

THE PRIME MINISTER OF
GOVERNMENT

No: 87/2004/QĐ-TTg

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness

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Ha Noi , Day 19 month 05 year 2004

**DECISION No. 87/2004/QĐ-TTg OF MAY 19, 2004 PROMULGATING THE
REGULATION ON MANAGEMENT OF OPERATIONS OF FOREIGN CONTRACTORS IN
THE CONSTRUCTION DOMAIN IN VIETNAM**

THE PRIME MINISTER

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

Pursuant to the Construction Law of November 26, 2003;

Pursuant to the Government's Decree No. 24/2000/ND-CP of July 31, 2000 detailing the implementation of the Law on Foreign Investment in Vietnam;

Pursuant to the Government's Decree No. 66/2003/ND-CP of June 12, 2003 amending and supplementing a number of articles of the Bidding Regulation promulgated together with the Government's Decree No. 88/1999/ND-CP of September 1, 1999 and Decree No. 14/2000/ND-CP of May 5, 2000;

At the proposal of the Construction Minister,

DECIDES:

Article 1.- To promulgate together with this Decision the Regulation on management of operations of foreign contractors in the construction domain in Vietnam.

Article 2.- This Decision takes effect 15 days after its publication in the Official Gazette. All stipulations contrary to the Regulation promulgated together with this Decision are hereby annulled.

Article 3.- The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies, the presidents of the People's Committees of the provinces and centrally-run cities and the concerned organizations and individuals shall have to implement this Decision.

Prime Minister
PHAN VAN KHAI

**REGULATION ON MANAGEMENT OF OPERATIONS OF FOREIGN CONTRACTORS IN
THE CONSTRUCTION DOMAIN IN VIETNAM**

(Promulgated together with the Prime Minister's Decision No. 87/2004/QĐ-TTg of May 19, 2004)

Chapter I

GENERAL PROVISIONS

Article 1.- Subjects and scope of application

This Regulation applies to operations of foreign contractors in Vietnam in the domains of investment and construction consultancy, provision of supplies and technological equipment accompanied by technical services related to construction works and work construction process.

In cases where international agreements which the Socialist Republic of Vietnam has signed or acceded to contain provisions different from those of this Regulation, such international agreements shall apply.

Article 2.- Interpretation of terms

The terms and phrases referred to herein are construed as follows:

1. "Foreign contractors" mean foreign organizations or individuals having civil legal capacity; particularly, individuals must also have civil act capacity for signing and performing contracts. The civil legal capacity and civil act capacity of foreign contractors are determined under the laws of the countries of which such contractors bear the nationality.

Foreign contractors may be principal contractors, general contractors, partnership contractors or sub-contractors.

2. "Principal contractors" mean contractors having the direct contractual relationship with investors.

3. "General contractors" mean contractors signing contracts directly with the work construction investors to undertake the whole volume of a type of work or the whole work volume of a work construction investment project. General contractors may take the following principal forms: designing general contractors; work construction general contractors; work designing and construction general contractors; general contractors for work designing, technological equipment provision and work construction; general contractors for formulation of work construction investment projects, work designing, technological equipment provision and work construction.

4. "Partnership contractors" mean organizations (other than legal persons), including foreign contractors or foreign contractors and Vietnamese contractors which jointly participate in a bidding and perform a contract in Vietnam on the basis of a partnership contract. A partnership contract must clearly prescribe the common responsibilities of all contractors to the partnership as well as their own responsibilities for contracted works of the partnership, and concurrently determine the leading contractor of the partnership.

5. "Subcontractors" mean contractors having the contractual relationship with the principal contractor or the general contractor for performing a portion of the latter's work.

6. "Executive offices" mean offices of foreign contractors registered for operation in localities where works are located to perform the contracted tasks after being granted contracting licenses. Executive offices shall only exist in the contract performance duration and be dissolved upon the liquidation of contracts.

7. "Authorized persons" mean persons authorized by foreign contractors to conduct transactions in Vietnam in the name of such foreign contractors. The authorization must comply with the Vietnamese laws.

8. "Investment and construction consultancy" means professional jobs in investment and construction activities, including consultancy on formulation of construction investment projects, construction surveys, architectural designing, technical designing, management of construction investment projects, supervision of construction process and other technical or econo-technical services for construction investment projects.

9. "Construction process" means the performance of construction and installation of equipment and technological chains in works in order to put such works into operation, exploitation and use according to their designs.

10. "Contracting licenses" mean licenses granted by competent Vietnamese State agencies to foreign contractors upon each contract after they win biddings or are selected for contracting according to Vietnamese law provisions.

Article 3.- Principles for managing operations of foreign contractors

1. Foreign contractors can operate in Vietnam only after being granted contracting licenses by competent Vietnamese State agencies.

2. Operations of foreign contractors in Vietnam must comply with the provisions of Vietnamese laws and relevant international agreements which Vietnam has signed or acceded to.

Chapter II

PROVISIONS ON FOREIGN CONTRACTORS

Article 4.- Conditions for being granted contracting licenses

To be granted contracting licenses, foreign contractors must satisfy the following conditions and requirements:

1. For bidding packages subject to compulsory application of the provisions of the Vietnamese bidding legislation:

a/ Having won biddings or having been selected for contracting.

b/ Having signed contracts.

2. For bidding packages not subject to compulsory application of the provisions of the Vietnamese bidding legislation:

a/ Having won biddings or having been selected for contracting.

b/ Having signed contracts.

c/ Having full capability suitable to contracted works according to Vietnamese law provisions.

3. In all cases of being contracted (as a result of winning bids or being selected as contractors), foreign contractors shall have to enter into partnership with Vietnamese contractors or employ Vietnamese subcontractors (except for cases permitted by the Prime Minister or provided for by Vietnamese laws).

4. They must commit to fully observe the Vietnamese law provisions concerning contracting activities in Vietnam.

Article 5.- Dossiers of application for contracting licenses

1. To be considered for grant of contracting licenses in Vietnam, foreign contractors must send their registration dossiers to competent agencies defined in Articles 10 and 16 of this Regulation.

A dossier of application for contracting license comprises:

a/ An application for contracting license (made according to the form guided by the Construction Ministry).

b/ A copy of the document on the bidding result or the decision on selection of the contractor or the lawful contract.

c/ Copies of the establishment license and the company's charter (or the business registration certificate, for organizations; the consultancy practice license, for individuals) and the practice certificate granted by the country of which the foreign contractor bears the nationality.

d/ The report on operation experiences related to contracted works and the financial audit report for the latest 3 years (for the cases mentioned in Clause 2, Article 4 of this Regulation).

e/ The partnership contract with a Vietnamese contractor or the written commitment to employ Vietnamese subcontractors to perform the contracted works (already included in the bid dossier or tender dossier).

f/ The lawful authorization letter, for persons other than the contractor's representative at law.

2. Applications for contracting licenses must be made in Vietnamese. Other foreign papers and documents must be consularly legalized (except otherwise provided for by Vietnamese laws or international agreements which Vietnam has signed or acceded to). Papers and documents in foreign languages must be translated into Vietnamese and the translations must be notarized or authenticated according to Vietnamese laws.

Article 6.- Time limits for granting contracting licenses and the licensing fee

1. Competent State agencies defined in Articles 10 and 16 of this Regulation shall examine dossiers before granting contracting licenses to foreign contractors within 20 working days after receiving the complete and valid dossiers specified in Article 5 of this Regulation. In case of refusal to grant licenses, the agencies competent to grant contracting licenses must reply the contractors in writing, clearly stating the reasons therefor.

2. Upon receiving contracting licenses, foreign contractors must pay a licensing fee prescribed by the Finance Ministry.

3. Contracting licenses shall cease to be valid in the following cases:

a/ Contracts are accomplished and liquidated.

b/ Contracts are no longer effective as the foreign contractors are suspended from operation, dissolved, go bankrupt or for other reasons prescribed by Vietnamese laws and laws of the countries of which such contractors bear nationality.

Article 7.- Rights and obligations of foreign contractors

1. Foreign contractors have the following rights:

a/ To request the functional agencies to guide the compilation of dossiers of application for contracting licenses and other matters related to operations of contractors according to this Regulation.

b/ To lodge complaints and/or denunciations against acts of violation committed by organizations and individuals performing works specified in this Regulation.

c/ To have their legitimate interests in their business in Vietnam under the granted contracting licenses protected.

2. Foreign contractors have the following obligations:

a/ To register the addresses, communications means, transaction accounts and places where they open transaction accounts of their work executive offices and representatives for contract performance at the concerned agencies according to the regulations of the People's Committees of the provinces where the contracted projects exist. At the same time, to notify such information to the Construction Ministry, the Public Security Ministry, the Finance Ministry, the Trade Ministry, Vietnam State Bank and the People's Committees of the provinces and centrally-run cities where construction works are located.

b/ To register the use of seals of their work executive offices at the Police Offices of the provinces and centrally-run cities where construction works are located. Foreign contractors shall only use these seals for affairs in service of contract performance in Vietnam according to the provisions of their contracting licenses.

Upon the expiry of contracts, foreign contractors must return their seals to the agencies which have granted them.

c/ To register and pay taxes according to Vietnamese law provisions; to observe the accounting regime, open accounts and make payments as guided by the Finance Ministry and Vietnam State Bank in service of business activities under contracts.

d/ To recruit and employ Vietnamese and foreign laborers according to the Vietnamese labor legislation.

To register only economic managerial and technical experts and highly skilled laborers whom Vietnam lacks for entry into Vietnam.

Foreigners working for foreign contractors in Vietnam must observe the Vietnamese legislations on exit and entry, register their temporary residence or permanent residence, and register for being granted work permits according to the provisions of the Vietnamese labor legislation.

e/ To carry out the procedures for exporting or importing supplies, machines and equipment related to the contracts in Vietnam according to Vietnamese law provisions and the Trade Ministry's guidance, including:

- Registration for temporary import for re-export of construction supplies, machines and equipment;
- Registration of the list of import raw materials, fuels, materials, complete and synchronous equipment for works under the contracts.

f/ To perform partnership contracts already signed with Vietnamese contractors or commitments to use Vietnamese subcontractors determined when participating in biddings or offering bids according to Vietnamese law provisions.

g/ To purchase insurance according to Vietnamese law provisions for contractor's works, including: insurance for professional liability of contractors providing investment and construction consultancy; insurance for assets and goods for procurement contractors; insurances of various kinds for construction contractors and other insurance regimes according to Vietnamese law provisions.

h/ To register for inspection the quality of supplies and equipment imported and supplied under the contracts.

i/ To register the safety of construction equipment and transport means related to business activities of foreign contractors according to Vietnamese law provisions.

j/ To observe the regulations on norms, standards, management of quality of construction works, environmental protection as well as other relevant Vietnamese law provisions.

k/ To implement the reporting regimes prescribed in contracting licenses.

l/ Upon the completion of works, foreign contractors shall have to compile dossiers on work completion; provide warranty; make the settlement of imported supplies and equipment; handle unused supplies and equipment in work construction contracts according to the regulations on export and import; re-export construction supplies and equipment already registered for temporary import - re-export; and liquidate the contracts. And at the same time, to notify the concerned State management agencies of the expiry of the contracts, terminate operation of their executive offices and return the seals of the executive offices to the agencies which have granted such seals.

m/ To supply data to the agencies managing data on contractors according to the provisions of the bidding legislation.

Chapter III

PROVISIONS ON INVESTORS OR PROJECT OWNERS

Article 8.- Selection of foreign contractors

When selecting foreign contractors to perform bidding packages not subject to the compulsory application of the provisions of the Vietnamese bidding legislation, apart from their own requirements, investors or project owners shall also base themselves on the provisions of Point c of Clause 2, Clause 3, Clause 4, Article 4 of this Regulation to consider, evaluate and select contractors. Contracts between investors or project owners and foreign contractors shall be made on the principle of agreement between involved parties but not in contravention of Vietnamese laws.

Article 9.- Responsibilities of investors or project owners

Investors or project owners shall have the responsibilities:

1. To guide foreign contractors in complying with the provisions of this Regulation and other relevant law provisions; to assist foreign contractors in preparing documents related to contracted works which must be declared by foreign contractors in their dossiers of application for contracting licenses and other relevant procedures according to Vietnamese law provisions. To register, together with foreign investors, the export and import of supplies, machines and equipment related to the contract performance by foreign contractors according to the provisions of Article 7 of this Regulation.
2. To supervise foreign contractors in strictly implementing their commitments in partnership contracts with Vietnamese contractors or commitments to employ Vietnamese subcontractors already registered when participating in biddings or offering bids.
3. To consider the domestic capability to supply construction equipment before agreeing on the lists of construction machines and equipment proposed by foreign contractors for temporary import and re-export.
4. To consider the domestic capability to supply technical workers before agreeing with foreign contractors on the lists of foreign personnel working for such contractors and applying for entry into Vietnam to perform the contractual works of foreign contractors.
5. To certify the foreign contractors' settlements of imported supplies and equipment upon the completion of works.
6. When employing foreign contractors to provide consultancy on construction management or supervise construction quality, investors or project owners must notify in writing other contractors and the construction quality management agencies of the functions and tasks to be performed by such foreign contractors on their behalf.

Chapter IV

FUNCTIONS, TASKS AND POWERS OF THE STATE MANAGEMENT AGENCIES

Article 10.- The Construction Ministry

1. To coordinate with the concerned ministries and branches in managing operations of foreign contractors in Vietnam according to its functions.

2. To explain and guide the procedures for, and manage, the grant of contracting licenses for foreign contractors to perform contracted works according to the provisions of this Regulation.
3. To grant or withdraw contracting licenses in cases where foreign contractors undertake bidding packages of group-A projects.
4. To assume the prime responsibility for, and coordinate with the concerned agencies in, organizing the inspection of operations of foreign contractors in Vietnam.
5. To handle violations according to the provisions of Article 18 of this Regulation.

Article 11.- The Finance Ministry

1. To prescribe the contracting licensing fee rates, the regime of fee collection, payment and use.
2. To explain and guide the regulations on regimes of tax collection, accounting reports, settlement of completed work volumes, work construction and installation insurance premium, goods supply and procurement insurance premium, consultancy service professional insurance premium and other regulations related to operations of foreign contractors in Vietnam according to its competence.

Article 12.- The Public Security Ministry

1. To prescribe the registration and management of seals of foreign contractors' executive offices in Vietnam.
2. To manage the exit and entry, registration of temporary residence or permanent residence of foreigners working for foreign contractors in Vietnam.
3. To coordinate with the relevant agencies in ensuring political security, social order and safety, fire and explosion prevention and fighting at operating establishments of foreign contractors.

Article 13.- The Trade Ministry

1. To manage the temporary import - re-export, temporary export - re-import and import of machines, equipment and supplies for the construction of works under foreign contractors' contracts to construct works in Vietnam.
2. To grant permits for temporary import - re-export, temporary export - re-import and import of machines, equipment and supplies to foreign contractors operating in Vietnam.
3. To examine the settlement of imported supplies, machines and equipment of foreign contractors and handle unused supplies and equipment according to law provisions.

Article 14.- The Labor, War Invalids and Social Affairs Ministry

1. To manage the recruitment and employment of laborers being Vietnamese or foreigners working for foreign contractors in Vietnam.

2. To manage the registration of safety of equipment in construction activities related to operations of foreign contractors in Vietnam.

Article 15.- The Planning and Investment Ministry

To manage the system of information data on foreign contractors operating in Vietnam according to the provisions of the bidding legislation.

Article 16.- The People's Committees of the provinces and centrally-run cities

1. To manage the registration of work executive offices, representatives of contractors and operations of foreign contractors in localities; to direct the concerned agencies and investors in their localities to implement this Regulation and the relevant law provisions.
2. To authorize the provincial/municipal Construction Services to grant and withdraw contracting licenses in cases where foreign contractors undertake bidding packages under group-B or group-C projects in their localities.
3. To organize the inspection of foreign contractors in their localities. To handle violations according to the provisions of Article 18 of this Regulation, for cases under their contracting licensing competence, or request the Construction Ministry and the concerned agencies to handle violations falling beyond their competence.

Chapter V

INSPECTION AND HANDLING OF VIOLATIONS

Article 17.- Inspection

1. The Construction Ministry shall assume the prime responsibility for organizing periodical inspections of operations of foreign contractors in Vietnam, but no more than once a year.
2. The relevant ministries and branches shall, with the ambit of their functions and powers, inspect, warn and handle foreign contractors when they violate this Regulation or other law provisions.
3. The provincial/municipal Construction Services shall assist the provincial/municipal People's Committees in assuming the prime responsibility for organizing the inspection of operations of foreign contractors in their localities, with the participation of the provincial/municipal Trade; Finance; Labor, War Invalids and Social Affairs and Public Security Services; and report once every six months on the situation of grant of contracting licenses and operations of foreign contractors in their localities to the Construction Ministry, which shall subsequently synthesize and report it to the Government.
4. Unexpected inspections shall be conducted only upon detecting signs of violations of Vietnamese laws committed by foreign contractors.

Article 18.- Handling of violations

1. Foreign contractors operating in Vietnam which violate the provisions of this Regulation and other Vietnamese law provisions shall, depending on the seriousness of their violations, be handled as follows:

a/ Being suspended from performing works in Vietnam.

b/ Being administratively sanctioned for violations of the administrative regulations in the construction domain.

c/ Having their contracting licenses withdrawn, having their right to participate in contracting works in Vietnam suspended definitely or indefinitely, or being handled in other forms prescribed by law.

d/ If causing damage, making compensations therefor according to law provisions.

2. State management agencies with the inspection function, when concluding that foreign contractors in Vietnam commit law violations, may handle them according to their competence or request competent agencies to handle according to their respective functions and law provisions.

3. Persons competent to manage operations of foreign contractors in Vietnam, who abuse their positions and powers to harass for bribes or improperly implement the provisions of this Regulation shall, depending on the seriousness of their violations, be handled according to law provisions.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 19.- Implementation provisions

The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies, the presidents of the People's Committees of the provinces and centrally-run cities, and the concerned organizations and individuals shall have to implement this Regulation.

Prime Minister
PHAN VAN KHAI