

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom – Happiness

No. 85/2009/ND-CP

Hanoi, October 15, 2009

DECREE

**GUIDING THE BIDDING LAW AND THE SELECTION OF CONSTRUCTION CONTRACTORS
UNDER THE CONSTRUCTION LAW**

THE GOVERNMENT

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

Pursuant to November 29, 2005 Bidding Law No. 61/2005/QH11 and November 26, 2003 Construction Law No. 16/2003/QH11 of the National Assembly;

Pursuant to June 19, 2009 Law No. 38/2009/ QH12 of the National Assembly, amending and supplementing a number of articles of the laws concerning capital construction investment;

At the proposal of the Minister of Planning and Investment and the Minister of Construction.

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.

Scope of regulation

1. This Decree guides November 29, 2005 Bidding Law No. 61/2005/QH11, and June 19, 2009 Law No. 38/2009/QH12 of the National Assembly, amending and supplementing a number of articles of the laws concerning capital construction investment (below referred to as the Amending Law), and the selection of construction contractors under November 26, 2003 Construction Law No. 16/2003/QH11 of the National Assembly.

2. The selection of contractors for bidding packages of ODA-funded projects complies with Clause 3, Article 3 of the Bidding Law. The procedures for submission, appraisal and approval of relevant contents in the course of contractor selection comply with this Decree.

Article 2.

Interpretation of terms

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

1. Use of state capital referred to in Clause 1, Article 1 of the Bidding Law covers spending in the form of purchase, hire or hire-purchase. The state capital portion of 30% or more in the total investment or investment capital amount of an approved project shall be determined based on

each specific project but not on the amount of contributed state capital in the total registered capital of the enterprise.

2. Dossier of requirements means the entire documentation used for contractor appointment, competitive offers, direct procurement or contractor selection in special cases, including requirements for a bidding package which serve as legal grounds for contractors to prepare dossiers of proposals and for the bid solicitor to evaluate such proposals in order to select a contractor that satisfies the requirements in the dossier of requirements; and serve as a basis for the negotiation. Finalization and conclusion of contracts. Investors shall decide on contents of dossiers of requirements.

3. Dossier of proposals means the entire documentation prepared and submitted by a contractor based on the dossier of requirements. For the form of competitive offers, dossiers of proposals are also referred to as price advices.

4. Contractor selection results means results of open or restricted bidding or other forms of selection.

5. Violation of the bidding law means an act of failure to comply or fully comply with the provisions of the bidding law.

6. Bidding participation means contractors' participation in open or restricted bidding.

7. Bidding package for selection of general construction contractor covers the selection of a general contractor to undertake an engineering (E) bidding package; a construction (C) bidding package; an engineering and construction (EC) bidding package; an engineering, procurement and construction (EPC) bidding package; and the formulation of projects, engineering, procurement and construction (turn-key).

8. Validity term of bid or dossier of proposals-means the number of days counted from the date of bidding closure or the deadline for submission of dossiers of proposals (counting from the time of bidding closure or the deadline for submission of dossiers of proposals to the 24th hour of the same day) to the 24th hour of the final effective date stated in the bidding dossier or dossier of requirements.

9. Validity term of bid security equals the validity term of a bid dossier plus 30 days, counted in days from the date of bidding closure (counting from the time of bidding closure to the 24th hour of the same day) to the 24th hour of the final effective date stated in the bidding dossier.

10. Short list means a list of contractors invited to participate in bidding in case of restricted bidding, a list of pre-qualified contractors or a list of contractors with dossiers of expression of interest which have been evaluated as meeting requirements of dossiers of invitation to interested parties.

11. Investment report and work construction investment project report in construction activities are respectively construed as a pre-feasibility study report and feasibility study report.

Article 3.

Assurance of competition in bidding

Assurance of competition and its implementation roadmap are implemented as follows:

1. Contractors participating in bidding and consultancy contractors for the compilation of bidding dossiers and evaluation of bids; contractors performing contracts and consultancy contractors for the supervision of contract performance shall be regarded as being organizationally independent, no dependent on the same management agency and financially independent under Clause 2, Article 2 of the Amending Law when fully meeting the following conditions:

a/ They are enterprises operating under the Enterprise Law or their establishment decisions have not been directly issued by the same agency or unit;

b/ They do not hold more than 30% of shares or contributed capital of each other.

2. Investors and contractors participating in bidding for bidding packages of the same project shall be regarded as being organizationally independent, non-dependent on the same management agency and financially independent under Clause 2, Article 2 of the Amending Law when fully meeting the following conditions:

a/ For contractors operating under the Enterprise Law: They do not hold more than 50% of shares or contributed capital of each other;

b/ For contractors being non-business units: Their establishment decisions have not been directly issued by the same agency or unit and they must be financially autonomous and accountable when providing services and goods;

c/ For contractors being state enterprises established under the 2003 Law on State Enterprises and subject to transformation under the Enterprise Law: They do not hold more than 50% of shares or contributed capital of each other from the deadline for transformation under decisions of competent authorities.

Contractors being state enterprises operating in special sectors or domains in which the State needs to hold the controlling stake shall comply with the Prime Minister's regulations.

Article 4.

Incentives in international bidding

1. Incentives in international bidding provided for in Article 14 of the Bidding Law are granted as follows:

a/ For consultancy service bidding packages: Contractors eligible for incentive have the total points of their bids added with 7.5% of that total; for consultancy service bidding packages involving hi-tech requirements, contractors' technical points are added with 7.5% of those points;

b/ For construction and installation bidding packages: Evaluation prices of bids submitted by contractors ineligible for incentive shall be added with a sum of money equal to 7.5% of bidding prices after errors and flaws of those contractors are corrected and adjusted respectively;

c/ For procurement bidding packages: Evaluation prices of bids submitted by contractors ineligible for incentive shall be added with a sum of money equal to the value of import duty and import-related charges and fees payable under law, which, however, must not exceed 15% of goods prices. Incentives are not applicable to goods subject to import duty or import-related charges and fees under regulations;

d/ For bidding packages for selection of general engineering contractors, the determination of incentives is pursuant to Point a of this Clause. For other bidding packages for selection of general construction contractors, the determination of incentives is pursuant to Point b of this Clause.

2. When bids of foreign contractors are ranked equal, a higher rank will be given to the bid proposing higher domestic expenses. When bids of a domestic contractor and a foreign contractor are ranked equal following the application of incentives under Clause 1 of this Article, a higher rank will be given to the bid of the domestic contractor.

Article 5.

Training and re-training in bidding operations

1. Trainees

a/ Individuals directly involved in bidding operations requiring bidding operation training or re-training certificates, except contractors;

b/ Other individuals who wish to possess such certificates.

2. Conditions for establishments to organize training and re-training activities

a/ Having business registration certificates or establishment decisions, for establishments having no business registration certificates as prescribed by law;

b/ Having a contingent of bidding trainers satisfying standards set by state management agencies in charge of bidding.

3. Conditions for grant of bidding certificates

a/ Certificates are only granted to trainees who attend all bidding training sessions and pass examinations or tests;

b/ A bidding training course, after which certificates will be granted, must last for at least 3 days.

4. Responsibilities and obligations of bidding training establishments

a/ To be responsible for training quality; to provide information on their own establishments to the database according to Point b, Clause 2 of this Article;

b/ To carry out training and re-training activities based on the bidding training framework program and grant training certificates to trainees under regulations;

c/ To archive dossiers on bidding training or retraining courses they have organized under regulations;

d/ To annually report on their bidding training and retraining activities to the Ministry of Planning and Investment, concerned ministries, branches or localities for monitoring and sum-up.

5. Organization and management of bidding operation training and re-training activities

The Ministry of Planning and Investment shall organize and manage bidding operation training and re-training activities under Clause 5, Article 68 of the Bidding Law, specifically:

a/ Summing up training and re-training activities of training establishments based on annual bidding reports of ministries, branches and localities and reports of these establishments;

b/ Building and managing a database of bidding training establishments on the basis of information provided by these establishments;

c/ Building and managing a database of bidding experts;

d/ Issuing regulations on the framework program on bidding training, certificates, criteria for bidding trainers, and archive of dossiers on bidding training and retraining courses;

e/ Organizing and supporting bidding operation training and retraining activities.

Article 6.

Bidding expenses

1. The sale price (tax inclusive) of a bidding dossier set shall be decided by the investor based on the size and characteristics of the bidding package but must not exceed VND 1,000,000 for domestic bidding. For international bidding, that price must comply with international bidding practice.

2. The expense for appraisal of contractor selection results, even when no contractor is selected, is equal to 0.01% of the bidding package price, but must be between VND 1,000,000 and VND 50,000,000.

3. The expense for the Advisory Council to deal with a contractor's complaint concerning bidding results is 0.01% of the bidding price offered by that contractor, but must be between VND 2,000,000 and VND 50,000,000.

The management and use of expenses specified in Clauses 1 and 2 of this Article comply with current provisions of law.

Article 7.

Bidding Newspaper and bidding website

1. The Bidding Newspaper is a non-business unit having revenues.

2. The Bidding Newspaper is a daily.

3. Provision of bidding information

a/ Responsibility to provide information

- Ministries, ministerial-level agencies, other central agencies and People's Committees at all levels shall provide information specified at Points g and h, Clause 1, Article 5 of the Bidding Law:

- Investors and bid solicitors shall provide information specified at Points a thru f and Point h, Clause 1, Article 5 of the Bidding Law.

b/ Time limit for information provision

With regard to notices of invitation for pre-qualification. bids, dossiers of expression of interest, and offers, information must be provided at least 3 working days before the intended date of publication of such information. Other information specified in Clause 1, Article 5 of the Bidding Law must be provided within 7 days after the signing of relevant documents.

The Ministry of Planning and Investment shall guide the provision of information and the timing and expenses for publication of bidding information on the Bidding Newspaper and bidding website.

Article 8.

Provisions on bidding time limits

1. Bidding time limits must comply with Article 31 of the Bidding Law. Clause 6, Article 2 of the Amending Law and the following specific provisions:

a/ Investors shall approve dossiers of requirements within 10 days from the date of receipt of bid solicitors' written requests for approval of dossiers of requirements or reports on appraisal of dossiers of requirements (if any);

b/ Investors shall approve bidding dossiers, approve or give opinions on the handling of contractor selection results within 10 days from the date of receipt of appraisal reports of appraisal agencies or organizations;

c/ The validity term of a bid must be specified in the bidding dossier but not exceed 180 days from the bidding-closing time. In case of necessity to extend the validity term of a bid, the contractor may be requested to grant a single or multiple extensions, provided that the total duration of all requested extensions must not exceed 30 days according to Clause 4, Article 31 of the Bidding Law.

2. In the course of implementation, the following bidding contents may be performed simultaneously: pre-qualification of contractors and compilation of bidding dossiers; approval of bidding dossiers and notification of invitation for bids; notification of bidding results and contract negotiation and finalization.

Chapter II

BIDDING PLAN

Article 9.

Bases for elaboration of a bidding plan

1. The investment decision or investment certificate and relevant documents;

For a bidding package which needs to be implemented before the investment decision is issued, the decision of the head of the project-preparing agency can be used as a basis.

2. Treaties or international agreements, for ODA-funded projects.
3. The approved design and cost estimate (if any).
4. Capital sources for the project.
5. Relevant legal documents (if any).

Article 10.

Contents of each bidding package in a bidding plan

The division of a project into bidding packages complies with Clause 4, Article 6 of the Bidding Law, and ensures that the size of each bidding package is neither too small nor too big as this may restrict the participation of contractors. Details of a bidding package include:

1. Title of a bidding package

The title of a bidding package indicates its characteristics, contents and scope of job, which are consistent with the contents of the project. When all conditions are met and depending on particularities of the project, a bidding package may include formulation of a pre-feasibility study report, a feasibility study report and the technical design. When a bidding package consists of separate parts (lots), the bidding plan should also indicate the title of each part.

2. Bidding package price

a/ The bidding package price is determined on the basis of the approved total investment level or total investment capital or cost estimate (if any) and relevant regulations;

b/ For consultancy service bidding packages for formulation of pre-feasibility study reports and feasibility study reports, the bidding package price is determined on the basis of information on the average price according to statistics of related projects already implemented in the sector in a given period of time; the estimated total investment capital based on investment ratio norms of projects in each specialized domain; and the preliminarily calculated total investment capital;

c/ For a bidding package consisting of separate lots, the estimated value of each part in the bidding package price must be clearly stated.

3. Capital sources

Capital sources or the mode of arranging capital for payment to contractors must be clearly identified (breach bidding package. When ODA capital is used, the name of the donor and the capital structure (domestic and foreign) must be stated.

4. Form of contractor selection and mode of bidding

The form of contractor selection (for domestic or international bidding, pre-qualification, invitation of interested parties, selection of individual consultants, if any) provided for in Articles 18 thru 24 of the Bidding Law, Clause 4, Article 2 of the Amending Law, and Article 97 of the Construction Law; and the mode of bidding provided for in Article 26 of the Bidding Law, must be stated.

5. Time of selection of contractors

The time of selection of contractors to undertake a bidding package according to schedule must be stated. The time of selection of contractors shall be counted from the date of issuing bidding dossiers or dossiers of proposals to the date of entry into contract. For open bidding involving the making of a short list, the time of selection of contractors shall be counted from the date of issuing dossiers of invitation for prequalification or dossiers of invitation for expression of interests to the date of entry into contract.

6. Forms of contract

Depending on the characteristics of the bidding package, the applicable form of contract must be identified pursuant to Articles 49 thru 53 of the Bidding Law and Article 107 of the Construction Law. In case a bidding package consists of many jobs corresponding to different forms of contract, the contract for this package may consist of these forms of contract.

7. Contract performance duration

The duration of performance of a contract shall be counted from the date the contract takes effect to the date the parties fulfill the contractual obligations, ensuring that the execution of the bidding package accords with the project implementation schedule.

Article 11.

Submission of a bidding plan for approval

1. Submission responsibility

The investor shall submit a bidding plan to the competent person or a person authorized to decide on investment for consideration and approval; and concurrently send that plan to the appraisal agency or organization. When submitting the bidding plan to the Prime Minister, the investor shall also send it to a relevant line ministry for making written comments to the Prime Minister for consideration and approval.

For consultancy service bidding packages executed before the investment decision is issued and in case the investor has been identified, the unit attached to the investor shall submit a bidding plan to the head of its investing agency for consideration and approval. In case the investor is not yet identified, the unit assigned to prepare the project shall submit a bidding plan to the head of its agency for consideration and approval. The head of the concerned investing agency and the head of the unit assigned to prepare the project shall designate a subordinate unit to appraise the bidding plan before approving it.

2. Dossier submitted for approval

a/ The document submitting a bidding plan for approval indicates:

- Jobs already done, including those related to project preparation and bidding packages executed in advance with their respective values and legal grounds;
- Jobs to which none of the forms of contractor selection prescribed in Articles 18 thru 24 of the Bidding Law, Clause 4, Article 2 of the Amending Law, and Article 97 of the Construction Law is applicable;
- Jobs specified in the bidding plan, with their contents and values constituting bidding packages to be executed in any of the forms of contractor selection prescribed in Articles 18 thru 24 of the

Bidding Law, Clause 4, Article 2 of the Amending Law, and Article 97 of the Construction Law, including such jobs as mine, bomb and explosive sweeping, building of resettlement areas, preparation of construction sites, work insurance, and training; and grounds for division of the project into bidding packages; and all contents specified in Article 10 of this Decree for each bidding package.

For a bidding package not subject to open bidding, the investor shall clearly state in the bidding plan-submitting document the reason(s) for the application of another form of contractor selection pursuant to the Bidding Law, the Construction Law, the Amending Law and this Decree. For a bidding package of a value within the limit eligible for the form of contractor appointment or subject to the form of contractor appointment under Clause 4, Article 2 of the Amending Law and Clause 1, Article 40 of this Decree due to other special requirements, the investor shall assure that contractor appointment is more efficient than open bidding by quantifying the benefits of socio-economic and other elements.

- Jobs ineligible for elaboration of a bidding plan (if any): their contents and values.

The total value of jobs already done, jobs to which no form of contractor selection is applicable, jobs falling under the bidding plan and jobs ineligible for elaboration of a bidding plan (if any) must not exceed the total investment of the project.

When necessary to make a bidding plan for one or some bidding packages to be executed in advance under Clause 2, Article 6 of the Bidding Law, the bidding plan-submitting document must still contain the contents specified in this Clause.

b/ Documentation enclosed with the bidding plan-submitting document

Upon submitting a bidding plan, the investor shall enclose copies of documentation used as a basis for the elaboration of that plan as prescribed in Article 9 of this Decree.

Article 12.

Appraisal and approval of a bidding plan

1. Appraisal of a bidding plan

a/ Appraisal of a bidding plan means examination and assessment of the contents specified in Articles 9, 10 and 11 of this Decree;

b/ The appraisal agency or organization shall make a report on appraisal results in compliance with Article 65 of the Bidding Law and submit it to a competent person for approval.

2. Approval of a bidding plan

The competent person or the person authorized to decide on investment: the head of the project-investing agency or the head of the unit assigned to prepare the project in case the bidding package is executed before the investment decision is issued shall approve the bidding plan within 10 days after receiving the report of the appraising agency or organization. The Prime Minister's approval of the bidding plan complies with the Government's Working Regulation.

Chapter III

PRE-QUALIFICATION OF CONTRACTORS

Article 13.

Application of pre-qualification

1. Based on the characteristic and size of a bidding package, pre-qualification of contractors may be conducted under Clause 7, Article 2 of the Amending Law to select capable and experienced contractors that meet requirements of the bidding package and invite them to participate in the bidding.
2. Pre-qualification of contractors must be approved by competent persons in bidding plans.

Article 14.

Order of pre-qualification

1. Compilation of a dossier of invitation for pre-qualification

The bid solicitor shall compile a dossier of invitation for pre-qualification and submit it to the investor for approval. The dossier of invitation for pre-qualification contains information on the bidding package and the following requirements for contractors:

- a/ Requirements on technical capability;
- b/ Requirements on financial capability;
- c/ Requirements on experience.

Pre-qualification dossiers are evaluated on the basis of the "pass" or "fail" criterion, which must be stated in the dossier of invitation for pre-qualification and include criteria for each of the requirements on technical capability, financial capability and experience.

For construction and installation bidding packages and bidding packages for selection of general construction contractors, excluding general engineering contractors, criteria for evaluation of pre-qualification dossiers must also conform to construction activity capability requirements under the construction law.

2. Notice of invitation for pre-qualification

A notice of invitation for pre-qualification (including an English version for international bidding) must be published on the Bidding Newspaper in 3 consecutive issues and on the bidding website. Apart from being published on these media, such an invitation may also be published on other mass media.

Dossiers of invitation for pre-qualification shall be supplied free of charge to contractors from the first date of publication of the notice of invitation for pre-qualification till the date of expiration of the time limit for submission of pre-qualification dossiers (closure of pre-qualification). Bid solicitors that fail to distribute dossiers of invitation for pre-qualification under regulations or take any action to prevent contractors from receiving such dossiers shall be handled under Point 1, Clause 1, Article 65 of this Decree.

3. Receipt and management of pre-qualification dossiers

The time for preparation of pre-qualification dossiers must be at least 10 days for domestic bidding or 20 days for international bidding, counted from the first date of issuance of the dossier of invitation for pre-qualification.

The bid solicitor shall receive pre-qualification dossiers from contractors and manage them under regulations. Pre-qualification dossiers submitted in compliance with the requirements of the dossier of invitation for pre-qualification shall be opened publicly right after the closure of pre-qualification. Pre-qualification dossiers submitted after the closure of pre-qualification will be regarded as invalid and rejected.

4. Evaluation of pre-qualification dossiers

The bid solicitor shall evaluate pre-qualification dossiers according to criteria stated in the dossier of invitation for pre-qualification.

5. Submission and approval of pre-qualification results

The bid solicitor shall submit pre-qualification results to the investor for approval.

6. Notification of pre-qualification results

After the investor approves pre-qualification results, the bid solicitor shall notify in writing those results to the contractors who have participated in pre-qualification and invite contractors who have passed pre-qualification to bidding.

Chapter IV

OPEN BIDDING AND RESTRICTED BIDDING FOR CONSULTANCY SERVICE BIDDING PACKAGES

Section I. PROCESS OF BIDDING FOR INSTITUTIONAL CONTRACTORS

Article 15.

Bidding preparation

1. Selection of a short list

Depending on characteristics and specific conditions of each bidding package, when undertaking open bidding, the investor may either promptly issue a notice of invitation for bids under Point a, Clause 4 of this Article or apply the procedure of selecting a short list, which however, must be approved by the competent person in the bidding plan. The procedure of selecting a short list is as follows:

a/ For open bidding:

- The investor shall approve the dossier of invitation for expression of interest with the requirements on professional capability and number of experts and requirements on experience;

- Dossiers of expression of interest shall be evaluated on the basis of the "pass" or "fail" criterion, which must be stated in the dossier of invitation for expression of interest and include criteria for professional capability and numbers of experts; and criteria for experience;

- The notice of invitation for expression of interest (including an English version for international bidding) must be published on the Bidding Newspaper in 3 consecutive issues and on the bidding website. Apart from publication under the above provisions, such an invitation may also be published on other mass media;

- From the first date of publication of the notice of invitation for expression of interest, the bid solicitor shall distribute free of charge the dossier of invitation for expression of interest to interested contractors till the deadline for submission of dossiers of expression of interest;

Bid solicitors that fail to distribute dossiers of invitation for expression of interest under regulations or take any action to prevent contractors from receiving such dossiers shall be handled under Point 1, Clause 1, Article 65 of this Decree.

- The period for contractors to prepare dossiers of expression of interest is at least 10 days for domestic bidding or 20 days for international bidding, counted from the first date of distribution of dossiers of expression of interest;

- The bid solicitor shall evaluate dossiers of expression of interest submitted by contractors according to the evaluation criteria, select and submit to the investor for approval a short list.

b/ For restricted bidding:

The bid solicitor shall select a short list of at least 5 contractors that are regarded as fully capable and experienced (under Article 19 of the Bidding Law) and wish to participate in bidding, and submit the list to the investor for approval.

2. Compilation of bidding dossiers

a/ Bases for compilation of a bidding dossier:

- The investment decision or investment certificate and relevant documents;
- The approved bidding plan;
- Legal provisions on bidding and relevant legal provisions; treaties or international agreements (if any), for ODA-funded projects;
- State policies on tax, salary and incentives in international bidding or relevant regulations.

When the bidding package needs to be executed before the issuance of an investment decision, the investor or unit assigned to prepare the project shall base itself on relevant documents to compile a bidding dossier and submit it to the head of the investing agency or the head of the unit assigned to prepare the project for approval.

b/ Contents of a bidding dossier:

A bidding dossier must cover the contents specified in Clause 2, Article 32 of the Bidding Law and be made according to the form issued by the Ministry of Planning and Investment, including important requirements (prerequisites) for rejection of bids. Specifically:

- The contractor is not on the list of purchasers of bidding dossiers or fail to meet the requirements set forth in Clause 2, Article 17 of this Decree;

- The contractor fails to ensure its eligibility according to Article 7 of the Bidding Law;
- The contractor participating in a construction consultancy bidding package fails to meet the construction capability conditions under the construction law;
- The original bid is unavailable;
- The application for bidding participation is invalid;
- The bid contains unfixed or different tenders;
- The bid fails to meet the validity requirements as stated in the bidding dossier;
- The contractor is named in two or more bids as principal contractor (independent or partnership contractor);
- The contractor commits any of prohibited acts in bidding as specified in Article 12 of the Bidding Law and Clauses 3 and 21, Article 2 of the Amending Law;
- Other peculiar important requirements of the bidding package.

Contractors that fail to satisfy any of the prerequisites stated in the bidding dossier will be rejected and their bids will not be further considered.

3. Approval of a bidding dossier

Based on the appraisal report of the appraisal agency or organization, the investor shall approve the bidding dossier under Clause 19, Article 2 of the Amending Law.

4. Invitation for bids

a/ Notice of invitation for bids:

In case of non-application of the procedure of selecting a short list, the investor shall publish a notice of invitation for bids (including an English version for international bidding) on the Bidding Newspaper in 3 consecutive issues and on the bidding website. Apart from publication according to the above provision, such an invitation may also be published on other mass media.

b/ Sending of letters of invitation for bids:

The bid solicitor shall send letters of invitation for bids to contractors on the short list under Clause 1 of this Article. A letter of invitation for bids is made according to the form provided in Appendix II to this Decree (not printed herein). The duration from the time of sending letters of invitation for bids to contractors to the time of distribution of bidding dossiers is at least 5 days for domestic bidding or 7 days for international bidding.

Article 16.

Bid evaluation criteria

1. For consultancy service bidding packages without hi-tech requirements, including those for construction consultancy services under the Construction Law:

a/ Technical evaluation criteria: To use a point scale (100, 1,000...) for the evaluation of the following contents:

- Experience and capability of a contractor. This content requires 10% - 20% of the total points;
- Solutions and methodology to be applied to meet the requirements of a bidding package. This content requires 30% - 40% of the total points;
- Contractor's personnel for execution of a bidding package. This content requires 50% -60% of the total points.

The required minimum technical points must be determined but not lower than 70% of the total points. A bid with technical points not lower than the required minimum points is regarded meeting the technical requirements.

b/ Financial evaluation criteria:

To use a point scale (100, 1,000...) in conformity with the technical point scale. Financial points required for each bid are determined as follows:

Lowest P x (100; 1,000...)
P in consideration

In which:

- The lowest P means the lowest bidding price after correction of errors and adjustment of flaws, which is offered by the contractor that passes the technical evaluation;
- P in consideration means the bidding price after correction of errors and adjustment of flaws of the bid in consideration.

c/ General evaluation criteria:

- General evaluation criteria are formulated on the basis of technical and financial evaluation criteria, of which the technical points must not be lower than 70% of the total points while the financial points must not be higher than 30% of the total points;

- The general points of a bid are determined according to the following formula:

$$\text{General points} = D_{\text{technical}} \times (K\%) + D_{\text{financial}} \times (G\%)$$

In which:

- K%: the percentage of technical points (on the general point scale);
- G%: the percentage of financial points (on the general point scale);

- $D_{\text{technical}}$: the number of points of the bid which is determined at the technical evaluation stage under Point a of this Clause;

- $D_{\text{financial}}$: the number of points of the bid which is determined at the financial evaluation stage under Point b of this Clause.

2. For consultancy service bidding packages, including those for construction consultancy services under the Construction Law, with hi-tech requirements:

Technical evaluation criteria shall be formulated pursuant to Point a, Clause 1 of this Article whereby the minimum technical points must not be lower than 80% of the total technical points.

Article 17.

Organization of bidding

1. Distribution of bidding dossiers

a/ The bid solicitor shall sell bidding dossiers till the time of bidding closure to contractors participating in open bidding (in case of non-application of the procedure of selecting a short list) or short-listed contractors at the price specified in Clause 1, Article 6 of this Decree. For a partnership of contractors, only one partner needs to buy the bidding dossier.

Bid solicitors that fail to sell bidding dossiers under regulations or take any action to prevent contractors from purchasing bidding dossiers shall be handled under Point 1, Clause 1, Article 65 of this Decree.

b/ Modification and clarification of bidding dossiers must comply with Clause 1 of Article 33, and Article 34 of the Bidding Law.

2. Preparation of bids

Contractors shall prepare and submit bids as required by the bidding dossier. When a contractor needs to change its bidding participation status (name) which is different from that it has registered at the time of purchasing the bidding dossier, it shall notify that in writing to the bid solicitor. The bid solicitor shall consider it in the following cases:

- For open bidding, it shall accept the status change when receiving such written notice before the time of bidding closure;

- For restricted bidding, through the step of selecting a short list, on a case-by-case basis, the bid solicitor shall consider and report to the investor for decision whether or not to accept the contractor's status change before the time of bidding closure, while ensuring competitiveness, equality and transparency in bidding.

3. Receipt and management of bids

The bid solicitor shall receive and manage submitted bids under regulations on management of "confidential" dossiers. Bids sent to the bid solicitor after the time of bidding closure are all regarded invalid and rejected. Any documents sent by contractors after the time of bidding closure as amendments or supplements to submitted bids are regarded invalid (except verification of bids at the request of the bid solicitor).

4. Modification or withdrawal of bids

If wishing to modify or withdraw their submitted bids, contractors shall make written requests and the bid solicitor shall approve the modifications only if they receive these requests before the time of bidding closure. Written requests for the withdrawal of bids must be sent separately from bids.

5. Opening of technical proposal dossiers

a/ Bids shall be opened publicly right after the time of bidding closure on the date and at the time and place indicated in the bidding dossier to the witness of all attendants, regardless of the presence or absence of the invited contractors. The bid solicitor may invite representatives of concerned agencies to attend the bid opening;

b/ The bid solicitor shall open the technical proposal dossier of each contractor according to their names in the alphabetical order and the following order:

- Checking the seal;
- Opening the dossier, reading and writing in a written record the following principal information:
 - + The name of the contractor;
 - + The number of originals and number of copies of the dossier;
 - + The validity term of the dossier;
 - + The written request for dossier modification (if any);
 - + Other relevant information.

The bid opening record must be signed for certification by representatives of contractors, of the bid solicitor and concerned agencies attending the bid opening.

After opening a bid, the bid solicitor shall sign for certification on every page of the original dossier of technical proposals and manage it under regulations on management of "confidential" dossiers. Technical proposal dossiers shall be evaluated using their copies.

Contractors shall take responsibility for the accuracy and consistency of the copies with the originals as well as for the seals of their bids.

Article 18.

Evaluation of bids

Evaluation of bids for consultancy service bidding packages, including those for construction services under the Construction Law, shall be based on the evaluation criteria and other requirements stated in the bidding dossier, the evaluation principles prescribed in Article 28 of the Bidding Law and the evaluation order provided for in Article 35 of the Bidding Law and Clause 9, Article 2 of the Amending Law.

After bids are opened, contractors shall clarify their bids when so requested by the bid solicitor under Article 36 of the Bidding Law. In case a bid lacks such documents as business registration

certificate, investment certificate, establishment decision, appropriate professional qualification certificate and other documents as required by the bidding dossier, the bid solicitor shall request contractors to add documents to prove their eligibility status, capability and experience without changing principal contents of their submitted bids or tenders.

1. Preliminary evaluation

a/ Checking the validity of a dossier of technical proposals according to the requirements of the bidding dossier:

- Validity of the application for bidding participation: The application must be completed and signed by a lawful representative of the contractor according to the requirements of the bidding dossier. For a partnership of contractors, the application must be signed by the lawful representative of each partner or by the partner leading the partnership as provided for in the partnership agreement document;

- Validity of the partnership agreement: The partnership agreement must clearly define responsibilities, powers, work volume to be performed and the corresponding value of each partner, including the leader of the partnership, and his/her responsibilities and signatures of all partners and their stamps (if any);

- Availability of any of valid papers as required by the bidding dossier: business registration certificate, investment certificate, establishment decision, lawful operation registration paper or appropriate professional qualification certificate;

- The number of originals and number of copies of the dossier of technical proposals;

- The appendices and documents enclosed with the bid.

b/ Rejecting bids which fail to meet important requirements (prerequisites) stated in the bidding dossier specified at Point b, Clause 2, Article 15 of this Decree.

2. Detailed evaluation

a/ Evaluating bids for consultancy service bidding packages, including those for construction consultancy under the Construction Law, without hi-tech requirements:

- Technical evaluation:

Conducting technical evaluation according to the evaluation criteria set in the bidding dossier. The investor shall approve a list of contractors that satisfy technical requirements for financial evaluation.

- Financial evaluation:

Opening publicly dossiers of financial proposals of contractors that satisfy technical requirements in the order specified at Point b, Clause 5, Article 17 of this Decree. A written record of opening of dossiers of financial proposals contains the following principal information:

- + The names of contractors;

- + The number of originals and number of copies of the dossiers;

- + The bidding prices indicated in the applications for bidding participation;
- + Technical points of bids meeting the minimum requirements;
- + Other relevant information.

After opening bids, the bid solicitor shall sign for certification on every page of the original dossier of financial proposals of each bid and manage those dossiers under regulations on management of "confidential" dossiers. Financial evaluation shall be conducted using the copies and contractors shall take responsibility for the accuracy and the consistency of the copies with the originals as well as for the sealing of dossiers of financial proposals. Financial evaluation shall be based on the relevant evaluation criteria stated in the bidding dossier.

- General evaluation:

General technical and financial evaluation shall be conducted according to the general evaluation criteria indicated in the bidding dossier. The contractor that gets the highest general point shall be proposed by the bid solicitor to the investor for being ranked first and invited to negotiate a contract under Article 19 of this Decree.

b/ Evaluation of bids for consultancy service bidding packages, including those for construction consultancy services under the Construction Law, with hi-tech requirements:

Dossiers of technical proposals shall be evaluated according to the criteria stated in the bidding dossier prescribed at Point a, Clause 2 of this Article. Bids which get technical points not lower than the required minimum points shall be regarded satisfying the technical requirements and ranked by the bid solicitor for submission to the investor for approval. The first-ranking contractor shall be invited to open the dossier of financial proposals and to negotiate a contract under Article 19 of this Decree.

Article 19.

Negotiation of contracts

1. Based on the investor's decision, the bid solicitor shall invite the first-ranking contractor to negotiate a contract.

2. Contents of negotiation of a contract

a/ The tasks and scope of specific jobs to be performed by the consultancy contractor;

b/ Technology transfer and training;

c/ The working plan and arrangement of personnel;

d/ The schedule;

e/ The handling of changes in personnel (if any);

f/ The assurance of working conditions; g/ Consultancy service charges; hi Other contents (when necessary).

If the contract negotiation fails, the bid solicitor shall report it to the investor for consideration and decision on the invitation of the next-ranking contractor for negotiation.

Article 20.

Submission for approval, evaluation, approval and notification of bidding results

1. The submission for approval and evaluation of bidding results of consultancy service bidding packages comply with Article 37 of the Bidding Law; Clause 11, Article 2 of the Amending Law; and Articles 71 and 72 of this Decree.
2. The approval of bidding results complies with Article 40 of the Bidding Law, and Clause 12, Article 2 of the Amending Law. For bidding packages executed before the investment decision is issued, the head of the investing agency or the head of the unit assigned to prepare the project shall approve bidding results.
3. The notification of bidding results complies with Article 41 of the Bidding Law, and Clause 13, Article 2 of the Amending Law. Specifically, right after receiving a decision approving the bidding results, the bid solicitor shall send a notice of bidding results to all participating contractors; the winning contractor shall also send a plan on contract negotiation and finalization.

Article 21.

Negotiation, finalization and conclusion of contracts

1. The negotiation, finalization and conclusion of contracts comply with the provisions of Article 42 and Chapter III of the Bidding Law; Clauses 14, 16 and 17, Article 2 of the Amending Law; and Section 2, Chapter VI of the Construction Law.
2. When the negotiation and finalization of a contract fails, the investor shall consider the cancellation of the earlier decision approving the bidding results and invitation of the next-ranking contractor to negotiate a contract under Article 19 of this Decree. In this case, contractors are requested to extend the validity of their bids, when necessary. The subsequent steps comply with Articles 20 and 21 of this Decree.

Section 2. PROCESS OF SELECTION OF INDIVIDUAL CONSULTANCY CONTRACTORS

Article 22.

Selection of individual consultancy contractors

Depending on the characteristics, content and scope of consultancy jobs, if the investor believes that an individual consultant may perform the jobs independently without involvement of many consultants or professional assistance of other individuals or organizations or that the use of an individual consultant is more efficient, the investor shall report it to the competent person for approval in the bidding plan. An individual consultant shall be selected in the following process:

1. The bid solicitor identifies the terms of reference and prepares a draft contract for the consultancy post to be recruited. The investor shall approve the terms of reference and make a list of contractors consisting of at least 3 individual consultants who meet the requirements stated in the terms of reference. In case there are fewer than 3 individual consultants, the investor shall consider and decide on the case. The bid solicitor shall send invitations and terms of reference to individual consultancy contractors for the latter to submit their curricula vitae.

The terms of reference include:

- a/ Brief description of the project and job;
 - b/ Requirements on the scope, volume, quality and time of performance of the job;
 - c/ Requirements on the capacity and qualification of the consultant;
 - d/ Conditions and place for the job performance; other necessary contents (if any).
2. The bid solicitor shall evaluate the eligibility of consultants based on their curricula vitae and the terms of reference.
3. On the basis of the draft contract, terms of reference and other relevant information, the bid solicitor shall negotiate with the individual consultant proposed for selection.
4. On the basis of the bid solicitor's report, the investor shall approve the selection result and sign the contract with the selected consultant.

Chapter V

OPEN BIDDING AND RESTRICTED BIDDING FOR PROCUREMENT OR CONSTRUCTION AND INSTALLATION BIDDING PACKAGES

Section I. ONE-STAGE BIDDING

Article 23.

Preparation for bidding

1. Pre-qualification of contractors complies with the provisions of Chapter III of this Decree.
2. Compilation of the bidding dossier
 - a/ Bases for compilation of the bidding dossier:
 - Investment decision or investment certificate and relevant documents;
 - Approved bidding plan;
 - Designing documents enclosed with the approved cost estimate (for construction and installation bidding packages);
 - Provisions of bidding law and relevant provisions of law; treaties or international agreements (if any), for ODA-funded projects;
 - State policies on taxes, salaries and incentives for domestic contractors or relevant regulations.
 - b/ Contents of a bidding dossier:

- A bidding dossier must cover the contents specified in Clause 2, Article 32 of the Bidding Law and made according to the form issued by the Ministry of Planning and Investment. For bidding packages having gone through pre-qualification, the bidding dossier is not required to specify criteria for evaluation of experience and capability of contractors but must require contractors to reconfirm information declared in their pre-qualification dossiers and update information on their capability and experience;

- For bidding packages which need to employ foreign workers qualified for their requirements, the bidding dossier must require contractors to declare in their bids the number, professional qualifications and skills and experience of foreign staff and experts mobilized to execute these packages; and strictly prohibit the employment of foreign workers to perform jobs which can be performed by domestic workers meeting requirements of bidding packages, especially unskilled and professionally untrained workers;

- The bidding dossier must not impose requirements on specific trademarks or origins of goods under Clause 5, Article 12 of the Bidding Law. In special cases when it is necessary to identify the mark or catalog of a producer or the country of origin of goods for reference or illustration of technical requirements for the goods, the phrase "or equivalent" must follow the indicated mark or catalog or origin and the word "equivalent" must be clearly defined as having similar technical properties or utilities as the mentioned goods. For peculiar and complicated goods, contractors are required to submit the permit for sale of goods under the copyright of the producer. When necessary, for ordinary goods, the bidding dossier may require letters of authorization for sale by distribution agents;

- The bidding dossier must state important requirements (prerequisites) for rejection of bids. Specifically:

+ The contractor is not on the list of purchasers of bidding dossiers or fails to meet the requirements specified in Clause 2, Article 28 of this Decree;

+ The contractor fails to ensure its eligibility status under Articles 7 and 8 of the Bidding Law;

+ The contractor participating in a construction and installation bidding package fails to meet the condition on construction activity capability under the construction law;

+ A bid security is unavailable or invalid, that is lower in value or uses a currency other than the prescribed one, has a shorter effective term, is submitted not to the address and according to the time indicated in the bidding dossier, states an incorrect name of the contractor (in case of a partnership of contractors as prescribed in Article 32 of this Decree), is not the original or contains no valid signature (for a bank or financial institution guarantee letter);

+ The bid original is unavailable;

+ The application for bidding participation is invalid;

+ The bid validity fails to meet the requirements set in the bidding dossier;

+ The bid offers an unfixed tender or different tenders or conditional tenders placing the investor at a disadvantage;

+ The contractor is named in two or more bids as principal contractor (independent contractor or partner);

+ The contractor commits any of prohibited acts in bidding as specified in Article 12 of the Bidding Law and Clauses 3 and 21, Article 2 of the Amending Law;

+ Other peculiar important requirements of the bidding package.

Contractors that breach any of the prerequisites in the bidding dossier shall be rejected and their bids shall not be further considered.

3. Approval of bidding dossiers

Approval of bidding dossiers complies with Clause 3, Article 15 of this Decree.

4. Invitation for bids

a/ Notice of invitation for bids For open bidding without pre-qualification, a notice of invitation for bids (including an English version for international bidding) must be published on the Bidding Newspaper in 3 consecutive issues and on the bidding website. Apart from being published according to the above provision, that notice may also be published on other mass media.

b/ Sending of letters of invitation for bids

Letter of invitation for bids is applicable to restricted bidding and open bidding which have gone through pre-qualification. Bid solicitors shall send letters of invitation for bids made according to the form provided in Appendix II to this Decree (not printed herein) to short-listed contractors. The period from the time these letters are sent to the time the dossiers of invitation for bids are distributed is at least 5 days, for domestic bidding, or 7 days, for international bidding.

Article 24.

General provisions on technical evaluation criteria

1. Use of the marking method

a/ A point scale (100; 1.000...) is used for the formulation of technical evaluation criteria. The contents of technical evaluation criteria for procurement or construction and installation bidding packages are specified in Clause 2, Article 25 and Clause 2, Article 26 of this Decree. The required minimum technical points depend on the characteristics of each bidding package but must not be lower than 70% of the total technical points; or 80% for bidding packages with hi-tech requirements;

Bidding packages for selection of general construction contractors (except those for selection of general engineering contractors) are also required to set the minimum points for each offer, which must not be lower than 70% of the corresponding maximum points.

b/ For procurement or construction and installation bidding packages, bids will be regarded satisfying the technical requirements if the points attained is not lower than the required minimum technical points.

For bidding packages for selection of general construction contractors (except those for selection of general engineering contractors), bids are regarded satisfying the technical requirements when the points given to each offer are not lower than the required corresponding minimum technical points and the total points given to all offers are not lower than the required minimum technical points of the whole bidding package.

2. Use of the "pass" or "fail" criterion

a/ Evaluation criteria

The contents of technical evaluation criteria applicable to procurement or construction and installation bidding packages are specified in Clause 2, Article 25 and Clause 2, Article 26 of this Decree. The requirements for each content are determined depending on the characteristic of each bidding package. The "pass" or "fail" criterion is used only for those contents which are regarded fundamental requirements of a bidding dossier. For non-fundamental contents, in addition to the "pass" or "fail" criterion, the "acceptable" criterion may be used but to not more than 30% of all requirement contents of evaluation criteria.

b/ A bid shall be evaluated as satisfying technical requirements when all of its fundamental requirement contents are evaluated "pass" while non-fundamental requirement contents are evaluated "pass" or "acceptable".

Article 25.

Criteria for evaluation of bids for procurement bidding packages

Criteria for evaluation of bids for procurement bidding packages include criteria for evaluation of contractors' capability and experience, criteria for technical evaluation and contents of determination of evaluation prices. Specifically:

1. Criteria for evaluation of contractors' capability and experience, applicable to bidding packages not requiring pre-qualification, including:

a/ Experience on execution of similar bidding packages in Vietnam and foreign countries; major production or business experience relevant to bidding packages;

b/ Production and business capability, material and technical foundations and professional qualifications of personnel related to bidding packages;

c/ Financial capability: total assets, total payable debts, short-term assets, short-term debts, turnover, profits, value of contracts currently performed and other criteria.

The determination of specific requirements for each criterion specified at Point a, b or c of this Clause shall be based on the requirements of each bidding package.

The "pass" or "fail" criterion may be used for evaluation criteria prescribed in this Clause. Contractors that "pass" all the three contents specified at Points a, b and c of this Clause shall be evaluated as meeting the capability and experience requirements.

2. Technical evaluation criteria

Technical evaluation criteria shall be formulated under Article 24 of this Decree and cover contents on capability to meet quantitative and qualitative requirements for goods mentioned in a bidding dossier. Specifically:

a/ Properties and technical specifications of goods, production standards and other contents;

b/ The rationality and economic efficiency of technical solutions, measures for organization of goods supply and installation;

c/ The extent of satisfaction of warranty requirements;

d/ Geographical adaptability;

e/ Environmental impacts and remedies;

f/ The financial capability (if required);

g/ Other factors related to commercial and financial conditions, time for execution, technology transfer training (if any).

3. Contents of determination of evaluation prices

Evaluation prices means those determined on the same technical, financial and commercial grounds and other elements in order to compare and rank bids. Methods of determination of evaluation prices must be stated in the bid evaluation criteria. Evaluation prices are determined in the following order:

- Determining tenders (in case there is a tender rebate letter, the determination must comply with Clause 13, Article 70 of this Decree);

- Correcting errors;

- Adjusting flaws;

- Converting tenders (post-correction and -adjustment) to a common currency (if any);

- Calculating expenses on the same ground for determination of evaluation prices, including:

- + Technical conditions such as implementation schedule; capacity and performance of machines and equipment; consumption of power, fuels and materials; costs of operation, regular repair and maintenance, useful life of works and other technical elements, as required by each bidding package;

- + Financial and commercial conditions;

- + Incentives in international bidding (if any);

- + Other elements.

Elements for determination of appropriate evaluation prices shall be specified depending on the characteristics of each bidding package. Bids shall be ranked according to evaluation prices, with the bid with the lowest evaluation price ranked first.

Article 26.

Evaluation criteria applicable to bids for construction and installation bidding packages

Evaluation criteria applicable to bids for construction and installation bidding packages include criteria for evaluation of contractors' capability and experience, criteria for technical evaluation and contents of determination of evaluation prices. Specifically:

1. Criteria for evaluation of contractors' capability and experience, applicable to bidding packages not requiring pre-qualification, including:

a/ Experience on execution of similar bidding packages in Vietnam, in similar geographical areas and sites;

b/ Technical capability: the number and qualifications of staff and technical workers directly involved in the execution of bidding packages and the quantity of available construction equipment, the capability of mobilizing construction equipment for the execution of bidding packages;

c/ Financial capability: total assets, total payable debts, short-term assets, short-term debts, turnover, profits, value of contracts currently performed and other criteria.

Determination of specific requirements for each criterion specified at Point a, b or c of this Clause must be based on the requirements of each bidding package.

Evaluation criteria specified in this Clause are "pass" and "fail". Contractors that "pass" all the three contents specified at Points a, b and c of this Clause shall be evaluated as meeting the capability and experience requirements.

2. Technical evaluation criteria

Technical evaluation criteria shall be elaborated under Article 24 of this Decree and cover contents on the extent of satisfaction of requirements for technical designing dossiers and accompanied estimates. Specifically:

a/ The rationality and feasibility of technical solutions and measures for organization of construction according to the proposed execution schedule;

Unless the bidding dossier, based on the characteristics of the bidding package, requires contractors to strictly follow the construction measures indicated in the bidding dossier, the bidding dossier should contain a provision that contractors may propose construction measures different from those indicated in the bidding dossier. In this case, the bidding dossier should specify evaluation criteria applicable to contractors' proposed construction measures.

b/ The satisfaction of environmental sanitation conditions and other conditions on fire prevention and fighting and labor safety;

c/ The extent of satisfaction of warranty requirements;

d/ Measures to guarantee quality;

e/ The construction schedule;

f/ Other contents (if any).

The marking method or the method of evaluation using the criterion "pass" or "fail" may be used for the above-mentioned technical criteria depending on the characteristics and specific conditions of each bidding package. When contractors are permitted to offer alternative or complementary options so as to encourage them to put forward creative proposals that can make the bidding packages more effective, the bidding dossier must clearly state this permission as well as evaluation criteria and methods for proposed options, including bidding prices.

When it is necessary to speed up the evaluation of bids for construction and installation bidding packages with simple technical requirements, the bidding dossier may state that the evaluation will be conducted at the same time with the consideration of technical capability and tenders of contractors and their proposed schedule for execution of the bidding packages.

3. Contents of determination of evaluation prices

Evaluation prices means those determined on the same technical, financial and commercial grounds and other elements in order to compare and rank bids. Methods for determination of evaluation prices must be specified in the evaluation criteria. The determination of evaluation prices is conducted in the following order:

- Determining tenders (in case there is a tender rebate letter, the determination must comply with Clause 13, Article 70 of this Decree);
- Correcting errors;
- Adjusting flaws;
- Converting tenders (post-correction and -adjustment) to a common currency (if any);
- Calculating expenses on the same grounds for determination of evaluation prices, including:
 - + Technical conditions such as implementation schedule; management, operation, regular repair and maintenance expenses, useful life of works and other technical elements, as required by each specific bidding package;
 - + Financial and commercial conditions;
 - + Incentives in international bidding (if any);
 - + Other elements.

Elements for determination of appropriate evaluation prices shall be specified depending on the characteristics of each bidding package. Bids shall be ranked according to evaluation prices, with the bid with the lowest evaluation price ranked first.

Article 27.

Criteria for evaluation of bids for bidding packages for selection of general construction contractors (except those for selection of general engineering contractors)

Criteria for evaluation of bids for bidding packages for selection of general construction contractors (except those for selection of general engineering contractors) include criteria for

evaluation of each content specified at Point a, Clause 1 of Article 16, and Articles 24, 25 and 26 of this Decree.

Article 28.

Organization of bidding

1. Distribution of bidding dossiers

a/ The bid solicitor shall sell bidding dossier sets until the time of bid closure to contractors on the list of those having passed pre-qualification (in case of pre-qualification), contractors invited for participation in restricted bidding or contractors that wish to participate in open bidding, at the price specified in Clause 1, Article 6 of this Decree. For a partnership of contractors, only one partner is required to purchase the bidding dossier;

Bid solicitors that fail to sell bidding dossiers under regulations or take any action to prevent contractors from purchasing bidding dossiers shall be handled under Point 1, Clause 1, Article 65 of this Decree.

b/ Modification and clarification of bidding dossiers comply with Clause 1 of Article 33, and Article 34 of the Bidding Law.

2. Preparation, receipt, modification or withdrawal of bids

Preparation, receipt, modification or withdrawal of bids comply with Clauses 2, 3 and 4, Article 17 of this Decree.

When a contractor needs to change its bidding participation status (name) which is different from that it has registered at the time of purchasing the bidding dossier, it shall notify that in writing to the bid solicitor. The bid solicitor shall consider it in the following cases:

- For open bidding, it shall accept the status change when receiving such written notice before the time of bidding closure;
- For restricted bidding or open bidding for which prequalification has been organized, on a case-by-case basis, the bid solicitor shall consider and report to the investor for decision whether or not to accept the contractor's status change before the time of bidding closure, while ensuring competitiveness, equality and transparency in bidding.

3. Bid opening

a/ Bids shall be opened publicly right after the time of closure on the date and at the time and place specified in the bidding dossier to the witness of all attendants, regardless of the presence or absence of invited contractors. The bid solicitor may invite representatives of concerned agencies to attend bid opening;

b/ The bid solicitor shall open, one after another, bids of contractors named in the list of those who have bought the bidding dossier, registered for participation in bidding and submitted bids before the time of bidding closure according to the contractors' names in the alphabetical order. The bid-opening order is as follows:

- Checking the seal of the bid;

- Opening, reading and recording in a written record the following principal contents:

- + The name of the contractor;
- + The number of originals and number of copies of the bid;
- + The validity term of the bid;
- + The tender stated in the application for bidding participation and rebate (if any);
- + The value and validity term of the bid security;
- + The written request for modification of the bid (if any);
- + Other relevant information.

The bid-opening record must be signed for certification by representatives of the bid solicitor, contractors and concerned agencies.

After bids are opened, the bid solicitor shall sign for certification every original page of all bids and manage them under regulations on management of "confidential" dossiers. Bids shall be evaluated based on their copies. Contractors are responsible for the accuracy and consistency between the copies and the originals as well as the seals of their bids.

Article 29.

Evaluation of bids

Bids shall be evaluated on the basis of bid evaluation criteria and other requirements stated in bidding dossiers, on the evaluation principles specified in Article 28 of the Bidding Law and in the order prescribed in Article 35 of the Bidding Law, and Clause 9, Article 2 of the Amending Law.

After bids are opened, contractors shall clarify their bids when so requested by the bid solicitor under Article 36 of the Bidding Law. In case a bid lacks such documents as business registration certificate, investment certificate, establishment decision, appropriate professional qualification certificate and other documents as required by the bidding dossier, the bid solicitor shall request contractors to add documents to prove their eligibility status, capability and experience without changing principal contents of submitted bids and tenders.

1. Preliminary evaluation

a/ Checking the validity of a bid:

- Validity of the application for bidding participation: The application must be completed and signed by the lawful representative of the contractor as required by the bidding dossier. For a partnership of contractors, the application must be signed by the lawful representative of each partner or by the partner leading the partnership as provided for in the partnership agreement document;

- Validity of the partnership agreement: The partnership agreement must specify the responsibilities, powers, work volumes to be performed and their corresponding values of each

partner, including the partnership leader as well as his/her responsibilities; and contain signatures of all partners and their seals (if any);

- Availability of any of the papers required by the bidding dossier: business registration certificate, investment certificate, establishment decision or lawful operation registration certificate, the permit for sale of goods under the copyright of the producer or written authorization for sale of goods by the distribution agent (if required);

- The number of originals and number of copies of the bid;

- The validity of the bid security;

- Appendices and documents enclosed with the bid.

b/ Rejecting bids which fail to satisfy prerequisites prescribed in the bidding dossier under Point b, Clause 2, Article 23 of this Decree;

c/ Evaluating the capability and experience of contractors according to the relevant criteria indicated in the bidding dossier, for bidding packages not requiring pre-qualification. The capability and experience of contractors may be evaluated at the preliminary evaluation stage for all contractors that have valid bids and satisfy all prerequisites or after evaluation prices are determined, depending on the conditions of each bidding package, which must be stated in the bidding dossier. Contractors must be evaluated as satisfying all capability and experience requirements stated in the bidding dossier before their bids are considered at subsequent stages.

2. Detailed evaluation of bids

a/ Technical evaluation

Technical evaluation according to the set criteria shall be stated in the bidding dossier. In the course of evaluation, the bid solicitor may request contractors to explain and clarify unclear or abnormal contents in their bids. Evaluation prices shall be determined under Point b. Clause 2 of this Article only for bids which are approved by the investor as satisfying the technical requirements.

While considering and approving the list of contractors satisfying the technical requirements, the investor may, when necessary, request the bid solicitor to re-evaluate the technical capability for bids of contractors that have obtained the points approximately close to the minimum requirements but offer low bidding prices and are capable of generating higher benefits for the project.

b/ Determination of evaluation prices

Evaluation prices shall be determined under Clause 3, Article 25 and Clause 3, Article 26 of this Decree.

3. Ranking of bids based on evaluation prices:

The bid with the lowest evaluation price shall be ranked first. If pre-qualification or evaluation of the capability and experience of the contractors has not yet been conducted at the preliminary evaluation stage, after the investor approves the list of contractors ranked according to the evaluation prices, the bid solicitor shall evaluate the capability and experience of the first-ranking contractor. If the capability and experience of the first-ranking contractor fail to meet the

requirements, this contractor's bid shall be rejected and the capability and experience of the next-ranking contractor shall be evaluated.

For a complicated bidding package, when necessary, the bid solicitor may propose the investor to permit the contractor with the first-ranking bid to enter into preliminary negotiations on a contract, thereby facilitating the negotiation and finalization of the contract after obtaining the bid-winning results.

Article 30.

Correction of errors and adjustment of flaws

1. Correction of errors

Correction of errors means the correction of errors in bids, including arithmetical errors and other errors, which is conducted on the following principles:

a/ For arithmetical errors, including errors due to inaccurate addition, subtraction, multiplication or division:

- When the unit price is inconsistent with the total sum, the unit price shall be used as a legal basis for error correction. In case the unit price is wrong while the quantity, volume and total sum are correct, the total sum shall be used as a legal basis for determination of the unit price;

- When the general price table is inconsistent with the detailed price table, the latter shall be used as a legal basis for error correction.

Arithmetical errors shall be calculated according to the total absolute value, regardless of whether tenders increase or rebate after error correction.

b/ For other errors:

- When the total sum column is filled in without a corresponding unit price, the unit price shall be determined by dividing that total sum by the quantity;

- When the unit price is available but the total sum column is left blank, the total sum shall be determined by multiplying the quantity by the unit price;

- For a specific item, when both unit price and total sum are available but the quantity column is left blank, that quantity shall be determined by dividing the total sum by the unit price of that item. When the determined quantity varies with that mentioned in the bidding dossier, it shall be regarded a flaw in terms of scope of supply and be adjusted under Clause 2 of this Article;

- Decimal errors: Errors related to the use of comma "," instead of full stop "." or vice versa are corrected appropriately according to the Vietnamese writing style.

- In case of disparity between contents involved in technical proposals and those in financial proposals, the former will serve as a legal ground for error correction;

- In case of disparity between numerals and letters, letters will serve as a legal ground for error correction. If letters are incorrect, numerals will serve as a legal ground for correction of arithmetical errors (if any) under Point a of this Clause;

- In case of disparity between prices stated in bids (exclusive of rebate) and those in the general price table, prices in the general price table after being corrected will serve as a basis for error correction which shall be conducted according to the detailed price table.

After correcting errors according to the above principles, the bid solicitor shall notify in writing concerned contractors thereof. These contractors shall notify in writing the bid solicitor of their acceptance of the error correction. If they refuse to accept the error correction, their bids shall be rejected.

2. Adjustment of flaws

Adjustment of flaws means the adjustment of incomplete or redundant contents of bids compared with of the requirements of the bidding dossier. Flaws shall be adjusted as follows:

If Haws are related to the scope of supply, the deficient offer shall be added while the redundant one be subtracted on the principle that if the prices of those offers cannot be separated from the tender offered by the flaw-adjusting contractor, the highest tender (in case of a deficient offer) or the lowest tender (in case of a redundant offer) offered for the same content by other bids which pass technical evaluation will apply. If only one contractor passes the technical evaluation, the flaws shall be adjusted according to the tender (if any) offered by that contractor or the price in the cost estimate.

Article 31.

Submission for approval, appraisal, approval and notification of bidding results; negotiation, finalization and conclusion of contracts

1. The submission for appraisal, approval and notification of bidding results comply with Article 38 of the Bidding Law; Clauses 10 and 11, Article 2 of the Amending Law; and Clauses 2 and 3 of Article 20, Articles 71 and 72 of this Decree.

2. Negotiation, finalization and conclusion of contracts

a/ The negotiation, finalization and conclusion of contracts comply with Article 42 and Chapter III of the Bidding Law; Clauses 14, 16 and 17, Article 2 of the Amending Law; and Section 2. Chapter VI of the Construction Law;

b/ When the negotiation or finalization of a contract fails, the investor shall consider and decide to annul bidding results and select the next-ranking contractor as the winning bidder who will be invited to negotiate and finalize the contract. In that case, when necessary, the concerned contractor is required to extend the validity term of the bid and the bid security.

Article 32.

Bid security

1. Contractors participating in bidding shall take the bid security measure under Article 27 of the Bidding Law. For a partnership of contractors, when participating in bidding for procurement, construction and installation bidding packages or bidding packages for selection of general contractors (except those for selection of general engineering contractors), they shall take the bid security measure according to the requirement of the bidding dossier in either of the following ways:

a/ Each of the partners shall provide a separate bid security and the total value of their bid securities must not be lower than the security amount required in the bidding dossier. If the bid security of a partner is determined to be invalid, the bid of the partnership shall be rejected according to the prerequisites stated in the bidding dossier. In case a partner breaches regulations, leading to a consequence that the contractor is not refunded the bid security in the cases specified in Clause 6, Article 27 of the Bidding Law, all partners' bid securities will be confiscated;

b/ The partners shall reach agreement that a partner shall take the bid security measure for the entire partnership. In this case, the bid security may bear the name of the partnership or the partner providing the bid security for the entire partnership and its total value must not be lower than the security amount required in the bidding dossier.

2. If the bidding dossier requires that the bid security is provided in the form of submitting a letter of guarantee of a bank or financial institution, the validity of such letter shall be examined according to the regulations of the bank or financial institution on decentralization of the signing and issuance of letters of guarantee.

Article 33.

Selection of contractors for small bidding packages

1. For procurement bidding packages valued at VND 5 billion or less, and construction and installation bidding packages or bidding packages for selection of general construction contractors (except those for selection of general engineering contractors) valued at VND 8 billion or less, open bidding or restricted bidding shall be conducted in the order specified in Section 1, Chapter V of this Decree, but the bidding dossiers are not required to set the criterion of converting expenses on the same grounds for determining evaluation prices, evaluation prices are not required to be determined in the process of evaluation of bids, and the list of contractors satisfying technical requirements is not required to be approved before error correction and flaw adjustment are conducted. The contractor shall be considered and proposed to be the successful bidder when fully satisfying the following conditions:

a/ Having a valid bid;

b/ Being evaluated as satisfying the capability and experience requirements;

c/ Having a technical proposal evaluated as satisfying the requirement based on the "pass" or "fail" criterion;

d/ Having the lowest tender after error correction and flaw adjustment;

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

2. Time limits in bidding for small bidding packages are specified as follows:

a/ Bidding dossiers shall be distributed from the date of notice of invitation for bids to the time of bidding closure;

b/ The period for preparation of bids is at least 10 days, counting from the date of distribution of bidding dossiers. When it is necessary to modify the bidding dossier, the bid solicitor shall notify the modification to contractors 3 days before the time of closure so that they have sufficient time for preparing their bids;

c/ The period of evaluation of bids is at least 20 days, counting from the date of bid opening to the time the bid solicitor submits a report on bidding results to the investor for consideration and decision.

3. For small bidding packages, the bid security must be equal to 1% of the price of the bidding package and the contract performance security equal to 3% of the contractual price.

Article 34.

Provisions on the process of selection of contractors for insurance and audit bidding packages and selection of investment partners

1. The process of selection of contractors for insurance bidding packages is similar to that of selection of contractors for procurement bidding packages.

2. The process of selection of contractors for audit bidding packages is similar to that of selection of contractors for consultancy service bidding packages.

3. The process of selection of investment partners for the execution of projects specified in Article 54 of the Investment Law must follow the guidance of the Ministry of Planning and Investment.

Section 2. TWO-STAGE BIDDING

Article 35.

Preparation for stage-I bidding

1. Pre-qualification of contractors complies with the provisions of Chapter III of this Decree.

2. Compilation of stage-I bidding dossiers

a/ Bases for compilation of stage-I bidding dossiers are specified at Point a, Clause 2, Article 23 of this Decree;

b/ A stage-I bidding dossier covers the contents specified at Point b, Clause 2, Article 23 of this Decree but does not require contractors to offer bidding prices and take the bid security measure.

3. The approval of bidding dossiers complies with Clause 3, Article 15 of this Decree.

4. The invitation for participation in stage-I bidding complies with Clause 4, Article 23 of this Decree.

Article 36.

Organization of stage-I bidding

1. Distribution of bidding dossiers

a/ The bid solicitor shall sell bidding dossiers till the time of bidding closure to short-listed contractors or to contractors wishing to participate in open bidding at the price specified in Clause 1, Article 6 of this Decree. For a partnership of contractors, only one partner is required to purchase the bidding dossier;

b/ Modification and clarification of a bidding dossier comply with Clause 1, Article 33, and Article 34 of the Bidding Law.

2. Receipt and management of stage-I bids

The bid solicitor shall receive and manage bids under regulations on management of "confidential" dossiers. Bids submitted after the time of bidding closure shall be regarded invalid and rejected.

3. Bid opening

Bids shall be opened under Clause 3, Article 28, of this Decree. Bid-opening records do not contain information on tenders and bid security.

4. Exchange of opinions on stage-I bids

Based on the requirements of the bidding dossier, the bid solicitor shall exchange opinions with each contractor to clarify technical requirements of the bidding package. Exchanged opinions must be recorded in writing which serve as a basis for compilation of the stage-II bidding dossier.

Article 37.

Stage-II bidding preparation and organization

1. Compilation of stage-II bidding dossiers

Stage-II bidding dossiers must identify technical, financial (including tenders) and commercial requirements as well as requirements on bid security measures.

The approval of stage-II bidding dossiers complies with Clause 3, Article 15 of this Decree.

2. Organization of bidding

Stage-II bidding dossiers shall be sold to contractors that have submitted stage-I bids at the price specified in Clause 1, Article 6 of this Decree. The organization of bidding complies with Article 28 of this Decree.

Article 38.

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Evaluation of stage-II bids

The evaluation of stage-II bids complies with Article 29 of this Decree.

Article 39.

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Submission for approval, appraisal, approval and notification of bidding results: negotiation, finalization and conclusion of contracts

The submission for approval, appraisal, approval and notification of bidding results as well as the negotiation, finalization and conclusion of contracts comply with Article 31 of this Decree.

Chapter VI

APPOINTMENT OF CONTRACTORS

Article 40.

Cases in which appointment of contractors is allowed and conditions thereon

1. Bidding packages of a value within the limit eligible for appointment of contractors under Clause 4, Article 2 of the Amending Law include:

a/ Consultancy service bidding packages valued at VND 3 billion or less, procurement bidding packages valued at VND 2 billion or less, construction and installation bidding packages and bidding packages for selection of general construction contractors (except for those for selection of general engineering contractors) valued at VND 5 billion or less under development investment projects specified in Clause 1, Article 1 of the Bidding Law, or overhaul projects of state enterprises specified in Clause 3, Article 1 of the Bidding Law;

b/ Procurement bidding packages valued at VND 100 million or less for maintenance of regular operations specified in Clause 2, Article 1 of the Bidding Law.

In case appointment of contractors is unnecessary, bidding shall be organized under regulations.

2. Apart from the cases eligible for appointment of contractors specified in Article 20 of the Bidding Law, Article 101 of the Construction Law and Clause 1 of this Article, bidding packages involving national secrets or for national interests in cases of emergency, and special cases eligible for appointment of contractors specified in Clause 4, Article 2 of the Amending Law and Point e, Clause 1, Article 101 of the Construction Law include:

a/ Bidding packages of national secret nature which require appointment of contractors to assure information confidentiality under the law on confidentiality;

b/ Bidding packages which must be immediately executed to avoid direct hazards for the health, assets and lives of local people or serious impacts on adjacent works, including:

- Bidding packages for procurement of medicines, chemicals, medical supplies and equipment for epidemic prevention and control in cases of emergency;

- Bidding packages for treatment of serious environmental pollution which must be immediately executed;

- Bidding packages in service of relocation of inhabitants in erosion-vulnerable areas or for storm and flood prevention and control in cases of emergency to assure safety of human lives and assets;

- Bidding packages for remedying work incidents in cases of emergency to assure safety of human lives and assets.

c/ Consultancy service bidding packages of elaboration and evaluation of strategy and planning reports, consultancy service bidding packages of elaboration of pre-feasibility or feasibility study reports in case only a sole contractor is capable of meeting the requirements of the bidding packages;

d/ Authors of contest-winning or selected work architecture designs eligible for copyright protection will be appointed to execute consultancy service bidding packages for elaboration of feasibility study reports and construction designs if they satisfy the prescribed capability conditions;

e/ Information technology consultancy service bidding packages for upgrading and expansion of software previously supplied by a contractor, and other contractors cannot supply this software due to the requirement to assure technological compatibility;

f/ Bidding packages for building monuments, murals, grandiose paintings and artistic works subject to copyright from composition to construction of works;

g/ Bidding packages for removal of works for ground clearance which must be performed by only one unit due to specialized requirements;

h/ Bidding packages for sweeping mines, bombs and explosive gears for preparation of work construction sites;

i/ Bidding packages under national target programs and programs to support poverty alleviation in mountainous remote, deep-lying or exceptional difficulty-hit areas: If local communities can undertake bidding packages, these packages will be assigned to local people; if several local mass organizations wish to participate in undertaking a bidding package, the one that offers the most effective plan will be selected;

j/ Other special cases considered and decided by the Prime Minister.

3. Conditions on appointment of contractors

Upon appointment of contractors, the following conditions must be fully satisfied, except for bidding packages specified at Point a, Clause 1, Article 20 of the Bidding Law:

a/ There is an investment decision, except for bidding packages specified at Points c and d, Clause 2 of this Article;

b/ There is an approved bidding plan;

c/ Capital has been allocated according to schedule for execution of the bidding package. Capital advance by contractors may not be used as a condition on appointment of contractors.

d/ There is an approved cost estimate under regulations;

e/ The duration for appointment of contractors from the date of approval of dossiers of requirements to the date of contract signing must not exceed 45 days. For large and complicated bidding packages, this duration must not exceed 90 days;

f/ The duration of contract performance must not exceed 18 months.

For bidding packages for removal of public works for ground clearance in order to accelerate the implementation of a number of exceptionally important and urgent projects, investors may consider the distribution of dossiers of requirements based on construction plans and methods and approved cost estimates.

Article 41.

Process of appointment of contractors

1. The process of appointing contractors for a bidding package (except for those specified in Clauses 2 and 3 of this Article) is as follows:

a/ Compiling and distributing dossiers of requirements

For consultancy service bidding packages, a dossier of requirements compiled by the bid solicitor is not required to state general evaluation criteria as well as elements for determination of evaluation prices, for procurement, construction and installation bidding packages and bidding packages for selection of general construction contractors (except for those for selection of general engineering contractors). Depending on the size and characteristics of each bidding package, specific requirements should be stated in the dossier of requirements which, however, must contain the following contents:

- For consultancy service bidding packages: requirements on capability criteria, number of experts; experience of contractors; requirements on content, scope and quality of jobs; requirements on the time and place of consultancy; requirements on price proposals; requirements on the time of preparation and submission of a dossier of proposals, and other necessary contents;

- For procurement and construction and installation bidding packages and bidding packages for selection of general construction contractors (except for those for selection of general engineering contractors): requirements on experience and capability; such technical requirements as those on quantity of goods, scope and volume of job; technical standards and solutions, work quality and time of implementation; requirements on price proposals; requirements on the time for preparation and submission of a dossier of proposals, and other necessary contents; but no requirement on bid security.

Technical requirements shall be evaluated according to the "pass" or "fail" criterion and this evaluation shall be stated in the dossier of requirements.

The investor shall approve the dossier of requirements and identify a contractor with capability and experience satisfying requirements of the bidding package to receive the dossier of requirements.

b/ The bid solicitor shall distribute the dossier of requirements to the contractor identified by the investor. The contractor proposed to be appointed shall prepare the dossier of proposals based on the dossier of requirements, including technical, financial and commercial proposals;

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

The bid solicitor shall evaluate dossiers of proposals of contractors and negotiate with contractors on their proposals according to the requirements stated in the dossier of requirements. In the course of evaluation, the bid solicitor may invite contractors to discuss, explain, clarify, modify or supplement essential information contents of their dossiers in order to prove their satisfaction of

requirements on capability, experience, schedule, quality, technical solutions and measures for organizing construction activities mentioned in the dossier of requirements.

Contractors may be appointed when satisfying all the following conditions:

- Having sufficient capability and experience as required by the dossier of requirements;
- Having technical proposals evaluated as meeting the requirements of the dossier of requirements according to the evaluation criteria;
- Offering prices not exceeding the estimated prices already approved for the bidding package.

d/ Submission, appraisal and approval of contractor appointment results

Based on the report on contractor appointment results and appraisal reports, the investor shall approve contractor appointment results.

e/ Negotiation, finalization and signing of contracts

Based on decisions approving contractor appointment results, bid solicitors shall negotiate and finalize contracts with appointed contractors for investors to conclude those contracts.

2. The fast-track process of appointment of contractors for consultancy service, procurement or construction and installation bidding packages valued at VND 500 million or less, must follow the following order:

a/ The bid solicitor shall, on the basis of the objectives, scope of work and the price of the bidding package already approved in the bidding plan, prepare and send a draft contract to a contractor identified by the investor to be fully capable and experienced to meet requirements of the bidding package. The draft contract must state requirements on the scope and content of jobs to be performed; time of performance, quality of jobs, services or goods to be attained and their corresponding values;

b/ On the basis of the draft contract, the bid solicitor and the proposed contractor shall negotiate and finalize the contract before it is signed;

c/ After the contract is negotiated and finalized, the bid solicitor shall submit the contract appointment result to the investor for approval and sign the contract with the contractor.

3. For bidding packages in cases of such force majeure circumstances as natural disasters, enemy sabotages and incidents which need to be promptly remedied as specified at Point a, Clause 1, Article 20 of the Bidding Law, appointment of contractors is not required to be conducted under Clauses 1 and 2 of this Article. Within 15 days after the date of contractor appointment, the investor or the agency managing the work or property and the contractor shall carry out procedures for determining the work volume and value for the two parties to sign a contract serving as a basis for implementation and payment.

4. In case appointment of contractors applies to a bidding package before the investment decision is issued, the investor or unit assigned to prepare the project shall make and approve a cost estimate under Clause 4, Article 2 of the Amending Law, and approve the dossier of requirements and contractor appointment results.

Chapter VII

OTHER FORMS OF SELECTION OF CONTRACTORS

Article 42.

Direct procurement

The application of the form of direct procurement must be approved together with bidding plans in compliance with Article 21 of the Bidding Law with regard to contracts already signed with contractors through open bidding or restricted bidding. The 6-month time limit is counted from the time of signing of the original contract to the time of approval of direct procurement results.

The process of direct procurement is as follows:

1. The investor shall approve the dossier of requirements, which serves as a basis for contractors to prepare dossiers of proposals.

2. Dossiers of proposals shall be evaluated as follows:

a/ Checking technical contents and unit prices;

b/ Updating contractors' capability and experience;

c/ Evaluating the implementation schedule;

d/ Other contents (if any).

3. Submission for approval, appraisal and approval of direct procurement results

Based on the report on direct procurement results and the appraisal report, the investment decider shall approve or authorize others to approve direct procurement results.

Article 43.

Competitive offers in procurement

The application of the form of competitive offers in procurement must be approved together with bidding plans in compliance with Article 22 of the Bidding Law.

The process of competitive offers in procurement is as follows:

1. Dossier of requirements

The investor shall approve the dossier of requirements. A dossier of requirements states such technical requirements as those on quantity, standards, technical specifications, time limit for goods supply, validity term and time for submission of the dossier of proposals, warranty, maintenance, training, technology transfer and other necessary contents, but no requirements on bid security. Technical requirements shall be evaluated according to the "pass" or fail" criterion as stated in the dossier of requirements.

2. Organization of competitive offers

a/ The bid solicitor shall publish a notice of invitation for competitive offers on the Bidding Newspaper in 3 consecutive issues and on the bidding website for interested contractors to register for participation in bidding. Apart from making announcement according to the above provision, the invitation may also be published on other mass media. The bid solicitor shall distribute the dossier of requirements to interested contractors after the notice of invitation for competitive offers is first published;

b/ The bid solicitor shall distribute the dossier of requirements to interested contractors till the deadline for submission of dossiers of proposals in order to receive at least 3 dossiers of proposals from 3 different contractors. The time limit for contractors to prepare dossiers of proposals is at least 5 days;

c/ Contractors shall submit dossiers of proposals to the bid solicitor in person, by post or fax. Each contractor may submit only one dossier of proposals;

d/ The bid solicitor shall keep confidential information in the dossier of proposals of each contractor. Right after the deadline for submission of dossiers of proposals, the bid solicitor shall make a written record on receipt of dossiers of proposals with such details as names of contractors, offered prices, after-sale conditions, validity terms of dossiers of proposals, and send these written records to contractors that have submitted dossiers of proposals.

3. Evaluation of dossiers of proposals

a/ The bid solicitor shall evaluate submitted dossiers of proposals based on the technical requirements of the dossier of requirements. A dossier of proposals will be considered passing the technical evaluation if all of its technical offers are evaluated "pass";

b/ The bid solicitor shall compare the offered prices of dossiers of proposals which satisfy technical requirements in order to determine the dossier of proposals with the lowest price. If, after error correction and flaw adjustment, the lowest price offered by a contractor does not exceed the bidding package price, that contractor shall be proposed for selection.

4. Approval of results of competitive offers and signing of contracts

a/ Based on the report on the results of competitive offers submitted by the bid solicitor and the appraisal report, the investor shall approve the results of competitive offers;

b/ The bid solicitor shall notify in writing the results of competitive offers to all contractors that have submitted dossiers of proposals and negotiate and finalize a contract with the selected contractor before the investor signs that contract.

Article 44.

Self-execution

The application of the form of self-execution must be approved together with bidding plans in compliance with Article 23 of the Bidding Law, and Point a, Clause 1 of Articles 41, 50, 57, 75 and 89, and Point b, Clause 2, Article 45 of the Construction Law, and is specified as follows:

1. Investors must have adequate capability and experience for executing all jobs of bidding packages, ensure that their execution will bring about higher benefits compared to the selection of other contractors to execute the bidding packages, and satisfy the following conditions:

a/ Their functions, tasks, operation domains and business lines (as stated in business registration certificates or establishment decisions) are relevant to the requirements of bidding packages;

b/ They have sufficient key staff members, technicians and technical workers (except for unskilled laborers) to execute the bidding packages; adequate machines and equipment for executing the bidding packages which must be under their ownership or they must prove the possibility of mobilizing machines and equipment for the bidding packages to meet the requirements on the schedule of execution of the bidding packages.

2. The investor shall select under the Bidding Law a supervision consultancy contractor that is organizationally and financially independent from the investor as required by law, specifically as follows:

a/ In case specialized laws specify jobs subject to performance supervision, the investor shall select a supervision consultant under regulations. If there are no interested independent supervision consultants or independent supervision consultants cannot be selected under current provisions of law because bidding packages are executed in deep-lying or remote areas and valued at under VND 1 billion each, the investor may organize community-based supervision under the law on community-based investment supervision;

b/ In case of application of the form of self-execution to bidding packages of renovation and overhaul of production equipment and lines, the hiring of supervision consultants is not required.

The investor shall supply necessary dossiers for the supervision consultancy contractor to perform the tasks defined in Clause 3 of this Article.

3. The supervision consultancy contractor has the following tasks:

a/ To supervise the execution of the bidding package of the investor strictly according to the plan and solutions set by the latter;

b/ To inspect goods, supplies and equipment used for the bidding package;

c/ To test the work volume performed by the investor as grounds for payment.

4. If, in the course of performance, the investor is detected to have transferred a work volume for a sum of money exceeding 10% of the self-execution value, the investor is regarded as having inadequate capability for self-executing the bidding packages and having violated Clause 14, Article 12 of the Bidding Law.

Article 45.

Selection of contractors in special cases

1. Based on the peculiarity of a bidding package to which the forms of contractor selection specified in Articles 18 thru 23 of the Bidding Law; Clause 4, Article 2 of the Amending Law; and Article 97 of the Construction Law are not applicable, the investor shall make a plan on selection of contractors, ensuring competitiveness and economic efficiency, and send that plan to the Ministry of Planning and Investment and relevant line ministries for comments before submission to the Prime Minister for consideration and decision.

2. When bidding peculiarities are provided for in another law, the decree guiding that law applies.

Article 46.

Selection of consultancy contractors for construction work architecture designing

Consultancy contractors for construction work architecture designing shall be selected through contests prescribed in Clause 3, Article 97 of the Construction Law and Clause 6, Article 1 of the Amending Law in compliance with Article 102 of the Construction Law.

Chapter VIII

PROVISIONS ON CONTRACTS

Article 47.

Components of a contract

1. Components of a contract are documents constituting a contract to regulate responsibilities and obligations of the investor and contractor. Components of a contract and their legal priority order are as follows:

- a/ Contract document (enclosed with appendices with price tariffs and other contents, if any);
- b/ The contract negotiation and finalization minutes;
- c/ The decision approving the contractor selection results;
- d/ Specific terms of the contract (if any);
- e/ General terms of the contract (if any);
- f/ The bid, the dossier of proposals and documents clarifying the bid and dossier of proposals of the selected contractor (if any);
- g/ The bidding dossier, the dossier of requirements and documents modifying or added to the bidding dossier and the dossier of requirements (if any);
- h/ Other enclosed documents (if any).

2. For construction and installation contracts, the price tariff must be formulated on the basis of the contract negotiation and finalization written record; the decision approving the contractor selection results; the bid; the dossier of proposals of the contractor selected according to detail items mentioned in the estimate of the bidding dossier or the dossier of requirements.

If the investor permits the addition or adjustment of the work volume before the signing of the contract, the price tariff must also cover this added or adjusted work volume.

3. In case additional annexes to a contract are signed under Clause 2, Article 52 of this Decree, these annexes will constitute a component of the contract.

Article 48.

Form of package contract

1. The principles of payment for package contracts are provided in Article 49 of the Bidding Law, specifically as follows:

a/ Contractual prices must not be adjusted in the course of contract performance, except in force majeure circumstances as agreed upon in the contracts (being circumstances which have actually occurred beyond the control and anticipation ability of investors and contractors and are not related to their wrongdoings or mistakes, such as war, riots, strikes, fires, natural disasters, floods, epidemics, quarantine isolation and embargo). Payment may be made in installments or in a lump sum upon completion of contracts. The total sum of money paid by the investor to the contractor by the time the contractor fulfills its contractual obligations is exactly the same as the price indicated in the contract. In force majeure circumstances, payment shall be made as agreed upon in the contract (if any);

For package contracts of bidding packages consisting of two or more jobs such as formulation of a pre-feasibility study report, a feasibility study report and a technical design, such a contract should specify the mode of payment for each job, specifically, if the pre-feasibility study report is disapproved, the contractor will only be paid for the formulation of the pre-feasibility report; if the feasibility study report is disapproved, the contractor will only be paid for the formulation of the pre-feasibility and feasibility study reports;

b/ For contractors that are selected by a method other than appointment of contractors, payment shall be based on the contractual prices and payment terms of the contracts, not on the cost estimates as well as the State's current regulations and guidance on cost norms and unit prices; and not on unit prices in financial invoices of contractors for input elements such as supplies, machines, equipment and others.

2. For construction and installation work, in the course of negotiation and finalization of a contract, the involved parties should review the table of job volume against the approved design, if the contractor (including appointed contractor) or the investor detects that the work volume is inaccurate compared to the design, the bid solicitor shall report it to the investor for consideration and decision to add a work volume suitable to the design. For this construction and installation work, after the package contract is signed, the work volume actually completed by the contractor according to the design (more or less than the work volume stated in the contract) will not affect the sum of money paid to the contractor. Payment shall be made to the contractor under Clause 1 of this Article.

The investor shall take responsibility for the accuracy of the job quantity or volume. In case of losses (due to wrong calculations of the job quantity or volume), individuals and organizations of the investor that are at fault shall pay compensations and be handled under law. If the contract between the investor and the consultancy contractor for the compilation of a bidding dossier or a dossier of requirements or for the making of a cost estimate contains provisions on the handling of wrong calculations of job quantity or volume, the investor shall be compensated as agreed upon in the contract with this consultancy contractor.

Article 49.

Form of unit price-based contract

The principles of payment for unit price-based contracts are provided in Article 50 of the Bidding Law and are specified as follows:

1. The payment value shall be calculated by multiplying the unit prices or adjusted unit prices in the contract by the job volume or quantity actually performed by the contractor.

2. For construction and installation work, if the job volume actually completed by the contractor according to design is less than that stated in the contract, the contractor shall only be paid for the actual volume. If the job volume actually completed by the contractor according to design is more than that stated in the contract, the contractor shall be paid for this increased volume.

The investor, supervision consultant and contractor shall certify in the takeover test record of the completed volume, which serves as a basis for payment to the contractor.

3. Payment shall be made on the basis of payment terms in the contract. When paying the contractor, the investor and payment agency shall comply with Article 53 of this Decree.

Article 50.

Form of time-based contract

Payment to consultants under a time-based contract shall be made as follows:

1. The level of remuneration for consultants, which covers expenses for consultants, will be equal to the basic salary and related expenses agreed upon by the investor and the contractor and stated in the contract or adjusted under Article 57 of the Bidding Law multiplied by the actual working time (in months, weeks, days or hours).

2. Expenses other than those for consultants specified in Clause 1 of this Article, including expenses for travel, survey, working office rent and other expenses, shall be paid according to the method stated in the contract. For each of these expenses, the contract should clearly state the method of payment: payment of actual costs in valid invoices and documents produced by the contractor and payment based on unit prices agreed upon in the contract.

Article 51.

Form of percentage-based contract

Contractual prices shall be calculated in a percentage of the value of works or job volumes. When the contractor fulfills its contractual obligations, the investor shall pay the contractor a sum of money equal to the value of the completed work or job volume multiplied by the percentage determined in the contract.

Article 52.

Adjustment of contractual prices and contracts

1. Adjustment of contractual prices

a/ Adjustment of contractual prices applies to unit price-based and time-based contracts. Contracts must clearly state the contents of adjustment, method and time of calculation of adjustment, and input data used for the calculation of price adjustments.

Prices are adjusted through adjusting job volumes under Clause 2, Article 49 of this Decree; adjusting unit prices or adjusting contractual prices due to inflation.

b/ The method of price adjustment stated in a contract must be suitable to the nature of jobs mentioned in the contract. Input data used for the calculation of price adjustments must be

relevant to the job contents. The contract should require the use of price notices or price indexes issued by competent local or central agencies or by independent foreign specialized agencies for expenses of foreign origin;

c/ In case the state-controlled (state-set) prices of fuels, supplies and equipment stated in the contract see big fluctuations directly affecting the performance of the contract in which there is an agreement on price adjustment, adjustment may be effected under Point c, Clause 1, Article 57 of the Bidding Law on the principle of application of new prices to jobs performed at the time of price fluctuations according to price announced by competent state agencies;

d/ If the State changes tax and salary policies, which directly affect the contractual prices, price adjustment must comply with Point a, Clause 1, Article 57 of the Bidding Law.

2. Adjustment of contracts

When arise reasonable jobs other than those stated in the contract which do not result in changes in the investment objectives or total investment levels (jobs outside the job volume to be performed according to design, for construction and installation work performed under package contracts or jobs outside the contractual job volume, for construction and installation work performed under unit price-based contracts), adjustment must comply with Clause 3, Article 57 of the Bidding Law and Clause 17, Article 2 of the Amending Law. In case of addition of arising jobs, the investor and the contractor shall sign an additional annex to the contract on the following principles:

- If this arising job volume is less than 20% of the corresponding job volume stated in the contract and its unit prices are indicated in the contract, payment shall be made based on these unit prices.

- If the arising job volume is equal to or higher than 20% of the corresponding job volume stated in the contract or does not has unit prices indicated in the contract, the investor and the contractor shall reach agreement on new unit prices of arising volumes on the principles set forth in the contract.

For construction and installation work, before signing an additional annex to the contract, the cost estimate of the arising job volume must be approved in accordance with law.

Article 53.

Payment dossiers

A payment dossier mentioned in a contract consists of:

1. For the construction and installation work performed under a unit price-based contract:

- a/ The written record of takeover test of the work volume performed in the payment period, certified by representatives of the contractor, the investor and the supervision consultant (if any);

- b/ The document certifying the increased or decreased volume, compared to the contractual volume, certified by representatives of the contractor, the investor and the supervision consultant (if any);

- c/ The table of calculation of the proposed payment value based on the certified completed job volume and unit prices stated in the contract;

d/ The contractor's request for payment, clearly stating the completed volume and value, the increased (decreased) value compared to the contractual value, the advanced value and the proposed payment value in the payment period.

2. For the construction and installation work performed under a package contract:

a/ The written record of takeover test of the volume performed in the payment period, certified by representatives of the contractor, the investor and the supervision consultant (if any). This written record should certify the completion of a work, a work item or a work's job according to design but does not need to certify the completed volume in detail;

b/ Other documents specified at Points b. c and d. Clause 1 of this Article.

3. For procurement work:

Depending on the characteristics of goods, an appropriate payment dossier is required to comprise such documents as invoices of the contractor, packing list, bill of lading, insurance policy, quality certificate, goods takeover test record, certificate of origin and other related documents.

4. For work performed under a time-based or percentage-based contract:

Depending on the characteristics of consultancy work, an appropriate payment dossier is required to consist of such documents as written record of takeover test of consultancy work results, written certification of the contract performance progress and other related documents.

For construction and installation work and procurement work, except the case in which the provisions on adjustment of contractual prices clearly stipulate that the investor and the contractor have agreed to use unit prices indicated in input invoices (for such input elements as machines, supplies, equipment and others) as a basis for price adjustment, the requirement that the contractor shall produce input invoices only aims to identify the origin and other related information and the unit prices indicated in these input invoices are not used as a basis for paying the contractor. The payment must be based on the contractual price and the contractual payment terms, not on the cost estimate as well as the State's current regulations and guidance on cost norms and unit prices, except for appointed contractors.

Chapter IX

DECENTRALIZATION OF RESPONSIBILITIES FOR APPRAISAL AND APPROVAL IN BIDDING

Article 54.

Responsibilities of the Prime Minister

1. For investment projects decided by the Prime Minister:

a/ To approve bidding plans (stating the form of contractor selection, including also the appointment of contractors under Clause 1, Article 20 of the Bidding Law, which is amended in Clause 4, Article 2 of the Amending Law and Clauses 1 and 2. Article 40 of this Decree);

b/ To settle or authorize others to settle petitions in bidding;

c/ To handle or authorize others to handle violations of the bidding law.

To approve or authorize others to approve bidding packages subject to appointment of contractors in special cases specified at Point j, Clause 2, Article 40 of this Decree.

To approve or authorize others to approve methods of the selection of contractors in special cases specified in Article 24 of the Bidding Law.

Article 55.

Responsibilities of ministers, heads of ministerial-level agencies, heads of other central agencies and chairpersons of provincial-level People's Committees

1. For projects in which investment is decided by the Prime Minister and of which they are not investors:

a/ To give written comments on bidding plans upon request;

b/ To perform other bidding-related jobs under the Prime Minister's authorization.

2. For projects in which investment is decided by them:

a/ To approve bidding plans (stating the form of contractor selection, including also the appointment of contractors under Clause 1, Article 20 of the Bidding Law, which is amended in Clause 4, Article 2 of the Amending Law and Clauses 1 and 2 (except for the case specified at Point j. Article 40 of this Decree);

b/ To perform other jobs falling within the responsibility of competent persons.

3. For projects of which they are investors:

a/ To approve bidding dossiers and dossiers of requirements;

b/ To approve contractor selection results;

c/ To perform other jobs falling within the responsibility of investors.

Article 56.

Responsibilities of chairpersons of People's Committees of provincial cities, urban districts, rural districts, towns, townships, wards or communes, and heads of other local agencies

1. For projects in which investment is decided by them:

a/ To approve bidding plans (stating the form of contractor selection, including also the appointment of contractors under Clause 1, Article 20 of the Bidding Law, which is amended in Clause 4, Article 2 of the Amending Law and Clauses 1 and 2 (except for the case specified at Point j. Article 40 of this Decree);

b/ To perform other jobs falling within the responsibility of competent persons.

2. For projects of which they are investors:

- a/ To approve bidding dossiers and dossiers of requirements;
 - b/ To approve contractor selection results;
 - c/ To perform other jobs falling within the responsibility of investors.
3. To perform bidding-related jobs under their superiors' authorization.

Article 57.

Responsibilities of boards of directors or directors of enterprises

1. For projects in which investment is decided by them:

a/ To approve bidding plans (stating the form of contractor selection, including also the appointment of contractors under Clause 1, Article 20 of the Bidding Law, which is amended in Clause 4, Article 2 of the Amending Law and Clauses 1 and 2 (except for the case specified at Point j, Article 40 of this Decree);

b/ To perform other jobs falling within the responsibility of competent persons.

2. For projects of which they are investors:

a/ To approve bidding dossiers and dossiers of requirements;

b/ To approve contractor selection results;

c/ To perform other jobs falling within the responsibility of investors and under authorization.

Article 58.

Responsibilities of boards of directors of joint-ventures, joint-stock companies and lawful representatives of parties to business cooperation contracts

1. For projects in which investment is decided by them:

a/ To approve bidding plans (stating the form of contractor selection, including also the appointment of contractors under Clause 1, Article 20 of the Bidding Law. which is amended in Clause 4, Article 2 of the Amending Law and Clauses 1 and 2 (except for the case specified at Point j, Article 40 of this Decree);

b/ To perform other jobs falling within the responsibility of competent persons.

2. For projects of which they are investors:

a/ To approve bidding dossiers and dossiers of requirements;

b/ To approve contractor selection results;

c/ To perform other jobs falling within the responsibility of investors.

Article 59.

Responsibilities of appraisal agencies and organizations

1. The Ministry of Planning and Investment shall appraise the following contents:

a/ Bidding plans which fall under the approving competence of the Prime Minister;

b/ The form of contractor appointment in special cases specified at Point j, Clause 2, Article 40 of this Decree which is applied under the Prime Minister's decisions;

c/ Contractor selection plans in special cases considered and decided by the Prime Minister.

2. Provincial-level Planning and Investment Departments shall appraise the following contents:

a/ Bidding plans for projects in which investment is decided by chairpersons of provincial-level People's Committees;

b/ Bidding dossiers and dossiers of requirements (when so requested), contractor selection results for bidding packages under projects of which provincial-level People's Committees are investors.

3. Agencies and organizations that are assigned the appraisal task by ministers, heads of ministerial-level agencies, heads of other central agencies, boards of directors or directors of enterprises shall appraise:

a/ Bidding plans for projects in which investment is decided by them;

b/ Bidding dossiers and dossiers of requirements (when so requested), and contractor selection results for bidding packages under projects of which ministries, ministerial-level agencies, other central agencies and enterprises are investors.

4. For projects falling under the investment-deciding competence of chairpersons of People's Committees of provincial cities, urban districts, rural districts or towns, their planning and finance sections shall appraise bidding plans.

5. For projects falling under the investment-deciding competence of chairpersons of People's Committees of townships, wards or communes, heads of other local agencies, boards of directors of joint-ventures, joint-stock companies or lawful representatives of parties to business cooperation contracts, their assisting sections shall appraise bidding plans.

6. Investors shall assign their attached organizations or individuals to appraise bidding dossiers, dossiers of requirements and contractor selection results, except for the case specified in Clause 2 of this Article.

When organizations and individuals assigned to perform the appraisal task are incapable, investors shall select a capable and experienced consultancy organization to conduct the appraisal. In any case, investors shall take responsibility for the appraisal of bidding dossiers, dossiers of requirements and contractor selection results.

Chapter X

SETTLEMENT OF BIDDING PETITIONS

Article 60.

Conditions for consideration and settlement of petitions

1. Petitions must be made by contractors participating in bidding.
2. Petitions must be signed by persons who sign applications for bidding participation or are lawful representatives of contractors, and must be affixed with stamps (if any).
3. Petitions are received by persons responsible for petition settlement within the time limit prescribed in Clause 3, Article 72 of the Bidding Law.
4. Contents of petitions have not yet brought to court by contractors.
5. With regard to petitions on contractor selection results, when sending them to investment deciders, contractors shall pay a sum of money under Clause 3, Article 6 of this Decree to the permanent assisting section of the Advisory Council mentioned in the bidding dossiers. If contractors' petitions are concluded right, individuals or organizations with related responsibilities shall refund this sum of money to the contractors.

Article 61.

Settlement of petitions

1. The time limit for settling a petition specified in Article 73 of the Bidding Law is counted from the time the administrative section of the person responsible for petition settlement receives the petition.
2. Persons responsible for petition settlement shall notify the contractors in writing of the non-consideration and non-settlement of their petitions if those petitions fail to meet the conditions specified in Article 60 of this Decree.
3. Contractors may withdraw their petitions in the course of settlement but must make written requests.

Article 62.

Advisory councils

1. Chairmen of advisory councils

a/ The chairman of the central advisory council is a competent representative of the Ministry of Planning and Investment. The central-level advisory council shall give advice on petitions concerning bidding packages directly approved by the Prime Minister or at the request of the Prime Minister;

b/ The chairmen of advisory councils of ministries, ministerial-level agencies, government-attached agencies or other central agencies (below referred to as ministerial-level advisory councils) are competent representatives of units under these agencies which are assigned to manage bidding. Except for bidding packages specified at Point a of this Clause, ministerial-level

advisory councils shall give advice on petitions concerning all bidding packages under investment projects decided or managed by ministries;

c/ The chairmen of local advisory councils are competent representatives of provincial-level Planning and Investment Departments. Except for bidding packages specified at Point a of this Clause, local advisory councils shall give advice on petitions concerning all bidding packages under investment projects decided or managed by localities.

2. Membership of an advisory council

Depending on the characteristics of each bidding package and when necessary, in addition to the members defined in Clause 2, Article 73 of the Bidding Law, the chairman of an advisory council may invite other individuals to participate in the advisory council. Members of an advisory council must not be relatives (blood parents, parents in law, spouses, blood children, adopted children, daughters or sons in law or blood siblings) of the persons who sign petitions or of individuals who are directly involved in the evaluation of bids under the assignment by bid solicitors, investors or individuals directly involved in the appraisal of contractor selection results and of the persons who sign for approval contractor selection results.

3. Activities of an advisory council

a/ The chairman of an advisory council shall issue a decision to set up the council within 5 days after receiving petitions from contractors. The advisory council shall work on a case-by-case basis;

b/ The advisory council shall work on the collective principle, vote by majority and submit reports on its working results to the investment decider for consideration and decision. Each member may reserve his/her opinions and is held responsible before law for his/her opinions.

4. Permanent assisting section of an advisory council

a/ Permanent assisting section is an agency or organization which is assigned the appraisal task in bidding, but does not have individuals directly involved in the appraisal of bidding packages subject to contractor petitions;

b/ The permanent assisting section shall perform administrative tasks assigned by the chairman of the advisory council; and receive and manage sums of money paid by contractors that file petitions under Clause 5, Article 60 of this Decree.

Chapter XI

HANDLING OF VIOLATIONS OF BIDDING LAW

Article 63.

Principles and competence for handling violations

1. Principles of handling violations

a/ Organizations or individuals that commit acts in violation of the bidding law shall, depending on the severity of their violations, be sanctioned in one of the following forms: caution, fine or ban from participation in bidding activities under Clause 1, Article 75 of the Bidding Law, Clause 21, Article 2 of the Amending Law; bidding results shall be cancelled, biddings stopped or contractor

selection results not recognized under Clause 18, Article 2 of the Amending Law. Cadres and public employees who commit acts in violation of the bidding law shall be handled in accordance with the law on cadres and public employees;

b/ Principles and procedures for handling violations and procedures for enforcement of sanctioning decisions comply with law;

c/ Sanctioning decisions must be sent to sanctioned organizations and individuals and concerned agencies and organizations. Sanctioning decisions shall be sent to the Ministry of Planning and Investment for monitoring, sum-up and handling under law;

d/ Sanctioning decisions issued in any localities or branches are effective for enforcement nationwide and in all branches;

e/ Organizations and individuals sanctioned for violations of the bidding law may initiate lawsuits at a court.

2. Competence for handling violations

a/ Competent persons shall handle violations of the bidding law in relation to projects in which investment has been decided by them under Clause 18, Article 2 of the Amending Law. When competent persons violate the bidding law, they shall be handled under law;

b/ The Ministry of Planning and Investment shall monitor the handling of violations of the bidding law and decide to impose the ban from participation in bidding activities on organizations or individuals that commit 3 acts of violation or more each and are subject to caution under Clause 4, Article 65 of this Decree in case they are handled not by the same competent person.

Article 64.

Fine

Depending on the severity of their violations, organizations or individuals violating the bidding law defined at Point b, Clause 1, Article 75 of the Bidding Law shall be fined under the law on sanctioning of administrative violations in the planning and investment domain.

Article 65.

Ban from participation in bidding activities

Depending on the severity of violations, a ban from participation in bidding activities may be imposed, specifically as follows:

1. Ban from participation in bidding activities for between 6 months and 1 year for one of the following violations:

a/ Violation of Clause 4, Article 12 of the Bidding Law;

b/ Violation of Clause 5, Article 12 of the Bidding Law, specifically:

Compilation, appraisal or approval of bidding dossiers for procurement, construction and installation bidding packages or bidding packages for selection of general construction contractors which state specific requirements on goods trademarks or origin;

c/ Violation of Clause 9, Article 12 of the Bidding Law by individuals of investors, bid solicitors, teams of bidding experts, bidding consultants or appraisal agencies or organizations involved in bidding;

d/ Violation of Clause 6, Article 12 of the Bidding Law;

e/ Violation of Clause 7, Article 12 of the Bidding Law, specifically:

Permission by investment deciders for the division of projects into bidding packages in contravention of Clause 4, Article 6 of the Bidding Law for appointment of contractors or creation of opportunities for a small number of contractors to participate in bidding.

f/ Violation of Clause 8, Article 12 of the Bidding Law, specifically:

Acceptance and offer by investors and bid solicitors of bid-winning proposals to contractors participating in procurement or construction and installation for bidding packages under projects for which those contractors have earlier provided consultancy services, except for EPC bidding packages, bidding packages for selection of general engineering and construction contractors or general turn-key contractors.

g/ Violation of Clause 10, Article 12 of the Bidding Law, specifically:

Failure to withdraw from assigned tasks by individuals who directly participate in organizing bidding or evaluating bids under the assignment by investors, bid solicitors, members of teams of bidding experts, bidding consultants; individuals directly involved in the appraisal of contractor selection results under the assignment by appraisal agencies or organizations and signers of decisions on contractor selection results when the signers of applications for bidding participation are their relatives (blood parents, parents in law, spouses, blood children, adopted children, daughters or sons in law or blood siblings).

h/ Violation of Clause 11, Article 12 of the Bidding Law, specifically:

Causing of difficulties by organizations or individuals of bid solicitors, investors, the State Treasury, financial management agencies, banks or takeover testing agencies in the procedures of payment and settlement under contracts signed between investors and contractors.

i/ Violation of Clause 13, Article 12 of the Bidding Law, specifically:

- Signing of the bidding participation application for a bidding package under a project of an agency or organization by an individual within 1 year counting from the time he/she received a decision allowing him/her to stop working for that agency or organization;

- Decision to select the winning contractor having the person who signs the bidding participation application for a project of the agency or organization at which that person received a decision allowing him/her to stop working less than one year ago.

j/ Violation of Clause 16, Article 12 of the Bidding Law, specifically:

Approval of a contractor selection form other than the open bidding form in a bidding plan without satisfying all the conditions specified in Articles 19 thru 24 of the Bidding Law, Articles 100 and 101 of the Construction Law, and the conditions specified in this Decree.

k/ Violation of Clause 17, Article 12 of the Bidding Law, specifically:

- Approval by competent persons of bidding plans to permit the selection of contractors when capital sources for execution of bidding packages have not yet been identified.

l/ Violation of Clause 3, Article 2 of the Amending Law, specifically:

- Failure of organizations and individuals of the bid solicitor to sell bidding dossiers to contractors or any actions taken by these organizations or individuals to hinder contractors from purchasing bidding dossiers within the time limit stated in notices or letters of invitation for bid;

- Failure of organizations and individuals of the bid solicitor to distribute or any actions taken by these organizations and individuals to restrict the distribution of dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification or dossiers of requirements to contractors within the time limit stated in notices of invitation for expression of interest, notices of invitation for pre-qualification or notices of invitation for making of offers.

2. Ban from participation in bidding activities for between 1 and 3 years for one of the following violations:

a/ Violation of Clause 2, Article 12 of the Bidding Law, specifically:

- Abuse by individuals of their powers or influence to force investors, bid solicitors, teams of bidding experts, bidding consultants, agencies or organizations appraising contractor selection results to propose winning contractors at variance with the requirements of bidding dossiers, dossiers of requirements and evaluation criteria already mentioned in bidding dossiers or dossiers of requirements;

- Intentional reporting by individuals directly evaluating bids or dossiers of proposals or appraising contractor selection results of incorrect or untruthful information which distorts contractor selection results, the conclusion and performance of contracts;

- Intentional supply by contractors of untruthful information in their bids or dossiers of proposals, which distorts contractor selection results, the conclusion and performance of contracts.

b/ Violation of Clause 14, Article 12 of the Bidding Law, specifically:

- Use by contractors of their names, signatures or seals to legalize their bids for procedural participation in bidding in order to win contracts for other contractors;

- Permission by contractors for others to use their names, signatures or seals; use by contractors of the names, signatures or seals of other contractors to create a partnership for participation in bidding and. after winning contracts, failure to comply with the written partnership agreements, unless otherwise provided for by contracts;

- Transfer by contractors to others of 10% or more of the value of job volume they have to perform (excluding job volumes undertaken by subcontractors) under signed contracts;

- Agreement by investors or supervision consultants for contractors to transfer certain jobs which fall within the responsibility of contractors, except for those falling within the responsibility of subcontractors as stated in contracts.

c/ Violation of Clause 15, Article 12 of the Bidding Law;

d/ Violation of Clause 3, Article 2 of the Amending Law, specifically:

- Failure of organizations and individuals to prescribe in bidding dossiers and contracts the ban on employment of foreigners who are unqualified for working in Vietnam under the Vietnamese law;

- Failure of organizations and individuals to prescribe in bidding dossiers and contracts the ban on employment of foreign workers for bidding packages which can be executed by local workers, or intentional promulgation by these organizations and individuals of criteria for evaluation of capability and experience of contractors or other evaluation criteria higher than practical requirements of bidding packages in order to fail local contractors;

- Employment of foreigners who are unqualified for working in Vietnam under the Vietnamese law by winning contractors, organizations and individuals of investors for performance of contracts.

3. Ban from participation in bidding activities for between 3 and 5 years for any of the following violations:

a/ Violation of Clause 1, Article 12 of the Bidding Law;

b/ Violation of Clause 3, Article 12 of the Bidding Law;

c/ Violation of Clause 12, Article 12 of the Bidding Law.

4. Organizations or individuals that commit 3 acts of violation subject to caution shall be banned from participation in bidding activities for 6 months under Clause 21, Article 2 of the Amending Law. For any further act of violation subject to caution, they shall be banned from participation in bidding activities for 3 months but the total ban duration must not exceed 3 years.

Article 66.

Cancellation or termination of contractor selection and non-recognition of contractor selection results

1. Cancellation or termination of contractor selection or non-recognition of contractor selection results means a measure taken by competent persons to handle acts of violation of the bidding law and other relevant laws committed by investors, bid solicitors, contractors or other organizations and individuals participating in bidding activities.

2. Cancellation of bidding

Apart from the cases specified in Clause 1, Article 43 of the Bidding Law, cancellation of bidding also applies to the following cases:

a/ Bidding dossiers and dossiers of requirements are incompliant with the bidding law or other relevant laws, resulting in the failure to select winning contractors or the fact that the winning contractors are not up to requirements of bidding packages;

b/ There is evidence of collusion between parties participating in bidding: the investor, bid solicitor, evaluation agency or organization and contractor, causing damage to the State's interests.

3. Termination of contractor selection or non-recognition of contractor selection results

Termination of contractor selection or non-recognition of contractor selection results applies when there is evidence that an organization or individual commits an act of violation of the bidding law or other relevant laws, leading to the consequence that objectives of bidding activities cannot be achieved or contractor selection results are falsified.

Termination of contractor selection may only be applied to immediately remedy violations and will be effective until approval of contractor selection results. Non-recognition of contractor selection results applies from the date of approval of contractor selection results to the date of contract signing.

Decisions on termination of contractor selection or non-recognition of contractor selection results must clearly state reasons, contents, measures and time limit for remedying bidding violations.

Chapter XII

OTHER ISSUES

Article 67.

Forms of bidding documents

1. Forms of bidding documents include the model bidding plan; the form of dossier of invitation for pre-qualification for construction and installation bidding packages; the form of bidding dossier and the form of report on evaluation of bids for consultancy service, procurement or construction and installation bidding packages; the form of report on appraisal of bidding results, and other forms.

2. The Ministry of Planning and Investment shall issue forms of bidding documents.

Article 68.

Warranty

1. Contractors shall provide work warranty if contracts between them and investors cover construction operations or provide goods warranty if contracts between them and investors cover goods procurement under current law.

2. Contents of warranty, warranty duration, relevant expenses and responsibilities of concerned parties (investors and contractors) must be stated in contracts.

Article 69.

Professional bidding organizations

Professional bidding organizations defined in Clause 3, Article 9 of the Bidding Law are organizations established and operating under the enterprise law, bidding law or relevant laws.

Article 70.

Handling of bidding circumstances

Bidding circumstances specified in Article 70 of the Bidding Law are handled as follows:

1. When it is necessary to adjust bidding package prices or contents, except for cases specified in Clauses 2 and 6 of this Article, investors shall carry out procedures to adjust bidding plans under law before the bid-opening time.
2. When cost estimates of bidding packages (exclusive of any provision) are lower or higher than their approved prices, those cost estimates will substitute bidding package prices to serve as a basis for consideration of contractor selection results without having to carry out the procedures for adjusting bidding package prices in approved bidding plans.

When cost estimates of bidding packages approved by investors are higher than bidding package prices approved by competent persons in bidding plans, investors shall ensure that the total value of such cost estimates is within the total investment level of the approved projects. If cost estimates are higher than bidding package prices, leading to the consequence that the form of contractor selection approved in bidding plans is no longer compliant with the Bidding Law and the Amending Law, investors shall consider and decide on another form of contractor selection compliant with the bidding law.

If cost estimates exceed total investment levels, these total investment levels shall be adjusted under law.

3. If by the time of bidding closure, time of pre-qualification closure, the deadline for submission of dossiers of expression of interest or the deadline for submission of dossiers of proposals for competitive offers, fewer than 3 contractors have submitted bids, bid solicitors shall immediately report (in person, by telephone, email or in writing) it to investors for consideration and settlement within 4 hours in one of the following two ways:

a/ Permitting the extension of the time of bidding closure or prequalification closure or the deadline for submission of dossiers of expression of interest or dossiers of proposals in order to allow more contractors to submit bids or dossiers;

b/ Permitting the immediate opening of bids or dossiers for evaluation.

In case of extension, the new time of bidding closure or pre-qualification closure, deadline for submission of dossiers of expression of interest or dossiers of proposals and relevant deadlines must be clearly specified for contractors to modify or supplement the submitted bids or dossiers according to new requirements.

In case of reporting by telephone or in person, bid solicitors shall subsequently complete the procedures in writing within 10 days from the time of bidding closure or pre-qualification closure, the deadline for submission of dossiers of expression of interest or dossiers of proposals.

4. In case a bidding package is divided into different parts, the bidding dossier should clearly specify the bid-offering conditions, measures and the bidding security value for each part or several parts and the method of evaluation for each part or several parts so that contractors can calculate bid offer plans suitable to their capability.

The evaluation of bids and consideration for approval of winning bids shall be conducted on the principle that the total evaluation price of the bidding package is lowest and the winning price of the entire bidding package does not exceed its approved price without comparing with the estimated cost of each part.

In case a bidding package has one or several parts for which there is no contractor participating in bidding or contractors participating in bidding do not satisfy the technical requirements, the investor shall report it to the competent person for adjusting the bidding plan of the bidding package by dividing such part(s) into different bidding packages with the bidding package price being the sum of estimated costs of these parts. The selection of contractors for parts for which there are contractors participating in bidding and they have been evaluated as satisfying the technical requirements must still ensure the principle that the total evaluation price of these parts is lowest and the winning prices of these parts do not exceed their total estimated cost, regardless of the estimated cost of each of these parts.

5. When a bid contains abnormal unit prices which are unfavorable to the investor, the bid solicitor may request contractors to make written explanations and clarifications. If contractors' explanations are unclear and unpersuasive, these abnormalities shall be considered flaws and must be adjusted under regulations like redundant or deficient offers of bids in line with the requirements of bidding dossiers according to Article 30 of this Decree.

6. For procurement and construction and installation bidding packages and bidding packages for selection of general contractors (except for those for selection of general engineering contractors), if after error correction and flaw adjustment, tenders of contractors all exceed the approved bidding package prices, investors shall consider and decide to handle in any of the following ways:

a/ Permitting these contractors to offer new tenders;

b/ Permitting these contractors to offer new tenders together with reconsidering approved bidding package prices and contents of bidding dossiers, when necessary.

If permitting contractors to offer new tenders, it is necessary to specify the time limit (not exceeding 10 days) for preparation and submission of new bids and require that the opening of new bids comply with the bid-opening procedures specified in Clause 3, Article 28 of this Decree. When it is necessary to adjust bidding package prices in approved bidding plans, competent persons shall approve adjustments within 10 days (but before the deadline for submission of new bids) from the date of receipt of investor reports.

c/ Permitting the invitation of the contractor with the lowest evaluation price to enter into negotiations while ensuring that post-negotiation prices do not exceed the post-error correction and -flaw adjustment bid of that contractor. In case of necessity to adjust the bidding package price in an approved bidding plan, the competent person shall approve the adjustment within 10 days after receiving the investor's report. In case of unsuccessful negotiation, the contractor with the second lowest evaluation price will be invited to enter into negotiation.

The investor shall take responsibility before law for negotiation results and must ensure the following conditions:

- The bidding package concerned is put up for open bidding;
- The bidding process is organized strictly according to prescribed procedures and ensures competitiveness, transparency and fairness;
- The increased bidding package price must not result in an excess of the approved total investment level and must ensure the project's efficiency.

7. In case only one bid passes the technical evaluation, the determination of total points is not required (for consultancy service bidding packages not requiring high techniques) or the determination of evaluation prices is not required (for procurement bidding packages, construction and installation bidding packages and bidding packages for selection of general contractors, except for those for selection of general engineering contractors) but the proposed winning prices must be determined to serve as a basis for consideration of bid winning results. For procurement bidding packages, construction and installation bidding packages and bidding packages for selection of general contractors (except for those for selection of general engineering contractors), in case the proposed winning price of the contractor exceeds the approved bidding package price, it shall be handled under Clause 6 of this Article.

8. When two bids gain the best evaluation results and are equal (in terms of points or evaluation prices), except for preferential cases prescribed in Clause 2, Article 4 of this Decree, the contractor requesting the lower winning price for procurement or construction and installation bidding packages or the contractor with the higher technical point for consultancy service bidding packages shall be considered winning the contract.

9. In the course of contract negotiation and finalization, when finding it necessary to supplement a reasonable work volume to the scope of work in the bidding dossier, which may, however, increase the contract conclusion price in excess of the bid-winning price, the bid solicitor shall report such to the investor for consideration and decision but must ensure that the contract conclusion price does not exceed the approved bidding package price and cost estimate. When the proposed contract conclusion price exceeds the approved bidding package price and cost estimate without resulting in an increase in the total investment capital level, the investor shall consider and decide without having to carry out procedures for adjusting the bidding package price in the approved bidding plan.

10. When the bid-winning price proposed by the solicitor is abnormally low or below fifty percent (50%) of the approved bidding package price or cost estimate, before approving the bidding results, the investor may put forth appropriate measures such as setting up an inter-branch appraisal team for more thorough appraisal of bids of contractors or other appropriate measures in the contract to ensure the feasible performance of the contract.

11. In case of pre-qualification and selection of a list of contractors to be invited to participate in bidding, if fewer than 3 contractors are qualified, the investor shall, depending on the practical conditions of the bidding package, handle this case in either of the following ways:

a/ Conducting an additional pre-qualification or selection of contractors to be added to the short list. In this case, contractors that have been evaluated as being qualified will have their evaluation results reserved and are not required to re-compile dossiers of participation in pre-qualification or dossiers of expression of interest but the bid solicitor shall request these contractors to update information on their capability and experience;

b/ Permitting the immediate distribution of bidding dossiers to contractors on the short list.

12. In case the bidding dossier permits contractors to propose construction measures different from those specified in bidding dossiers, the disparity between the job volume performed by the construction measures specified in the bidding dossier and that performed by construction measures proposed by contractors are not required to be readjusted under Article 30 of this Decree. This disparity will not be regarded as flaw to reject bids under Article 45 of the Bidding Law.

13. If contractors file letters of price rebate, the error correction and flaw adjustment shall be conducted on the basis of tenders not yet subtracted with the price rebate value. In this case, the determination of the absolute value of arithmetic errors or flaws will be made on the basis of tenders stated in the applications.

14. Upon approving the list of contractors invited to participate in a restricted bidding, if there is only one or there are two contractors, the investor shall report such to the competent person for consideration and decision on permission for organizing the restricted bidding or applying another form of selection. If there are three or four contractors, the investor shall consider and permit the immediate distribution of bidding dossiers to contractors on the short list or extend the time for adding more contractors to the short list.

In addition to the above-mentioned cases, when new circumstances arise, bid solicitors shall report them to investors for consideration and decision.

Article 71.

Dossiers submitted for approval of contractor selection results

Based on dossiers submitted by bid solicitors for approval of contractor selection results, investors shall consider and decide on these results. Dossiers submitted for approval of contractor selection results comprise reports on contractor selection results and relevant documents.

1. A report on contractor selection results covers:

a/ Legal grounds of the selection of contractors;

b/ Contents of the bidding package;

c/ The process of selecting and evaluating bids or dossiers of proposals of contractors;

d/ The proposal on contractor selection results, including:

- The name of the contractor proposed for selection (including the names of subcontractors when necessary). For a partnership of contractors, the names of all partners must be stated;

- The proposed winning price or the price proposed for execution of the bidding package (inclusive of taxes, if any);

- The form of the contract;

- The time for performance of the contract.

- When a contractor cannot be selected, a subsequent handling solution is required.

2. Relevant documents include:

a/ Photocopies of the investment decision and documents serving as grounds for making that decision: the business registration certificate, investment certificate or establishment decision; the relevant international treaty or agreement (if any); the bidding plan;

b/ The bidding dossier and the dossier of requirements;

c/ The decision on setting up of the team of bidding experts, the contract on hiring of bidding consultants or a professional bidding organization;

d/ The list of contractors who have submitted bids, dossiers of proposals and the bid-opening written records;

e/ The bids, dossiers of proposals and relevant documents for clarification, modification or supplementation;

f/ The reports on evaluation of bids and dossiers of proposals made by the team of bidding experts, bidding consultant or professional bidding organization;

g/ The document approving the contents of the process of selecting contractors under regulations;

h/ The written record of contract negotiation, for a consultancy service bidding package;

i/ The foreign donor's opinions on the contractor selection results (if any);

j/ Other relevant documents.

Article 72.

Appraisal of bidding dossiers, dossiers of requirements and contractor selection results

1. Appraisal of bidding dossiers or dossiers of requirements

a/ Appraisal contents:

- Checking documents used as grounds for compilation of bidding dossiers or dossiers of requirements;

- Checking contents of bidding dossiers or dossiers of requirements;

- Finding out omitted, unclear or inappropriate contents of bidding dossiers or dossiers of requirements concerning the objectives and scope of work and duration of project implementation against the bidding law and relevant laws;

- Opinions (if any) which remain divergent between organizations and individuals taking part in compilation of bidding dossiers or dossiers of requirements;

- Other contents (if any).

b/ An appraisal report has the following principal contents:

- An overview of the project and bidding package: principal contents of the project and bidding package, legal grounds for compilation of the bidding dossier or dossier of requirements;
- Summarized principal contents of the bidding package;
- Comments on the legal aspect and problematic contents of the bidding dossier or dossier of requirements; proposals on contents which must be revised for approval of the bidding dossier or dossier of requirements;
- Other contents (if any).

2. Appraisal of contractor selection results

a/ Appraisal contents:

- Checking documents used as grounds for the selection of contractors;
- Checking the process and time related to the selection of contractors under regulations: time for publication of bidding information, distribution of bidding dossier sets and dossiers of requirements; time for preparation of bids and dossiers of proposals, bid-closing time, bid-opening time, time for evaluation of bids and dossiers of proposals;
- Checking contents of evaluation of bids and dossiers of proposals: the written record of evaluation and comments of each expert, the sum-up report of the team of bidding experts, the evaluation by bidding consultants and professional bidding organization (if any), the evaluation of bids and dossiers of proposals according to the requirements of the approved bidding dossier, the dossier of requirements and the evaluation criteria, and the accuracy of evaluation;
- Finding out unclear contents in the dossiers submitted for approval of contractor selection results;
- Opinions (if any) which remain divergent between members of the team of bidding experts, the bidding consultant, the professional bidding organization and the bid solicitor.

b/ An appraisal report has the following major contents:

- An overview of the project and concerned bidding package: principal contents of the project and the bidding package, and legal grounds for selection of contractors;
- A summary of the process of implementation and proposals of the submitting agency on the contractor selection results;
- Comments on the legal aspect, the implementation process and proposals of the submitting agency;
- Opinions on the contractor selection results or measures for handling cases in which grounds are not sufficient to make conclusions on the contractor selection results.

3. Appraisal reports shall be sent concurrently to bid solicitors.

Article 73.

Management of foreign contractors

1. After being selected for execution of bidding packages in the Vietnamese territory, foreign contractors shall comply with the provisions of Vietnamese law on entry, exit, import and export of goods, temporary residence registration, accounting regulations, taxes and relevant provisions of Vietnamese law, unless otherwise provided for by a treaty to which the Socialist Republic of Vietnam is a contracting party or by an international agreement which the competent agency or organization of the Socialist Republic of Vietnam has signed.

2. Within 15 days after contracts signed with foreign contractors become effective, investors of projects shall send reports in writing and by email (according to the forms in Appendix III to this Decree, not printed herein) to the Ministry of Planning and Investment and concurrently to concerned line ministries (for investment projects under the management of these ministries or decided by their ministers), the Ministry of Construction (for construction and installation bidding packages) and to provincial-level Planning and Investment Departments in localities (for projects under local management) for synthesis and monitoring.

Article 74.

Bidding examination

1. The Ministry of Planning and Investment shall assume the prime responsibility for organizing bidding examination nationwide. Ministries, ministerial-level agencies, government-attached agencies, other central and local agencies and People's Committees at all levels shall direct the bidding examination at the units under their management and for projects in which investment has been decided by them. Provincial-level Planning and Investment Departments shall assist provincial-level People's Committees in organizing the bidding examination in their localities.

2. Bidding examination shall be conducted regularly according to plan or extraordinarily (upon occurrence of problems, petitions or requests) under decisions of competent persons of examination agencies.

3. Bidding examination covers:

a/ Examining bidding training and retraining certificates, certificates of professional qualifications of bidding officials and experts, and legal documents related to contractor selection.

b/ Examining the elaboration of bidding plans in terms of:

- Legal grounds;

- Contents of bidding plans, rationality of the division of bidding packages and forms of selection of contractors applicable to bidding packages;

- Schedules for execution of bidding packages under the approved bidding plans. Adjustment of bidding plans (if any) and reasons;

- Submission and approval of bidding plans.

c/ Checking the selection of contractors for execution of bidding packages in terms of:

- Compliance with the approved legal grounds such as bidding plans, bidding dossiers and dossiers of requirements;

- The execution process and time.

d/ Finding out shortcomings in bidding work and proposing remedies.

4. At the end of an examination, an examination report must be made. The examination agency shall monitor the remedy of shortcomings listed in the examination report's conclusions.

5. An examination report contains the following details:

a/ Legal grounds;

b/ Examination results;

c/ Comments;

d/ Proposals.

Article 75.

Community-based supervision of bidding activities

Community-based supervision of bidding activities complies with law on community-based supervision of investment.

Chapter XIII

IMPLEMENTATION PROVISIONS

Article 76.

Implementation guidance

1. For bidding dossiers, dossiers of requirements, dossiers of invitation for expression of interest and dossiers of invitation for prequalification distributed before August 1, 2009, the Bidding Law and the Government's Decree No. 58/2008/ND-CP dated May 5, 2008, will apply. Particularly, the decentralization of responsibilities in bidding must comply with the Amending Law from August 1, 2009.

For bidding dossiers, dossiers of requirements, dossiers of invitation for expression of interest and dossiers of invitation for prequalification distributed from August 1, 2009, to before the effective date of this Decree, the Amending Law, the Bidding Law and the Government's Decree No. 58/2008/ND-CP dated May 5, 2008, will apply.

For bidding dossiers, dossiers of requirements, dossiers of invitation for expression of interest and dossiers of invitation for prequalification distributed from the effective date of this Decree, the Bidding Law, the Amending Law and this Decree will apply.

2. The Ministry of Planning and Investment shall guide Articles 5, 7, 34 and 67 and other relevant provisions of this Decree to meet the requirements of state management of bidding.

3. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with concerned agencies in, building the national bidding network and application

roadmap; and formulating a mechanism of management and operation of and guiding the online bidding.

4. The Ministry of Finance shall guide Clause 2, Article 1 of the Bidding Law on projects to procure assets with state capital to maintain regular operations of state agencies, political organizations, socio-economic organizations, socio-political-professional organizations, social organizations, socio-professional organizations and people's armed force units.

5. The Ministry of Finance shall guide various expenses related to the contract selection.

6. The Ministry of Industry and Trade shall guide procedures for export and import of goods by contract-winning contractors.

6. The Ministry of Labor, War Invalids and Social Affairs shall assume the prime responsibility for, and coordinate with the Ministry of Finance and concerned line agencies in, issuing regulations on levels of salaries of different categories of domestic consultants, which serve as a basis for the determination of values of consultancy contracts and application of the form of time-based contract specified in Article 51 of the Bidding Law and Article 50 of this Decree.

7. Ministries, ministerial-level agencies, government-attached agencies, other central agencies and provincial-level People's Committees shall, within their respective management scope, provide detailed guidance on a number of contents of this Decree (when necessary), which must, however, not contravene this Decree.

8. Ministers, heads of ministerial-level agencies, heads of other central agencies and chairpersons of People's Committees at all levels shall each nominate one of their deputies to take charge of bidding work within the management scope of their respective branches or localities. In the course of implementation of this Decree, any arising problems or obstacles should be reported to the Prime Minister for consideration and decision. Annually, ministries, ministerial-level agencies, government-attached agencies, other central agencies, provincial-level People's Committees and enterprises set up under decisions of the Prime Minister shall make and send reports on the bidding situation to the Ministry of Planning and Investment for synthesis and reporting to the Prime Minister.

Article 77.

Effect

This Decree takes effect on December 1, 2009. From the effective date of this Decree, the Government's Decree No. 58/2008/ND-CP dated May 5, 2008, and the Prime Minister's Decision No. 49/2007/QĐ-TTg dated April 11, 2007, cease to be effective. All previous regulations of the Government, ministries, ministerial-level agencies and localities which are contrary to the Bidding Law, the Construction Law, the Amending Law and this Decree are annulled.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER
(Signed and sealed)**

Nguyen Tan Dung

(This translation is for reference only)