring that it is done prior to closure of the deadline for submitting the new offers.

(c) To permit adjustment of the tender package price based on the lowest tender price of a tenderer after errors have been rectified and discrepancies have been adjusted, and to invite such tenderer to negotiate but ensuring that the post-negotiation price does not exceed the tender price of such tenderer after errors have been rectified and discrepancies adjusted. The person approving such adjustment to the tender package price shall be responsible for his decision and must ensure satisfaction of the following conditions:

- Open tendering applies to such tender package;
- Tendering is held in accordance with the regulations and ensures competitiveness and transparency;
- The increased tender package price does not exceed the approved total invested capital and does not adversely impact on the effectiveness of the project.

7. In a case where only one tender is evaluated as technically responsive (applicable to tender packages for the procurement of goods, construction and installation, or for the selection of a general construction contractor but not for selection of a general design contractor) it shall not be necessary to determine the assessment price but only to determine the proposed winning tender price in order to provide the basis for consideration of the results of winning contractor; if the proposed winning price exceeds the approved tender package price, then the matter shall be resolved in accordance with clause 6 above.

8. If the results are that two tenders have the same assessed price (regarding points scored or assessment prices) then consideration shall be given to awarding the contract to the tenderer with the proposed winning tender price which is lower, except in the case of preferences stipulated in article 4.2 of this Decree.

9. If the proposed contract signing price exceeds the approved winning tender price, then the investor must provide a written report to the person who made the investment decision or to the authorized person for the latter's consideration and decision.

10. If the proposed winning tender price provided by the investor or the evaluating body is abnormal or less than fifty (50) per cent of the tender package price or the estimated budget, then prior to approving the tendering results, the person who made the investment decision or the authorized person may provide appropriate measures such as establishment of a multi-sector evaluating body to conduct a more careful evaluation of

the tender of such tenderer or to provide other appropriate measures in the contract in order to ensure feasibility of the implementation process.

11. If in a case of pre-qualification or selection of a list of tenderers to invite, there are less than three tenderers who satisfy the requirements, then depending on the specific conditions of each tender package, either one of the following two solutions shall apply:
  - (a) Report to the person making the investment decision to permit immediate issuance of the tender invitation documents to the tenderers who pre-qualified or to the tenderers on the list;
  - (b) The investor shall conduct an additional pre-qualification, or add further tenderers to the list of tenderers to be invited to participate. In such cases, the tenderers who already pre-qualified or who have been assessed as satisfying the requirements shall retain such results and shall not be required to re-submit pre-qualification applications or expressions of interest, but the party calling for tenders must require such tenderers to update their information on capability.
12. If the tender invitation documents permit a tenderer to propose other construction execution methods than those stipulated in the tender invitation documents, then such different proposals shall not be treated as errors or discrepancies to be adjusted pursuant to article 30 of this Decree; nor shall they be treated as errors or discrepancies within the meaning of article 45 of the Law of Tendering, so that tenders must not be rejected on this basis.
13. If during the process of assessment of tender prices a tenderer provides a letter reducing its price, then the assessment shall be conducted on the basis of the tender price recorded in the tender form after rectification of errors and adjustment of discrepancies, without regard to the reduction proposed in the letter. The total value after rectification of errors and adjustment of discrepancies shall be based on the tender price stipulated in the tender form.

If any exceptional situation arises other than the situations mentioned above, the investor must report to the person who made the investment decision or to the authorized person for the latter's consideration and decision.

## **Article 71**

### **Documents to be submitted for approval of results of selection of contractor**

On the basis of a consideration of the report on results of selection of contractor and the file for approval submitted by the party calling for tenders, the investor shall prepare a report and submit it to the person making the investment decision or the person delegated with authority to make the investment decision for the latter's consideration and decision. The documents

submitted by the investor for approval of the results of selection of contractor shall include the report on results of selection of contractor and other relevant data.

1. The report on results of selection of contractor shall comprise:
  - (a) Legal basis for conducting the selection of contractor;
  - (b) Contents of the tender package;
  - (c) Process of holding the selection and assessment of tenders or sets of proposals;
  - (d) Proposal on results of selection of contractor, comprising:
    - Name of proposed winning tenderer (including names of sub-contractors if necessary). In the case of a joint venture tenderer, the names of all members of the joint venture must be specified;
    - Proposed winning tender price or proposed price for implementation of the tender package (including taxes, contingencies and inflation if any);
    - Form of contract;
    - Duration for performance of the contract.

If no tenderer is successful, there must be a plan for dealing with the next stage.

2. Relevant data shall comprise:
  - (a) Copies of the investment decision and documents on which the investment decision was based; business registration certificate, investment certificate or decision on establishment, international treaties or international agreements (if any); tendering plan;
  - (b) Tender invitation documents or set of requirements;
  - (c) Decision on establishment of the expert tendering group, or contract selecting the consultancy organization or professional tendering organization;
  - (d) List of tenderers who submitted tenders or sets of proposals, and minutes of opening of tenders;
  - (dd) All tenders or sets of proposals and documents clarifying, amending or supplementing same;

- (e) Report assessing tenders or sets of proposals from the expert tendering group, consultancy organization or professional tendering organization;
- (g) Approval documents as stipulated throughout the process of selection of contractor;
- (h) Minutes of contract negotiation in the case of tender packages for consultancy services;
- (i) Opinion on results of selection of contractor from the foreign donor organization (if any);
- (k) Other relevant data.

## **Article 72**

### **Evaluation of results of selection of contractor**

1. Contents of an evaluation shall comprise:

- (a) A check of the data which was the basis for the selection of contractor;
- (b) A review of the procedures and time-limits applicable in accordance with regulations to selection of a contractor; the time-limit for publication of information on tendering, for issuing tender information documents and sets of requirements, the time-limit for preparation of tenders and sets of proposals, the deadline for closure of submission of tenders, the time for opening tenders and the time-limits for opening for receipt of, deadline for receipt of and assessing tenders and sets of proposals;
- (c) A review of the contents of assessment of tenders and sets of proposals; of minutes of assessment of observations provided by each expert, of overall reports from the expert group, tendering consultant and any professional organization; a review of compliance by the assessment of tenders and sets of proposals with the requirements in the tender invitation documents and sets of requirements and approved assessment standards, and a review of the level of accuracy of the assessment;
- (d) A detection of any unclear matters in the file submitting the results of selection of contractor for approval;

- (dd) A review of any differences of opinion between the expert group, and between consultants or the professional organization [on the one hand] with the party calling for tenders [on the other hand].
2. An evaluation report shall contain the following main particulars:
- (a) An overall view and the main contents of the project and the tender package, and the legal basis for holding selection of contractor;
  - (b) A summary of the process of holding the tendering and proposals from the body submitting the results of selection of contractor for approval;
  - (c) Observations on the legal bases for the process of holding the tendering, and on the proposals of the body making the submission for approval;
  - (d) Opinion on the results of selection of contractor or measures for resolving a case where there are insufficient bases for the conclusion on results of selection of contractor.
3. The evaluation report stipulated in clause 2 of this article shall be sent simultaneously to the person making the investment decision, the investor and the party calling for tenders.

### **Article 73**

#### **Administration of foreign contractors**

1. A foreign contractor, after being selected to implement a tender package in the territory of Vietnam, must comply with the provisions of the law of Vietnam on entry and exit, import and export of goods, registration of residence, and with the accounting and tax regimes and other relevant provisions of the law of Vietnam unless an international treaty of which Vietnam is a member contains different provisions or unless there are different provisions in an international treaty which an authorized body or organization of the Socialist Republic of Vietnam has signed.
2. Within fifteen (15) days from the date on which a contract signed with a foreign contractor takes effect, the investor of the project shall be responsible to provide a written report or to send an email (on the standard form in Appendix 2 issued with this Decree) to the Ministry of Planning and Investment and also to the ministry managing the relevant industry namely the Ministry of Construction in the case of construction and installation, and the local Department of Planning and Investment in the case of a project managed by a locality, in order for these latter authorities to monitor such project.

## **Article 74**

### **Checks of tendering activities**

1. The Ministry of Planning and Investment shall have the main responsibility to conduct checks of tendering activities throughout the whole country. Ministries, ministerial equivalent bodies, Government bodies, other central bodies, local bodies, and people's committees at all levels shall be responsible to conduct checks of tendering activities by entities within the scope of their administration and of projects for which such above-named ministry or body made the investment decision.
2. Checks of tendering activities shall be conducted on a regular basis in accordance with plans, or on a random basis (when there are difficulties or complaints) in accordance with a decision made by the authorized person of the inspecting body.
3. The contents of a check of tendering activities shall comprise:
  - (a) A check of training certificates and of professional certificates of senior staff and tendering experts, and of the legal documents forming the basis for the process of selection of contractor.
  - (b) A check of formulation of the tendering plan with the following items:
    - Legal basis;
    - Contents of the tendering plan, the legality of the division of a tender package, and the legality of the form of selection of contractor applicable to the particular tender package;
    - Progress of implementation of the tender package in accordance with the approved tendering plan; and any amendments to the tendering plan and the reasons for same;
    - Submission of tendering plan for approval and the approval.
  - (c) A check of the holding of selection of contractor in order to implement a tender package with the following items:
    - Compliance with the approved legal bases being the tendering plan, tender invitation documents or set of requirements;
    - Implementing procedures and time schedules.

- (d) Identification of any problems during tendering work and proposals on measures to remedy same.
4. On the conclusion of any check, there must be a report on the results of the check. The inspecting body shall be responsible to monitor any measures taken to remedy problems stipulated in the conclusions in such report.
5. A report on a check shall comprise the following items:
- (a) Legal basis;
  - (b) Results of the check;
  - (c) Observations;
  - (d) Recommendations.

#### **Article 75**

##### **Supervision of tendering activities by the community**

Supervision of tendering activities by the community shall be implemented in accordance with the law on supervision of investment by the community.

### **CHAPTER XIII Implementing Provisions**

#### **Article 76**

##### **Implementing guidelines**

1. In the case of projects (other than important national projects) for which the Prime Minister of the Government approved the investment decision prior to the date of effectiveness of this Decree, responsibility to approve subsequent tendering contents of such projects shall lie with the managing minister, head of ministerial equivalent body or other central body, chairman of a provincial people's committee or board of management of the State enterprise.
2. Tender invitation documents, sets of requirements and notices calling for expressions of interest which were issued prior to the date on which this Decree takes affect shall be implemented in accordance with the Law on Tendering and Decree 111-2006-ND-CP of the Government dated 29 September 2006. Any such items issued on or after the date on which this Decree takes affect shall be implemented in accordance with the Law on Tendering and this Decree.

3. Publication of information on the Tendering Newsletter and the tendering website, tendering via the internet, certificates of participation in tendering courses, and standard forms for tendering data shall be implemented in accordance with guidelines of the Ministry of Planning and Investment.
4. Implementation of article 1.2 of the Law on Tendering on projects financed by the State for procurement of assets for the purpose of maintaining regular activities of State bodies, political organizations, socio-political organizations, social organizations, socio-political-occupational organizations and units of the armed forces shall be implemented in accordance with guidelines of the Ministry of Finance.
5. Procedures for import and export of goods applicable to winning contractors shall be implemented in accordance with guidelines of the Ministry of Industry and Trade.
6. The Ministry of Labour, War Invalids and Social Affairs shall preside over coordination with the Ministry of Finance and other relevant administrative bodies to issue regulations on salary levels of all types of domestic consultancy experts as the basis for determining consultancy contract sums and for applying the form of unit price contract pursuant to article 51 of the Law on Tendering and article 50 of this Decree.
7. Ministries, ministerial equivalent bodies, Government bodies, other central level bodies and provincial level people's committees shall be responsible, within the scope of their administrative powers, to provide guidelines when necessary on a number of provisions in this Decree, ensuring that such guidelines are not inconsistent with the provisions in this Decree.
8. Ministers, heads of ministerial bodies and other central bodies and chairmen of provincial people's committees shall each appoint a deputy to be directly responsible for tendering work within the scope of the industry or locality managed by such minister, head or chairman. Any problems arising during the process of implementation of this Decree should be reported to the Prime Minister of the Government for his consideration and decision. Ministries, ministerial equivalent bodies, Government bodies, other central bodies, provincial people's committees and enterprises established pursuant to a decision of the Prime Minister shall provide annual reports on the status of conducting tendering work to the Ministry of Planning and Investment in order for the latter to provide an overall report to the Prime Minister of the Government.

#### **Article 77**

##### **Effectiveness**

This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette. As from the date this Decree takes effect, Decree 111-2006-ND-CP of the Government dated 29 September 2006 shall no longer be effective. Any previous

provisions issued by the Government, ministries, ministerial equivalent bodies or localities which are contrary to the provisions in the Law on Tendering, the Law on Construction, and this Decree are hereby repealed.

For the Government  
Prime Minister  
NGUYEN TAN DUNG  
*(signed and sealed)*