

## DECREE

### ELABORATION OF SOME ARTICLES OF THE LAW ON BIDDING ON INVESTOR SELECTION

*Pursuant to the Law on Government Organization dated June 19, 2015;*

*Pursuant to the Law on Bidding dated November 26, 2013;*

*Pursuant to the Law on Investment dated June 18, 2014;*

*Pursuant to the Law on Public Investment dated June 13, 2019;*

*Pursuant to the Law on Land dated November 29, 2013;*

*At the request of the Minister of Planning and Investment;*

*The Government promulgates a Decree on elaboration of some Articles of the Law on Bidding on investor selection.*

### Chapter I

## GENERAL PROVISIONS

### Article 1. Scope and regulated entities

#### 1. Scope

This Decree elaborates some Articles of the Law on Bidding on selection of investors in the following projects:

- a) Projects in the form of public-private partnerships (PPP) defined by regulations of law on PPP;
- b) Projects that involves use of land construction of commercial housing, commercial buildings, multipurpose building or complex for commercial purposes;
- c) Projects other than those mentioned in Point a and Point b of this Clause but still have to undergo bidding according to relevant laws and laws on private investment.

#### 2. Regulated entities

- a) Organizations and individuals that participate or are involved in selection of investors in the projects specified in Clause 1 of this Article.
- b) Organizations and individuals that wish to apply regulations of this Decree to selection of investors in projects other than those regulated by this Decree. In this case, specify the contents that apply the Law on Bidding, this Decree and other laws to ensure fairness, transparency and efficiency.

### Article 2. Assurance of competitiveness in bidding

A bidder is considered legally and financially independent from the counseling contractor, the competent authorities, the procuring entity as prescribed in Clause 4 Article 6 of the Law on Bidding when the following conditions are fully satisfied:

#### 1. The bidder is not holding shares of stakes of the following counseling contractors:

- a) The counseling contractor specialized in validation of the pre-feasibility study, feasibility study, design document, cost estimate;
- b) The counseling contractor specialized in preparation of the prequalification documents, bidding document, assessment of prequalification applications and bids, validation of prequalification result and investor selection result.

#### 2. The bidder and the counseling contractor mentioned in Clause 1 of this Article is holding less than 30% of the other's shares/stakes.

In case the bidder or counseling contractor is a joint venture, the holdings of other organizations and individuals in the joint venture shall be equal to the total holdings of the members of the joint venture.

#### 3. The competent authority and the procuring entity is holding not more than 49% of the share/stake in the bidder. In case the bidder is a joint venture, the holding of the competent authority or the procuring entity in the joint venture shall be equal to the total holdings of the members of the joint venture.

$$\text{Tỷ lệ sở hữu vốn} = \sum_{i=1}^n X_i \times Y_i$$

Where:

$X_i$ : holding of the competent authority or procuring entity in joint venture member  $i$

$Y_i$ : capital contribution ratio of member  $i$  in the joint venture agreement.

$n$ : number of joint venture members

### **Article 3. Incentives in selection of investors in PPP projects**

An bidder has an approved feasibility study or pre-feasibility study (for high technology projects), design, cost estimate (for BT projects or projects the bidding for which is based upon the design and cost estimate) (hereinafter referred to as “eligible bidder”) will receive certain incentives during bid evaluation. To be specific:

1. When applying the service price-based method, an ineligible investor will have to increase the proposed price by 5%.
2. When applying the state investment-based method, an ineligible bidder will have to increase the proposed state investment by 5%.
3. When applying the state interest-based method, an eligible bidder may increase the proposed contribution to state budget by 5% or decrease the contract duration by 5%.
4. In case of a BT project, an eligible bidder may decrease the bid price by 5% after correction, adjustment and discount (if any).
5. When applying a combined method, the incentives will be proportional to the methods applied but must not exceed 5% in total.

### **Article 4. Publishing bidding information**

1. Responsibility to publish bidding information on the national bidding network:

- a) Ministries, ministerial agencies, governmental agencies, the People’s Committees of provinces and competent persons shall publish the regulations in Clause 1.g and 1.h Article 8 of the Law on Bidding;
- b) Provincial Departments of Planning and Investment and units in charge of PPP management shall publish the regulations in Point g and Point h Clause 1 Article 8 of the Law on Bidding;
- c) Department of Planning and Investment shall publish information about land-using projects, extension or change of deadline for applying (if any), capacity profile evaluation, experience of each applicants according to Clause 1.i and 1.l Article 8 of the Law on Bidding;
- d) The procuring entity shall publish the information specified in Clause 1.a, b, c, d and dd Article 8 of the Law on Bidding and information about change in bid closing time (if any); information about PPP projects and land-using projects specified in Clause 1.l Article 8 of the Law on Bidding;
- d) Bidders shall update information about their capacity and experience to the bidder database in accordance with Clause 1.d Article 5 and Clause 1.k Article 8 of the Law on Bidding.

2. Information about projects on the list of state secrets shall be published in accordance with state secret protection laws.

3. When an invalid information is found, the Ministry of Planning and Investment shall post a notice on the national bidding network and the information provider shall make adjustments accordingly.

4. In addition to the responsibility to publish the information specified in Clause 1.c of this Article, Departments of Planning and Investment shall publish on an English website or newspaper in Vietnam information about any land-using project whose total estimated cost (excluding compensation and relocation cost, land levy and land rent) is 800.000.000.000 VND or over.

5. In addition to the responsibility to publish the information specified in Clause 1.d of this Article, the procuring entity shall publish the prequalification notice and invitation to bid on an English website or newspaper in Vietnam.

### **Article 5. Bidding information publishing duration**

1. The procuring entity shall issue prequalification documents and bidding documents during the time period specified in the prequalification notice or invitation to bid, which must not be shorter than 03 working days from the first day on which the information specified in Clause 1.b and 1.c Article 8 of the Law on Bidding is published on the national bidding network.

2. The information specified in Clause 1.a, d, dd, g, h, i, l Article 8 of the Law on Bidding shall be published within 07 working days from the issuance date of the document.

3. Within 02 working days from the day on which the any of the information mentioned in Points b, c, d, dd, g Clause 1 Article 8 of the Law on Bidding is posted on the national bidding network, Vietnam Public Procurement Review Journal (VPPR) shall publish it on 01 issue.

#### **Article 6. Time limits for various tasks of investor selection**

1. The investor selection plan shall be validated within 20 days from the receipt of adequate documents, and approved within 10 days from the receipt of the validation report.
2. The time limit for an bidder to prepare the capacity profile and submit the bid shall be 30 days from the day on which the project list is posted.
3. The prequalification documents, bidding documents and request for proposals shall be issued after 03 working days from the first day on which the prequalification notice or invitation to bid is posted on the national bidding network, or from the day the invitation to bid is sent and before the bid closing time.
4. The time limit for preparing the prequalification application shall be at least 30 days from the first day on which the prequalification documents are issued to the bid closing date. Bidders shall submit prequalification applications before the bid closing time.
5. The time limit for preparing the proposal shall be at least 30 days from the first day on which the request for proposals is issued to the bid closing date. Bidders shall submit proposals before the bid closing time.
6. The time limit for preparing the bid shall be at least 60 days for domestic bidding or 90 days for international bidding from the first day on which the bidding documents are issued to the bid closing date. Bidders shall submit bids before the bid closing time.
7. Any revisions to prequalification documents shall be sent (by post, fax, email or in person) to the bidders that received the prequalification documents at least 10 days before the bid closing date. Any revisions to the bidding documents shall be sent to bidders that received bidding documents at least 15 days for domestic bidding or 90 days for international bidding before the bid closing date; at least 10 days before the bid closing time for revisions to the request for proposals. If the revisions are not sent within the time limit specified in this Clause, the procuring entity shall defer the bid closing time accordingly.
8. The procuring entity shall send the notice of investor selection result to the bidders by post or fax within 05 working days from the day on which the result is approved.
9. In case prequalification procedure is applied, the competent person or head of the approving authority shall be responsible for the punctuality of prequalification tasks.
10. The competent person shall decide other time limits according to Appendix I hereof and take responsibility for the punctuality and quality of investor selection tasks.

#### **Article 7. Investor selection costs**

1. For domestic bidding, the selling price (inclusive of tax) shall not exceed 20.000.000 VND for a set of bidding documents or request for proposals; 5.000.000 VND for a set of prequalification documents. For international bidding, the selling price (inclusive of tax) shall not exceed 30.000.000 VND for a set of bidding documents or request for proposals; 10.000.000 VND for a set of prequalification documents.
2. Costs of preparation and validation of prequalification documents; evaluation of prequalification applications; validation of prequalification result:
  - a) The cost of preparation of prequalification documents shall be 0,02% of the total investment but shall not be smaller than 10.000.000 VND or greater than 100.000.000 VND;
  - b) The cost of validation of prequalification documents shall be 0,01% of the total investment but shall not be smaller than 10.000.000 VND or greater than 50.000.000 VND;
  - c) The cost of evaluation of prequalification applications shall be 0,02% of the total investment but shall not be smaller than 10.000.000 VND or greater than 100.000.000 VND;
  - d) The cost of validation of prequalification result shall be 0,01% of the total investment but shall not be smaller than 10.000.000 VND or greater than 50.000.000 VND.
3. Costs of preparation and validation of bidding documents and request for proposals; evaluation of bids and proposals; validation of investor selection result:
  - a) The cost of preparation of bidding documents or request for proposals shall be 0,05% of the total investment but shall not be smaller than 10.000.000 VND or greater than 200.000.000 VND;
  - b) The cost of validation of bidding documents or request for proposals and validation of investor selection result shall be 0,02% of the total investment but shall not be smaller than 10.000.000 VND or greater than 100.000.000 VND;

c) The cost of evaluation of bids or proposals shall be 0,03% of the total investment but shall not be smaller than 10.000.000 VND or greater than 200.000.000 VND.

4. For re-selection of investors and similar projects of the same competent authorities and procuring entity, the costs of preparation and validation of prequalification documents, preparation and validation of bidding documents or request for proposals shall be 50% of the costs mentioned in Clause 2 and Clause 3 of this Article. In case of re-selection of investors, the costs shall be included in the investment preparation expense.

5. The costs specified in Clauses 2, 3, 4 of this Article apply when the competent authority and procuring entity directly carry out investor selection. In case a counselor is hired to perform the tasks in Clauses 2, 3 and 4 the costs depend on the volume and duration of work, the counselor's capacity, experience and wage, and other elements. In case the counsellor's wage is not specified, it will be determined according to the wages paid to counsellors of similar projects over a specific period of time or in the total investment.

6. The cost of payment for the counsellors on handling of bidders' complaints against the investor selection result shall be 0,02% of total investment of the complaining bidders but shall not be smaller than 20.000.000 VND or greater than 200.000.000 VND.

7. The Ministry of Planning and Investment shall provide guidance on the costs of publishing bidding information, participation in the national bidding network, management and use of revenues from collection of these costs.

8. The management and use of the revenues mentioned in Clauses 1, 2, 3, 4, 5, 6 of this Article shall comply with instructions of the Ministry of Finance.

#### **Article 8. Time and cost of selection of investors in PPP projects of Group C**

##### 1. Time:

a) The investor selection plan shall be validated within 10 days from the receipt of adequate documents, and approved within 05 working days from the receipt of the validation report.

b) The prequalification documents (if any), bidding documents and request for proposals shall be issued after 03 working days from the first day on which the prequalification notice or invitation to bid is posted on the national bidding network, or the day the invitation to bid is sent before the bid closing time.

c) The time limit for preparing the prequalification application shall be at least 10 days from the first day on which the prequalification documents are issued to the bid closing date. Bidders shall submit prequalification applications before the bid closing time.

d) The time limit for preparing the bid shall be at least 30 days, proposals at least 15 days from the first day on which the bidding documents or request for proposals is issued to the bid closing date. Bidders shall submit bids and proposals before the bid closing time.

dd) Any revisions to prequalification documents, bidding documents or request for proposals shall be sent (by post, fax, email or in person) to the bidders that received them at least 03 days before the bid closing date.

e) The procuring entity shall send the notice of investor selection result to the bidders by post or fax within 05 working days from the day on which the result is approved.

g) In case prequalification procedure is applied, the competent person or head of the approving authority shall be responsible for the punctuality of prequalification tasks.

h) The competent person shall decide other time limits according to Appendix I hereof and take responsibility for the punctuality and quality of investor selection tasks.

##### 2. Costs:

a) The value of bid security shall be 0,5% - 1% of the total investment in the project, the value of performance security shall be 1% - 1,5% of the total investment in the project.

b) The selling price (tax-inclusive) shall not exceed 15.000.000 VND for a set of bidding documents or request for proposals; 5.000.000 VND for a set of prequalification documents.

c) Costs of preparation and validation of prequalification documents; evaluation of prequalification applications; validation of prequalification result:

- The cost of preparation of prequalification documents shall be 0,02% of the total investment but shall not be smaller than 5.000.000 VND or greater than 50.000.000 VND;

- The cost of validation of prequalification documents and prequalification result shall be 0,01% of the total investment but shall not be smaller than 5.000.000 VND or greater than 25.000.000 VND;

- The cost of evaluation of prequalification applications shall be 0,02% of the total investment but shall

not be smaller than 5.000.000 VND or greater than 50.000.000 VND.

d) The costs of preparation and validation of bidding documents and request for proposals; evaluation of bids and proposals; validation of investor selection result:

- The cost of preparation of bidding documents or request for proposals shall be 0,05% of the total investment but shall not be smaller than 5.000.000 VND or greater than 100.000.000 VND;

- The cost of validation of bidding documents or request for proposals and validation of investor selection result shall be 0,02% of the total investment but shall not be smaller than 5.000.000 VND or greater than 50.000.000 VND;

- The cost of evaluation of bids or proposals shall be 0,03% of the total investment but shall not be smaller than 5.000.000 VND or greater than 100.000.000 VND.

dd) For re-selection of investors and similar projects of the same competent authorities and procuring entity, the costs of preparation and validation of prequalification documents, preparation and validation of bidding documents or request for proposals shall be 50% of the costs mentioned in Point c and Point d of this Clause. In case of re-selection of investors, the costs shall be included in the investment preparation expense.

e) The costs specified in Points c, d and dd of this Clause apply when the competent authority and procuring entity directly carry out investor selection. Clause 5, 6, 7 Article 7 of this Decree shall apply to the cost of bidding counseling; payment for the counseling board for complaint handling; cost of publishing bidding information, cost of participation in the national bidding network.

### **Article 9. Selection of investors in PPP projects**

1. International competitive bidding shall apply to selection of investor in PPP projects, except for the cases specified in Clause 2 and Clause 3 of this Article.

2. Domestic competitive bidding shall be carried out in the following cases:

a) Foreign bidders are restricted from investment in the project under Vietnam's law or an international treaty to which Vietnam is a signatory.

b) Foreign bidders do not participate in or succeed in international prequalification;

c) The project belongs to Group B or Group C as prescribed in public investment laws. In case foreign technology or experience is needed, the domestic bidder may form a joint venture with foreign bidder or hire foreign contractors to execute the project;

d) The project involves national defense or security matters under decision of the Prime Minister at the request of a competent authorities and consensus with the Ministry of National Defense (for national defense matters) or the Ministry of Public Security (for security matters).

3. Direct contracting mentioned in Clause 4 Article 22 of the Law on Bidding shall be carried out in the following cases:

a) There is only one bidder applies and satisfies the requirements in the prequalification documents; only one bidder is shortlisted;

b) Only one bidder is capable of executing the project as prescribed in Point b Clause 4 Article 22 of the Law on Bidding;

c) The project proposed by the bidder satisfies the feasibility requirements and effectiveness requirements in terms of protection of national sovereignty, border and islands as prescribed in Point c Clause 4 Article 22 of the Law on Bidding, decided by the Prime Minister at the request of a competent authorities.

4. The decision of direct contracting mentioned in Point c Clause 3 of this Article shall fully satisfy the following requirements:

a) the project has a decision on investment guidelines or approved feasibility study report (for Group C projects);

b) The feasibility and effectiveness of the project is approved by the Ministry of National Defense (for national defense matters) or the Ministry of Public Security (for security matters).

### **Article 10. Selection of investors in land-using projects**

1. International competitive bidding shall be carried out if the project fully satisfies the following requirements:

a) The total estimated cost of the project (excluding cost of compensation, assistance and relocation, land levy, land rent) is at least 800.000.000.000 VND;

b) At least two bidders are qualified in terms of capacity and experience as prescribed in Clause 3 Article 13 of this Decree, including at least one foreign bidder;

c) It is not any of the cases specified in Point a and Point c Clause 2 a of this Article.

2. Domestic competitive bidding shall be carried out in the following cases:

a) Foreign bidders are restricted from investment in the project under Vietnam's law or an international treaty to which Vietnam is a signatory.

b) At least two bidders are qualified in terms of capacity and experience as prescribed in Clause 3 Article 13 of this Decree, and none of them is a foreign bidder;

c) The project involves national defense or security matters under decision of the Prime Minister at the request of a competent authorities and consensus with the Ministry of National Defense (for national defense matters) or the Ministry of Public Security (for security matters).

3. Direct contracting is applied as prescribed in Point b Clause 4 Article 22 of the Law on Bidding.

#### **Article 11. Identification of land-using project**

1. The project is on the list of projects that need land expropriation as prescribed by land laws or located in a land area under management of the State; belongs to an urban development program (if any) as prescribed by urban development laws.

2. The project is appropriate for the socio-economic development or industry development plan; the construction planning has a ratio of 1/2.000 or 1/500 (if any), or the urban sector planning has a ratio of 1/2.000 or 1/5.000 as prescribed by law.

3. A land use right auction cannot be held as prescribed by land laws.

#### **Article 12. List of land-using projects**

1. A project regulated by Point b Clause 1 Article 1 of this Decree and fully satisfies the conditions in Article 11 of this Decree (except for those specified in Article 26 of the Law on Bidding or Clause 3 Article 10 of this Decree) shall be included in the list of land-using projects

2. Compilation of the list of land-using projects

a) For projects proposed by specialized agencies affiliated to the People's Committees of provinces or districts:

The proposing agency shall submit the proposal to Department of Planning and Investment. The proposal shall contain the project's name, objectives, scale, estimated total cost, capital and mobilization thereof, location, time limit, investment schedule, socio-economic efficiency and required capacity and experience of bidders.

b) For projects proposed by bidders:

In case an bidder proposes a land-using project that is not on the list of land-using projects approved by the President of the People's Committee of the province, the proposed project must be regulated by Point b Clause 1 Article 1 of this Decree and fully satisfies the conditions in Article 11 of this Decree. The bidder shall prepare and submit a proposal to Department of Planning and Investment. The proposal consists of:

- A written request for permission to execute the land-using project, including a commitment to bear all the costs and risks if the proposal is rejected;

- The project's name, objectives, scale, estimated total cost, capital and mobilization thereof, location, time limit, investment schedule, socio-economic efficiency and required capacity and experience of bidders.

- Documents about the bidder's legal status, capacity and experience;

- The need for land use;

- Other documents that explain the proposal (if any).

3. Approving the list of land-using projects:

a) Within 30 days from the receipt of the proposal mentioned in Point a or Point b cl 2 of this Article, Department of Planning and Investment shall cooperate with relevant authorities in compiling the list of land-using project, establish preliminary criteria for bidder's capacity and experience, and submit a report to the President of the People's Committee of the province.

b) Within 10 days from the receipt of the report from the Department of Planning and Investment, the President of the People's Committee shall consider approving the list and the criteria for bidder's capacity and experience.

4. Publishing of the list:

a) Pursuant to the approval decision mentioned in Clause 3 of this Article and the list of land-using project published by Department of Planning and Investment as prescribed in Point c Clause 1,

Clause 4 Article 4 and Clause 2 Article 5 of this Decree.

b) Information published:

- The project's name, objectives, scale; estimated total cost; basic requirements; time limit and investment schedule;
- The project location, land area, land use purposes; approved planning criteria, and current status of the land area;
- Preliminary investor's capacity and experience requirements;
- Deadline for bidders to submit the application for project execution;
- Bidders shall submit the application for project execution through the national bidding network. In case the Ministry of Planning and Investment has not provided the roadmap and detailed instructions as prescribed in Point b Clause 1 Article 91 of this Decree, bidders shall submit applications to the Department of Planning and Investment;
- Address, phone number, fax number of the Department of Planning and Investment;
- Other necessary information.

### **Article 13. Preparation, submission of application and evaluation of bidder's capacity**

1. The bidder shall prepare and submit the application for project execution to the Department of Planning and Investment and through the national bidding network according to the published information specified in Point b Clause 4 Article 12 of this Decree. The application for project execution shall include the application form, documents about the bidder's legal status, capacity, experience, and relevant documents (if any).

2. Upon the deadline for applying for project execution, the Department of Planning and Investment shall cooperate with relevant authorities in evaluating the bidders' capacity and experience.

3. When the evaluation result is available and:

a) If at least two bidders are qualified, the President of the People's Committee of the province shall issue a decision to carry out competitive bidding as prescribed in Clause 1 or Clause 2 Article 10 of this Decree; request the Department of Planning and Investment to publish the list of qualified bidders in accordance with Point c Clause 1 Article 4 of this Decree and a specialized agency affiliated to the People's Committee of the province or the People's Committee of the district to act as the procuring entity;

b) If only one bidder is qualified, the President of the People's Committee of the province shall issue a decision to request the Department of Planning and Investment to issue a notice and instruct the bidder to submit the decision on investment guidelines in accordance with investment laws and relevant laws. The allocation or lease of land for execution of the project shall comply with land laws.

### **Article 14. Retention of bidding information**

1. All documents relevant to the process of investor selection shall be retained for at least 03 years after the project execution contract is terminated, except for the documents specified in Clause 2, 3, 4 of this Article.

2. Financial proposals of bidders that fail the technical evaluation shall be returned as is to them together with the return or release of bid security paid by unsuccessful bidders. In case a bidder refuses to receive the documents, the procuring entity shall consider destroying them while ensuring confidentiality of information therein.

3. In case a bidding process is cancelled, relevant documents shall be retained for 12 months from the day on which the project cancellation decision is issued.

4. Documents about finalization of the project execution contract and successful bidders shall be retained in accordance with regulations of law on document retention.

### **Article 15. Expert team**

1. Participants in the expert team shall have bidding practitioner's certificate under the roadmap specified by the Ministry of Planning and Investment, except for those specified in Clause 3 and Clause 4 of this Article.

2. Depending on the nature and complexity of the project, the expert team may consist of experts in technology, finance, commerce, administration, law, land and relevant fields.

3. An individual who is not one of those specified in Clause 2 Article 16 of the Law on Bidding and wishes to participate in an expert team shall have:

- a) A certificate of training in bidding;
- b) Qualifications in the field(s) relevant to the project.

- c) Proficiency in a foreign language suitable for the project;
  - d) Ample knowledge about specific contents of the project;
  - dd) At least 05 years' experience of work in the fields relevant to the project.
4. In special cases where opinions of experts in certain fields are needed, they are not required to have the certificate of training in bidding.
5. Training in bidding for investor selection shall be carried out in accordance with bidding laws.

**Article 16. Investor selection under relevant laws and laws on private investment.**

1. Selection of investors in the projects specified in Point c Clause 1 Article 1 of this Decree shall comply with the following principles:

a) The list of projects shall be published on the national bidding network as the basis for determination of interested bidders.

b) In case there are at least 02 interested bidders, competitive bidding shall be carried out following single-stage two-envelop (SSTE) procedure, including:

- Preparation for investor selection;
- Carrying out investor selection;
- Evaluation of technical proposals; validation and approval of the list of technically qualified bidders;
- Opening and evaluation of financial proposals;
- Submission, validation, approval and publishing of investor selection result;
- Negotiation and conclusion of the contract.

c) If only one investor is interested, a competent authority shall issue decision on investment guidelines in accordance with investment laws, relevant laws and private investment laws.

d) The selected investor shall have the required capacity and experience, and a feasible and effective project execution plan.

2. Responsibility for investor selection shall be assigned in accordance with the Law on Bidding and this Decree, unless otherwise prescribed by investment laws, relevant laws and private investment laws.

3. Ministries, ministerial agencies, governmental agencies, within their jurisdiction, shall promulgate regulations on selection of investors in the projects specified in Point c Clause 1 Article 1 of this Decree, ensuring competitiveness, fairness, transparency and efficiency, including specific regulations on compilation, approval and publishing of lists of projects, model bidding documents and other contents (if any).

**Chapter II**

**PREQUALIFICATION AND INVESTOR SELECTION PLAN**

**Section 1. Prequalification for PPP projects**

**Article 17. Detailed procedures**

1. Preparation for prequalification:

- a) Preparation of the prequalification documents;
- b) Validation, approval of the prequalification documents.

2. Organization of the prequalification:

- a) Issuance of the notice of prequalification;
- b) Issuance, revision, clarification of the prequalification documents;
- c) Preparation, submission, receipt, management, revision, withdrawal of prequalification applications;
- d) Bid opening.

3. Evaluation of prequalification applications.

4. Submission, validation, approval of the prequalification result and publishing of the short list.

**Article 18. Application of prequalification procedure**

1. Projects of national importance and Group A projects shall undergo international prequalification procedure, except for the cases specified in Point a and Point d Clause 2 Article 9 of this Decree.

2. Projects of national importance and Group A projects shall undergo international prequalification



procedure, except for the cases specified in Point a and Point d Clause 2 Article 9 of this Decree.

3. Prequalification procedure is not required for Group B and Group C projects

4. After the prequalification result is available, the competent person shall decide whether to apply competitive bidding according to Clause 1 and Clause 2 Article 9 of this Decree or direct contracting according to Point a Clause 3 Article 9 of this Decree.

#### **Article 19. Preparation, validation and approval of prequalification documents**

1. Preparation of prequalification documents;

Prequalification documents shall contain:

a) Instructions for bidders: basic contents of the projects and other instructions for bidders.

b) Eligibility requirements of bidders according to Article 5 of the Law on Bidding.

c) Capacity and experience requirements:

- Financial capacity, availability of capital and capacity of project execution, similar projects previously executed. In case of a joint venture, the bidder's capacity and experience shall be the combination of capacity and experience of the joint venture members; the joint venture leader shall have at least 30% holding, each joint venture member shall have at least 15% holding in the joint venture;

- Preliminary plan for project execution and commitment to execute the project; declaration of disputes over finished and ongoing contracts.

For BT projects, bidders shall also satisfy capacity and experience in the field of investment, construction, housing real estate and relevant laws.

d) Evaluation method and criteria

Prequalification applications shall be evaluated according to the criteria specified in the prequalification documents on a scale from 1 to 100 or 1000. The passing score shall not be smaller than 60%; the passing score of and each criterion shall not be smaller than 50%.

2. Validation, approval of the prequalification documents:

a) The procuring entity shall submit the draft prequalification documents and relevant documents to a competent person and the validating unit;

b) The prequalification documents shall be validated in accordance with Clause 1 Article 75 of this Decree;

c) Approval for the prequalification documents shall be made in writing on the basis of the request for approval and the report on validation of the prequalification documents.

#### **Article 20. Prequalification notice, issuance, revision, clarification of prequalification documents**

1. The prequalification notice shall be issued in accordance with Point d Clause 1 Article 4 and Clause 1 Article 5 of this Decree.

2. Issuance, revision, clarification of the prequalification documents:

a) Prequalification documents shall be issued in accordance with Clause 3 Article 6 and Point b Clause 1 Article 8 of this Decree. In case the bidder is a joint venture, only one of its members need to buy the prequalification documents, even if the joint venture is yet to be established when the prequalification documents are bought.

b) In case the prequalification documents are revised after issuance, the procuring entity shall send a decision which specify the revisions to the buyers.

c) In case the prequalification documents have to be clarified, the bidder shall send a written request for clarification to the procuring entity at least 05 days before the bid closing date. The procuring entity shall clarify the prequalification documents by:

- Sending clarifying documents to the buyers or recipients of the prequalification documents; or

- Holding a pre-bidding convention to discuss contents of the prequalification documents that need clarifying. The discussion details shall be recorded into a clarifying document which shall be subsequently sent to the buyers of prequalification documents.

- The clarifications must not contradict the approved contents of the prequalification documents. In case the prequalification documents have to be revised after clarification, the revisions shall be made in accordance with Point b of this Clause.

d) The revision document and clarifying document are integral part of the prequalification documents.

#### **Article 21. Preparation, submission, receipt, management, revision, withdrawal of**

## **prequalification applications and bid opening**

1. Preparation, submission, receipt, management, revision, withdrawal of prequalification applications;

a) Bidders shall prepare and submit their prequalification applications to the national bidding network in accordance with instructions in the prequalification documents. In case the Ministry of Planning and Investment has not provided the roadmap and detailed instructions as prescribed in Point b Clause 1 Article 91 of this Decree, bidders shall submit applications to the procuring entity in accordance with instructions in the prequalification documents;

b) The procuring entity shall receive and treat the submitted prequalification applications as confidential documents until the prequalification result is published; information in a bidder's prequalification application must not be revealed to any other bidder, except for the information that may be published upon bid opening. Prequalification applications that are sent to the procuring entity after the bid closing time shall be considered invalid and thus eliminated. All revising or supplementary documents to the prequalification applications sent by bidders after the bid closing time shall be considered in valid, except for clarifications to the prequalification applications requested by the procuring entity and documents proving the bidder's eligibility, capacity and experience;

c) The bidder that wishes to revise or withdraw the submitted prequalification application shall send a written request to the procuring entity. The procuring entity will consider granting the bidder's request if it is received before the bid closing time;

d) The procuring entity shall receive all prequalification applications that are submitted by bidders before the bid closing time, including bidders that have not bought or directly received prequalification documents from the procuring entity. When submitting the prequalification application, the bidder that did not buy the prequalification documents shall pay the procuring entity an amount equal to the selling price for the prequalification documents.

2. Bid opening:

The prequalification application submitted at the time and location specified in the prequalification documents shall be publicly opened within 01 hour from the bid closing time. The opening of prequalification documents shall be recorded in writing. The bid opening record shall be sent to the bidders that submitted the prequalification applications. Prequalification applications that are sent after the bid closing time shall be considered invalid and thus eliminated.

## **Article 22. Evaluation of prequalification applications**

1. Prequalification applications shall be evaluated according to the evaluation criteria specified in the prequalification documents. Prequalification applications that achieve the passing score will be shortlisted, the bidder whose application has the highest score will be the first ranked. In case there are more than 03 qualified bidders, 03 – 05 bidders with highest scores will be shortlisted.

2. Clarification of prequalification applications:

a) After bid opening, bidders shall clarify their prequalification applications as requested by the procuring entity. The procuring entity will request bidders to provide documents proving their eligibility, capacity and experience if they are not included in their prequalification applications.

b) In case the procuring entity finds that a bidder's prequalification application does not include documents providing that bidder's eligibility, capacity and experience after the bid closing time, that bidder may send clarifying documents to the procuring entity. The procuring entity shall receive the bidder's documents clarifying the bidder's eligibility, capacity and experience and treat them as part of the prequalification application;

c) Clarifying documents shall only be sent to the procuring entity by the bidder whose prequalification application needs clarifying. The clarifications must be made in writing and treated by the procuring entity as part of the prequalification application. The clarification process must not change the nature of the bidder.

## **Article 23. Submission, validation, approval of the prequalification result and publishing of the short list**

1. According to the result of evaluation of prequalification applications, the procuring entity shall submit the prequalification result for approval and provide the bidder's opinions on the evaluations by the expert team.

2. The prequalification result shall be validated in accordance with Clause 2 Article 76 of this Decree prior to approval.

3. In case only one bidder applies and is qualified or shortlisted, a competent authority will request the procuring entity to issue a notice that the time limit for receiving applications will be extended for 20 more days from the noticing date.

4. After extension, if no more bidders submit applications or all new bidders are unqualified, the

procuring entity shall request a competent person to either:

a) Apply direct contracting prescribed in Point a Clause 3 Article 9 of this Decree. In this case, the competent person shall ensure the competitiveness, fairness and efficiency of the investor selection process, and is fully responsible for any violation that leads to complaints, lawsuits or loss of state resources.

b) Request the procuring entity to extend the time limit for receiving prequalification applications and revise the contents of the prequalification documents (if necessary).

5. The extension and revisions to the prequalification documents (if any) mentioned in Clause 3 and Clause 4 of this Article shall be informed to all bidders and posted on the national bidding network.

6. During the extended period mentioned in Clause 3 and Clause 4 of this Article, the bidders that submitted prequalification applications may revise, replace or withdraw their applications.

7. After the extension mentioned in Point b Clause 4 of this Article, if no more bidders submit applications or all new bidders are unqualified, the competent person shall consider approving the prequalification result as per regulations.

8. The prequalification result shall be approved in writing and on the basis of the request for approval and the prequalification result validation report. In case a short list is made, the prequalification result validation report shall contain the names of the shortlisted bidders and notes (if any). In case no short list is made, the prequalification result validation report shall specify the explanation therefor.

9. The short list shall be published in accordance with Point d Clause 1 Article 4 and Clause 2 Article 5 of this Decree and sent to all bidders that applied.

## **Section 2. INVESTOR SELECTION PLAN**

### **Article 24. Preparation of investor selection plan**

1. Basis for preparation of investor selection plan:

a) For a PPP project:

- The decision to approve the feasibility study report (or pre-feasibility study report for high-tech projects);

- The decision to approve the design and construction cost estimate for BT projects and projects that undergo bidding based on design and cost estimate under decision by competent authorities;

- International treaties and agreements for projects funded by ODA or concessional loans (if any);

- The prequalification result (if any);

- Relevant documents (if any).

b) For a land-using project:

- The decision to approve the list of land-using projects (except for the projects mentioned in Article 26 of the Law on Bidding or Clause 3 Article 10 of this Decree);

- The decision to apply competitive bidding;

- Relevant documents (if any).

2. On the basis of the documents specified in Clause 1 of this Article, the procuring entity shall prepare the investor selection plan and submit it to a competent person and the validating unit.

3. The documents to be submitted include:

a) The written request for approval which contains brief description of the preparation process and contents of the plan as prescribed in Article 25 of this Decree;

b) The table for monitoring progress of investor selection tasks as prescribed in Clause 10 Article 6 and Point h Clause 1 Article 8 of this Decree;

c) Enclosures including photocopies of the documents mentioned in Clause 1.

### **Article 25. Contents of investor selection plan**

1. The project's name.

2. The total investment and capital for a PPP project; estimated total cost of the project, cost of compensation, assistance and relocation, land levy, land rent of a land-using project.

3. Initial participation of the State in the PPP project, financial mechanism for assisting the project execution (if any).

4. Methods and types of investor selection:

a) The method of investor selection shall be selected in accordance with Article 20, 22, 26 of the Law

on Bidding, Article 9 and Article 10 of this Decree;

b) The type of investor selection shall be either single stage one envelope (SSOE) or single-stage two-envelope (SSTE) procedure as prescribed in Article 28 or Article 29 of the Law on Bidding.

5. Initiation time of investor selection:

The investor selection process shall be initiated when the bidding documents or request for proposals are issued, which is a specific month or quarter of the year.

6. Type of contract:

a) For a PPP project, the type of contract shall be determined in accordance with Article 68 of the Law on Bidding and PPP laws;

b) For a land-using project, the type of contract shall be a land-using project contract.

7. Contract duration:

Contract duration is the number of years or months from the effective date of the contract to the date on which the parties fulfill their contractual obligations.

#### **Article 26. Validating and approving the investor selection plan**

1. Validating the investor selection plan:

a) Validation includes the validation and assessment of the contents specified in Article 25 of this Decree;

b) The validating unit shall prepare and submit the validation report to the competent person for approval.

2. On the basis of the validation report, the competent person shall issue a decision to validate the investor selection plan and a table for monitoring progress of investor selection tasks as the basis for initiation of the investor selection process.

### **Chapter III**

## **COMPETITIVE BIDDING FOR SELECTION OF INVESTORS IN PPP PROJECTS**

### **Section 1. DETAILED PROCEDURES**

#### **Article 27. Detailed procedures**

1. Preparation for investor selection, including:

a) Preparation of the bidding documents;

b) Validation and approval of the bidding documents.

2. Carrying out the investor selection, including:

a) Issuance of the bidding documents;

b) Issuance, revision, clarification of the bidding documents;

c) Preparation, submission, receipt, management, revision, withdrawal of bids;

d) Opening technical proposals.

3. Evaluation of technical proposals, including:

a) Inspection and evaluation of validity of technical proposals;

b) Detailed evaluation of technical proposals;

c) Validation and approval for the technically qualified bidders.

4. Opening and evaluation of financial proposals, including:

a) Opening financial proposals;

b) Inspection and evaluation of validity of financial proposals;

c) Detailed evaluation of financial proposals and ranking bidders.

5. Submission, validation, approval and publishing of investor selection result.

6. Contract negotiation and conclusion, including:

a) Negotiation of the contract;

b) Conclusion of the contract and publishing information thereof.

7. Clause 1, 2, 3, 4, 5 of this Article shall apply to selection of investors in high technology projects. The selected investor shall prepare a feasibility study report. On the basis of the approved feasibility

study report, the competent authority and the investor shall negotiate and conclude the contract. The contents of the feasibility study report and the contract shall be appropriate for the objectives and scale of the project and the basic criteria for investor selection.

## **Section 2. PREPARATION FOR INVESTOR SELECTION**

### **Article 28. Preparation of bidding documents**

#### 1. Basis for preparation of the bidding documents

- a) The decision to approve the feasibility study or pre-feasibility study (for high technology projects); project documents and relevant documents;
- b) The decision to approve the design and construction cost estimate for BT projects and projects that undergo bidding based on design and cost estimate under decision by competent authorities;
- c) The prequalification result (if any);
- d) The decision to approve the investor selection plan;
- dd) Relevant regulations of law and state policies.

#### 2. Contents of bidding documents:

- a) The bidding documents must not contain any conditions that restrict participation of bidders or give advantage to one or some bidders causing unfair competition;
- b) The bidding documents shall contain adequate information for bidders to prepare their bids, including the following fundamental information:
  - Overall information about the project, including the project's contents and scope, outlet, services that may be provided when the project is completed;
  - Instructions for bidders including bidding procedures and the bid data sheet;
  - Requirements for eligibility of bidders according to Article 5 of the Law on Bidding;
  - Required capacity and experience of the investor that executes the project according to Point c Clause 1 Article 19 of this Decree (if prequalification procedure is not applied);
  - The project requirements according to the approved feasibility study (or pre-feasibility study for high technology projects), including:
    - + Technical requirements: criteria for project execution, construction, product or service quality requirements, detailed description of technical standards and criteria used in bid evaluation, environment and safety requirements;
    - + Financial requirements: Plan for organization of investment and business; financial plan (total investment, capital sources and mobilization; state participation in the PPP project (if any); expenditures, revenues, prices for goods and services; time for recovery of capital and profit); specific requirements regarding risk distribution.
  - Criteria for bid evaluation, including criteria for evaluation of capacity, experience, technical capacity, financial capacity and evaluation methods;
  - Bid forms include the letter of bid, technical proposal, financial proposal, bid security, financial institution commitment (if any) and other forms;
  - The type of the project execution contract, conditions and draft contract include: project execution requirements, construction and service quality standards, pricing mechanism, bonuses and penalties, force majeure events, reconsideration of the contract during project operation and other contents prescribed by PPP laws.

### **Article 29. Criteria and method for bid evaluation**

The bid evaluation method is expressed through the evaluation criteria in the bidding documents, including:

#### 1. Criteria and method for evaluation of capacity and experience:

- a) If prequalification procedure is applied, criteria for bidders' capacity and experience are not required in the bidding documents though bidders must update information about their capacity and experience;
- b) If prequalification procedure is not applied, the criteria and method for evaluation of capacity and experience shall be determined according to Point d Clause 1 Article 19 of this Decree.

#### 2. Method and criteria for technical evaluation:

- a) Technical criteria include:
  - Quantity and quality;

- Operation, management, maintenance;
- Environment and safety.

While preparing the bidding documents, detailed technical criteria shall be established in accordance with this Point; the standards must be appropriate for the project to select an investor that satisfy all requirements for project execution. During the process of establishing criteria, other technical standards may be included if they are appropriate for the project.

b) Technical evaluation method

A scale of 1 – 100 or 1 – 1000 shall be used for technical criteria with minimum and maximum score for each criterion. The overall passing score shall not be smaller than 70%; the passing score of each of the quantity, quality, operation, management, maintenance, environment, safety criteria and other primary criteria shall not be smaller than 60%.

c) The scoring system mentioned in Point a of this Clause shall be suitable for the type of the project execution contract and the maximum score shall be 100%.

3. Financial evaluation method:

The bid evaluation method shall be specified in the bidding documents, including:

a) Service price-based method:

- The service price-based method shall be applied to a project whose fees and prices for goods and services are the financial criteria and other contents such as standards for assets and services of the project; capital recovery time and relevant elements have been specified in the bidding documents;

- Bids that are technically qualified shall be ranked according to their prices for goods and services. The bidder that offers the lowest prices shall be first ranked and proposed as successful bidder.

b) State investment-based method:

- The state investment-based method shall be applied to a project in which state investment is the financial criteria and other contents such as standards for assets and services of the project; capital recovery time and relevant elements have been specified in the bidding documents;

- Bids that are technically qualified shall be ranked according to the state investment therein. The bidder that proposes the lowest state investment shall be first ranked and proposed as successful bidder.

c) State interest-based method:

- The state interest-based method is meant to find the bidder that offers the most efficient project execution plan and other contents such as standards for assets and services of the project; capital recovery time and relevant elements have been specified in the bidding documents. Investment efficiency shall be evaluated according to the bidder's proposed contribution to state budget (in addition to the bidder's liabilities to state budget prescribed by applicable law) or the contract duration;

- Bids that are technically qualified shall be ranked according to their proposed state budget contribution or contract duration. The bidder that offers the highest payment to state budget or the shortest contract duration shall be first ranked and proposed as successful bidder.

d) Combined method:

The combined method is the combination of the methods specified in Point a, b, c of this Clause, including: combination of service price-based method and state investment-based method, combination of service price-based method and state interest-based method.

dd) In case a project does not apply any of the aforementioned methods, the procuring entity shall request the competent person to consider approving another method and contract awarding criteria in the bidding documents, provided they ensure competitiveness, fairness, transparency and efficiency.

4. Financial evaluation of BT projects:

a) The state interest-based method shall be applied to find the bidder that offers the most efficient project execution plan. Investment efficiency is evaluated by finding the bidder that offers the lowest evaluated bid and the bid after adjustment of deviation minus discount does not exceed the value of the BT project as specified in the bidding documents. The bidder that offers the lowest evaluated bid shall be first ranked and proposed as successful bidder;

b) The strike price shall be determined according to Appendix II hereof.

**Article 30. Validating and approving the bidding documents**

1. The bidding documents shall be validated in accordance with Clause 2 Article 75 of this Decree prior to approval.

2. Approval for the bidding documents shall be made in writing on the basis of the request for approval

and the report on validation of the bidding documents.

### **Section 3. ORGANIZATION OF INVESTOR SELECTION**

#### **Article 31. Inviting bids**

1. If prequalification procedure is applied, the invitation to bid shall be sent to the shortlisted bidders, specifying the time and location of issuing the bidding documents, the bid closing and bid opening time.
2. If prequalification procedure is not applied, the invitation to bid shall be published in accordance with Point d Clause 1, Clause 5 Article 4 and Clause 1 Article 5 of this Decree.

#### **Article 32. Issuance, revision, clarification of bidding documents**

1. In case prequalification procedure is applied, bidding documents shall be issued to shortlisted bidders. In case prequalification procedure is not applied, bidding documents shall be issued to all bidders. In case the bidder is a joint venture, only one of its members need to buy the bidding documents.
2. In case the bidding documents have to be revised after issuance, the procuring entity shall send a revision decision specifying the revisions to the bidders who bought or received the bidding documents.
3. In case the bidding documents have to be clarified, the bidder shall send the procuring entity a written request for clarification at least 07 working days (for domestic bidding) or 15 days (for international bidding) before the bid closing date. Clarification of the bidding documents shall be carried out by the procuring entity in one or some of the following manners:
  - a) Sending clarifying documents to the bidders that bought the bidding documents;
  - b) Holding a pre-bidding convention to discuss contents of the bidding documents that need clarifying. The discussion details shall be recorded into a clarifying document which shall be subsequently sent to the bidders that bought bidding documents.

The clarifications must not contradict the approved contents of the bidding documents. In case the bidding documents have to be revised after clarification, the revisions shall be made in accordance with Clause 2 of this Article.

4. The revision decision and clarifying documents are integral part of the bidding documents.

#### **Article 33. Preparation, submission, receipt, management, revision, withdrawal of bids**

1. Bidders shall prepare and submit their bids as required by bidding documents.
2. The procuring entity shall receive and treat the submitted bidding documents as confidential documents until the investor selection result is published; information in a bidder's bid must not be revealed to any other bidder, except for the information that may be published upon bid opening. Bids that are sent to the procuring entity after the bid closing time shall be considered invalid and thus eliminated. All revising or supplementary documents to the bids sent by bidders after the bid closing time shall be considered in valid, except for clarifications to the bids requested by the procuring entity and documents proving the bidder's eligibility, capacity and experience.
3. The bidder that wishes to revise or withdraw the bid shall submit a written request to the procuring entity. Such a request shall only be granted if it is received before the bid closing time.

#### **Article 34. Opening technical proposals**

1. Technical proposals shall be opened publicly within 01 hour from the bid closing time, even if there is only one bidder. Only open the technical proposals received by the procuring entity in the presence of representatives of the bidders, with or without the presence of the bidders.
2. Bids shall be opened in alphabetical order following these steps:
  - Inspect the seal;
  - Open the bid and read out loud the following information: the bidder's name; quantity of originals and photocopies of the technical proposal; the letter of bid in the technical proposal; effective period of the technical proposal; contract duration; value and effect of bid security; relevant information.
3. The information mentioned in Clause 2 of this Article shall be written in the bid opening record. The bid opening record shall be signed by representatives of the procuring entity and the bidders that participate in the bid opening ceremony and sent to all bidders.
4. The representative of each bidder shall sign the original copy of the letter of bid, the power of attorney (if any), the joint venture agreement (if any), bid security agreement and important contents of each technical proposal.
5. Financial proposals of all bidders shall be put in a separate bag with a seal signed by

representatives of the procuring entity and bidders that participate the bid opening ceremony.

#### **Article 35. Bid evaluation principles**

1. Bids shall be evaluated according to the bid evaluation criteria and other requirements specified in the bidding documents and clarifying documents provided by bidders in order to select an investor with adequate capability and experience, and feasible technical and financial plans for execution of the project.
2. The photocopies shall be used for evaluation. The bidders are responsible for the consistency between the original copies and the photocopies. In case of discrepancies between the original copy and the photocopy which do not change the bidder's rankings, the original copy shall be used for evaluation.
3. In case of discrepancies between the original copy and the photocopy which result in a change in a bidder's rankings, that bid will be eliminated.

#### **Article 36. Clarification of bids**

1. After bid opening, bidders shall clarify their bids if requested by the procuring entity. Clarifications of technical and financial proposals must not change the fundamental contents of the bid submitted.
2. After bid closing, bidders may send documents clarifying their eligibility, capacity and experience if prequalification procedure is not applied. The procuring entity shall receive clarifying documents from bidders; the documents clarifying a bidder's eligibility, capacity and experience and shall be treated as part of the bid.
3. Clarifying documents shall only be sent to the procuring entity by the bidder whose bid needs clarifying and must not change the bidder's nature. The clarifications must be made in writing and treated by the procuring entity as part of the bid.

#### **Article 37. Error correction and adjustment of deviations**

1. Error correction means correction of the errors in the bid, including numerical error, unit error; discrepancies in technical and financial proposals, and other errors.
2. Adjustment of deviations means adjusting minor missing or redundant contents in the bid. Adjustment of deviations shall ensure fairness, transparency and efficiency.
3. After error correction and adjustment of deviations, the procuring entity shall send a written notice to the bidder of the errors, deviations, correction and adjustment thereof. Within 07 working days from the receipt of this notice, the bidder shall send a written response to the procuring entity regarding:
  - a) Whether the bidder concurs with the error correction. Bidders that do not concur with the error correction will have their bids eliminated.
  - b) Their opinions on the adjustment of deviations. The bidder that does not concur with the adjustment of deviations shall provide explanation for the procuring entity to consider;
  - c) Whether the bidder concurs with the adjustment of deviations (for BT projects). Bidders that do not concur with the adjustment of deviations will have their bids eliminated.

### **Section 4. EVALUATION OF TECHNICAL PROPOSALS**

#### **Article 38. Evaluation of technical proposals**

1. Inspection of the validity of the technical proposal, including:
  - a) Quantity of original copies and photocopies of the technical proposal;
  - b) Composition of the technical proposal, including: the letter of bid in the technical proposal, joint venture agreement (if any), letter of attorney (if any); bid security agreement; documents proving the signor's eligibility (if any); documents proving the bidder's eligibility, capacity and experience (if prequalification procedure is not applied); the proposals and other mandatory documents in the technical proposal;
  - b) Consistency between the original copies and photocopies.
2. Evaluation of the validity of the technical proposal:

A bidder's technical proposal is considered valid when it fully satisfies the following conditions:

  - a) The technical proposal is the original copy;
  - b) There is a letter of bid bearing the signature and seal (if any) of the bidder's legal representative as requested by the bidding documents. In case the investor is a joint venture, the letter of bid shall bear the signatures and seals (if any) of legal representatives of all joint venture members, or the signature of the lead member of the joint venture if authorized in the joint venture agreement;
  - c) The effective period of the technical proposal is conformable with requirements in the bidding



documents;

d) There is bid security with value and effective period conformable with requirements in the bidding documents. In case bid security is an underwriting letter, the letter shall bear the signature of the legal representative of the credit institution with a value and beneficiary conformable with requirements in the bidding documents;

d) The bidder does not submit more than one technical proposal as an independent bidder or joint venture member;

e) The joint venture agreement bears the signatures and seals (if any) of legal representatives of all joint venture members;

g) The bidder is not being banned from bidding as prescribed by bidding laws.

h) The bidder is eligible as prescribed in Article 5 of the Law on Bidding.

3. Evaluation of capacity and experience:

a) If prequalification procedure is applied, the bidder shall have a written commitment to satisfy all project execution requirements. In case of any change to information in the prequalification application, the bidder's capacity and experience shall be updated and evaluated according to the criteria and method in the prequalification documents;

b) If prequalification procedure is not applied, bidders' capacity and experience shall be evaluated according to the criteria and method specified in the bidding documents.

4. Bidders that have valid technical proposals and satisfy capacity and experience requirements shall have their technical proposals undergo detailed evaluation

5. Detailed evaluation of technical proposals:

a) Detailed evaluation of technical proposals shall be carried out according to the technical criteria specified in the bidding documents;

b) Technically qualified bidders shall have their financial proposals evaluated.

#### **Article 39. Validation and approval for the technically qualified bidders**

The list of technically qualified bidders shall be approved in writing on the basis of the written request for approval and the report on validation of the list of technically qualified bidders. The procuring entity shall send the list of technically qualified bidders to all bidders and invite the technically qualified bidders to attend the financial proposal opening ceremony.

### **Section 5. OPENING AND EVALUATION OF FINANCIAL PROPOSALS**

#### **Article 40. Opening financial proposals**

1. Inspect the sealed bag that contains the financial proposals.

2. Open the financial proposals:

a) Only open the financial proposals of the bidders on the list of technically qualified bidders in the presence of representatives of the bidders that attend the opening ceremony, regardless of the presence of the bidders, regardless of the presence of the bidders themselves.

b) The representative of each attending bidder shall be requested to confirm the availability of the proposal of decrease in service price or state investment or increase in state budget contribution in their financial proposal.

c) Financial proposals shall be opened one by one in alphabetical order of the list of technically qualified bidders and following these steps:

- Inspect the seal;

- Open the envelope and read out loud the following information: the bidder's name; quantity of originals and photocopies of the financial proposal; the letter of bid in the financial proposal; effective period of the financial proposal; total investment and total capital of the project, service price, state investment (if any), proposed state budget contribution specified in the letter of bid (if any); decrease in service price or state investment or increase in state budget contribution (if any); passing score; relevant information.

3. Financial proposal opening record:

a) The information mentioned in Clause 1 and Clause 2 of this Article shall be written in the financial proposal opening record. The financial proposal opening record shall bear the signatures of representatives of the procuring entity and the bidders that attend the ceremony and be sent to the technical qualified bidders;

b) The representative of the procuring entity shall sign all pages of original copies of financial

proposals.

#### **Article 41. Evaluation of financial proposals**

1. Inspect the validity of a financial proposal, including:

- a) Quantity of original copies and photocopies of the technical proposal;
- b) Composition of the financial proposal, including the letter of bid and other mandatory documents in the financial proposal;
- c) Consistency between the original copies and photocopies of the technical proposal.

2. Evaluation of the validity of a financial proposal:

A bidder's financial proposal is considered valid when it fully satisfies the following conditions:

- a) The financial proposal is the original copy;
- b) There is a letter of bid bearing the signature and seal (if any) of the bidder's legal representative as requested by the bidding documents; the total investment and total capital of the project, service price, state investment, contribution to state budget are specific, expressed as both numbers and words and are suitable for the bidder's financial plan; the proposal does not contain different values for the same item or any conditions that are disadvantageous to the state or the procuring entity. In case the investor is a joint venture, the letter of bid shall bear the signatures and seals (if any) of legal representatives of all joint venture members, or the signature of the lead member of the joint venture if authorized in the joint venture agreement;
- c) The effective period of the financial proposal satisfies the requirements in the bidding documents.

The bidders whose financial proposals are valid (hereinafter referred to as "financially qualified bidders") shall undergo detailed financial evaluation.

3. Detailed evaluation of financial proposals and ranking bidders:

a) Detailed evaluation of financial proposals and ranking of bidders shall be carried out according to the evaluation criteria specified in the bidding documents.

b) After bidders are ranked and listed, the expert team shall send a report to the procuring entity for consideration. The report shall contain:

- The list of ranked bidders;
- The list of eliminated bidders and reasons for elimination;
- Remarks on the competitiveness, fairness, transparency and efficiency of the investor selection process. In case competitiveness, fairness, transparency or efficiency is not achieved, provide explanation and recommendations;
- Recommendations for any unconformable contents of the bidding documents that may lead to misunderstanding or inconsistent implementation or adversely affect the investor selection result (if any).

4. If necessary, the procuring entity may request the competent person to consider allowing the first-ranked bidder to enter into preliminary contract negotiation to facilitate the process of negotiation of the contract after the investor selection result is available.

#### **Article 42. Rules for choosing the successful bidder**

A bidder will be proposed as successful bidder when the following conditions are fully satisfied:

1. The bid is valid;
2. The bidder's capacity and experience are qualified ;
3. The technical proposal is qualified;
4. The bid price is:
  - a) If service price-based method is applied, the lowest service price which does not exceed the price specified in the approved feasibility study report (or pre-feasibility study report for high technology projects) and complies with pricing laws;
  - b) If state investment-based method is applied, the lowest proposed state investment which does not exceed the value specified in the approved feasibility study report (or pre-feasibility study report for high technology projects);
  - c) If state interest-based method is applied, the highest proposed state budget contribution or shortest contract duration which does not exceed that specified in the approved feasibility study report (or pre-feasibility study report for high technology projects);
  - d) In case of a BT project, the lowest evaluated price and the bid price after error correction and

adjustment of deviations minus discounts (if any) does not exceed the BT project value specified in the approved bidding documents.

## **Section 6. SUBMISSION, VALIDATION, APPROVAL AND PUBLISHING OF INVESTOR SELECTION RESULT**

### **Article 43. Submission, validation, approval and publishing of investor selection result**

1. On the basis of the bid evaluation result, the procuring entity shall submit the investor selection result which specifies the procuring entity's opinions on evaluations by the expert team.
2. The investor selection result shall be validated in accordance with Clause 4 Article 76 of this Decree prior to approval.
3. The decision to approve the investor selection result shall be made in writing on the basis of the written request for approval and the report on validation of the investor selection result.
4. When an investor is selected, the written approval for investor selection result shall contain the following information:
  - a) The project's name, location and scale;
  - b) Name of the successful bidder (the selected investor);
  - c) Type contract;
  - d) Time of construction initiation and completion, inauguration and transfer of the project;
  - dd) Conditions for use of land serving project execution (location, area, purposes, duration);
  - e) Total investment and capital of the project;
  - g) Service price, state investment, state budget contribution or contract duration;
  - h) Notes (if any).
5. In case the bidding process is cancelled according to Clause 1 Article 17 of the Law on Bidding, the approval decision or cancellation decision shall specify the reasons for cancellation and responsibility of the parties.
6. After the investor selection result approval decision is available, the procuring entity shall publish the information specified in Point d Clause 1 Article 4 and Clause 2 Article 5 of this Decree; send a notice of investor selection result to the bidders within the time limit specified in Clause 8 Article 6 or Point e Clause 1 Article 8 of this Decree. The notice of investor selection result shall contain:
  - a) The information specified in Clause 4 of this Article;
  - b) The list of unsuccessful bidders and reasons for the elimination of each one;
  - c) The plan for negotiation and conclusion of the contract with the selected investor and the plan for preparation and approval of the feasibility study report (for high technology projects).

## **Section 7. CONTRACT NEGOTIATION AND CONCLUSION**

### **Article 44. Contract negotiation**

1. The first-ranked bidder will be invited to negotiate the contract. In case the first-ranked bidder does not come or refuses to come to negotiate the contract, the bid security will not be refunded.
2. Basis for contract negotiation:
  - a) The bid evaluation report;
  - b) The bid, clarifying and revising documents (if any) provided by the bidder;
  - c) The bidding documents.
3. Rules for contract negotiation:
  - a) Do not negotiate the contents that are already conformable with the bidding documents;
  - b) The contract negotiation must not change the basic contents of the bid.
4. Contents of contract negotiation:
  - a) Negotiate the contents that are not adequately detailed or consistent between the bidding documents and the bid, the discrepancies in the bid that may lead to disputes or affect the responsibility of the parties during contract execution;
  - b) Negotiate the issues that arise during the investor selection process (if any) in order to complete details of the project;
  - c) In addition to the contents mentioned in Point a and Point b of this Clause, the procuring entity shall request the competent person to decide other contents for negotiation that are appropriate for the type

of contract.

5. During the contract negotiation process, the parties shall complete the basis for contract conclusion, draft the contract, and changes to special terms and conditions of the contract (if any).

6. In case the contract negotiation is not successful, the procuring entity shall request the competent person to consider cancelling the investor selection result and invite the next-ranked bidder to negotiate the contract. In case the process of contract negotiation with the next-ranked bidder is not successful, the procuring entity shall request the competent person to consider cancelling the bidding process in accordance with Clause 1 Article 17 of the Law on Bidding.

#### **Article 45. Contract conclusion and publishing of contract information**

1. Contracts for execution of projects of national importance, Group A and Group B projects shall comply with regulations of Articles 69, 70, 71, 72 of the Law on Bidding and PPP laws.

2. Contracts for execution of Group B projects shall comply with regulations of Article 69, Article 70, Article 71, Clause 1, 3, 4 Article 72 of the Law on Bidding, Point a Clause 2 Article 8 of this Decree and PPP laws.

3. Within 07 working days from the day on which the project execution contract is concluded, the procuring entity shall publish information about the contract on the national bidding network. Information to be published is specified in PPP laws.

### **Chapter IV**

## **COMPETITIVE BIDDING FOR SELECTION OF INVESTORS IN LAND-USING PROJECTS**

### **Section 1. Detailed procedures**

#### **Article 46. Detailed procedures**

1. Preparation for investor selection, including:

- a) Preparation of bidding documents;
- b) Validation and approval of the bidding documents.

2. Organization of investor selection, including:

- a) Inviting bids;
- b) Issuance, revision, clarification of the bidding documents;
- c) Preparation, submission, receipt, management, revision, withdrawals of bids;
- d) Opening technical proposals.

3. Evaluation of technical proposals, including:

- a) Inspection of validity of technical proposals;
- b) Detailed evaluation of technical proposals;
- c) Validation and approval of technically qualified bidders.

4. Opening and evaluation of financial proposals, including:

- a) Opening financial proposals;
- b) Inspection of validity of financial proposals;
- c) Detailed evaluation of financial proposals and ranking bidders.

5. Submission, validation, approval and publishing of investor selection result.

6. Contract negotiation and conclusion, including:

- a) Contract negotiation;
- b) Contract conclusion and publishing of contract information.

### **Section 2. PREPARATION FOR INVESTOR SELECTION**

#### **Article 47. Preparation of bidding documents**

1. Basis for preparation of bidding documents:

- a) The published list of land-using projects that need to undergo investor selection;
- b) The approved plan for investor selection;
- c) Applicable regulations of law on land, housing, real estate trade, investment, construction and relevant laws.

## 2. Contents of bidding documents:

The bidding documents must not contain any conditions that restrict participation of bidders or give advantage to one or some bidders causing unfair competition. The bidding documents shall contain adequate information for bidders to prepare their bids, to be specific:

- a) Overall information about the project, including the project's name, purposes, location, scale; initial execution schedule; status of the land area; planning criteria;
- b) instructions for bidders, including bidding procedures and the bid data sheet;
- c) Project execution, architecture, environment, safety requirements and other contents of the project (if any);
- d) Bid evaluation criteria, including criteria for evaluating bidders' capacity and experience, technical criteria, financial criteria and evaluation methods;
- dd) Bid forms, including the letter of bid, technical proposal, financial proposal, bid security, commitment of finance organization (if any) and other forms;
- e) Land allocation or land lease duration; land use purposes and proportions;
- g) Land levy or land rent estimated by the procuring entity using the most appropriate land pricing method and input parameters.

The land levy or land rent shall be paid by the successful bidder (the selected investor) when a decision on land allocation or land lease is issued by a state authority in accordance with land laws;

h) Total cost of project execution (excluding the cost of compensation, assistance and relocation land levy or land rent ( $m_1$ )) estimated by the procuring entity in accordance with construction laws, ensuring efficient use of the land area.

i) Plan and cost of compensation, assistance and relocation. The cost of compensation, assistance and relocation ( $m_2$ ) is calculated according to:

- Land compensation;
- Remaining value of investment in the land area upon land expropriation by the State (if any);
- Compensation for housing, construction, property on land and business loss upon land expropriation by the State;
- Assistance amount upon land expropriation by the State (if any), including: assistance in life stabilization; training, career change and job finding; assistance in relocation; other assistance;
- Cost of organization of land clearance and compensation.

k) Minimum state budget contribution ( $m_3$ ) calculated by the procuring entity as follows:

$m_3 = s \times \Delta G \times k$ , where:

- S: area of levied land or leased land;
- $\Delta G$ : average increase in value after land use right auction per unit of area of land with the same uses in the same area. In case such a land area is not available, land data of administrative divisions with similar socio-economic conditions may be used;
- k: coefficient of average increase in value after land use right auction, with account taken of the similarity of the land area of the project and other factors (if any).

This value is relative, is the basis for bidders to propose state budget contribution, and independent from the land levy or land rent payable the investor according to land laws.

l) The draft contract, including project execution requirements, land allocation or land lease duration; land area; estimated land levy or land rent and method for determination thereof; input parameters or how to determine input parameters according to the applied pricing method; applicable regulations; bonuses and penalties; force majeure events; reconsideration of contract during project operation and other contents.

### **Article 48. Bid evaluation criteria and method**

The bid evaluation method shall be expressed through the evaluation criteria in the bidding documents, including:

1. The basis for establishment of the preliminary capacity and experience requirements that are approved according to Clause 3 Article 12 of this Decree, criteria and methods for evaluation thereof, additional criteria (if necessary) according to Point d Clause 1 Article 19 of this Decree. In case of a joint venture, the investor's capacity and experience shall be the total capacity and experience of its members; the lead investor of the joint venture shall have at least 30% holding; each member shall have at least 15% holding in the joint venture.

## 2. Method and criteria for evaluation of technical capacity:

### a) Technical criteria:

- Relevance of the project's objectives for the socio-economic development or industry development plan; the construction planning has a ratio of 1/2.000 or 1/500 (if any), or the urban sector planning has a ratio of 1/2.000 or 1/5.000 as prescribed by law.
- The project's scale, architectural solutions and basic functions of the project;
- Environment and safety requirements;
- Other criteria on a case-by-case basis.

### b) Technical evaluation method:

A scale of 1 – 100 or 1 – 1000 shall be used for technical criteria with minimum and maximum score for each criterion. The total passing score shall not be smaller than 70%; the passing score of and each criterion mentioned in Point a of this Clause shall not be smaller than 60%.

c) The scoring system mentioned in Point a of this Clause shall be suitable for the type of the project execution contract and the maximum score shall be 100%.

## 3. Financial criteria and evaluation method:

### a) Financial criteria:

- Total cost of the project ( $M_1$ );
- Cost of compensation, assistance and relocation ( $M_2$ );
- Investment efficiency ( $M_3$ ).

Where:

+  $M_1$  is the total estimated cost of the project (excluding cost of compensation, assistance and relocation, land levy, land rent) proposed by the bidder in the bid according to the value of  $m_1$  specified in the bidding documents;

+  $M_2$  is the cost of compensation, assistance and relocation, land levy, land rent proposed by the bidder in the bid according to the value of  $m_2$  specified in the bidding documents.

In case the approved cost of compensation, assistance and relocation is smaller than the value of  $M_2$ , the difference shall be paid to state budget; In case it is higher than  $M_2$ , the difference shall be covered by the investor and be included in the project's total capital.

The investor may offset the approved cost of compensation, assistance and relocation against the land levy or land rent payable. The cost of compensation, assistance and relocation that remains after offsetting (if any) shall be included in the project's total capital.

+  $M_3$  is the bidder's proposed state budget contributions specified in the bid in addition to the bidder's liabilities to state budget prescribed by applicable law.

### b) Financial evaluation method

- State interest-based method shall apply to financial evaluation. Technically qualified bids shall be ranked according to their investment efficiency. Investment efficiency shall be evaluated according to  $M_3$ ;
- When  $M_1 \geq m_1$  and  $M_2 \geq m_2$ ,  $M_3 \geq m_3$ , the bidder that proposes the highest  $M_3$  will be first-ranked and proposed as successful bidder.

## **Article 49. Validating and approving the bidding documents**

Bidding documents shall be validated and approved in accordance with Article 30 of this Decree.

## **Section 3. ORGANIZATION OF INVESTOR SELECTION**

### **Article 50. Conditions for issuance of bidding documents**

Bidding documents shall be issued for selection of investor in a land-using project when the following conditions are fully satisfied:

1. The conditions specified in Clause 2 Article 7 of the Law on Bidding are satisfied;
2. The construction planning has a ratio of 1/2.000 or 1/500 (if any), or the urban sector planning has a ratio of 1/2.000 or 1/5.000 and is approved by a competent authority as prescribed by law.

### **Article 51. Organization of investor selection**

The investor selection shall be organized in accordance with Section 3 Chapter III of this Decree. Inviting bids, issuing bidding documents, opening technical proposals:

#### 1. Inviting bids:

The invitation to bid shall be published in accordance with Point d Clause 1 Article 4 and Clause 1 Article 5 of this Decree.

#### 2. Issuing bidding documents:

a) Bidding documents shall be issued to all bidders;

b) In case the bidder is a joint venture, only one of its members need to buy the bidding documents, even if the joint venture is yet to be established when the bidding documents are bought.

#### 3. Opening technical proposals:

Technical proposals shall be opened in accordance with Article 34 of this Decree, even if there is only one bidder.

### **Section 4. EVALUATION OF TECHNICAL PROPOSALS**

#### **Article 52. Evaluation of technical proposals**

1. The validity of technical proposals shall be inspected in accordance with Clause 1 and Clause 2 Article 38 of this Decree.

#### 2. Evaluation of capacity and experience:

Bidders' capacity and experience shall be evaluated according to the criteria and method specified in the bidding documents.

3. Bidders that have valid technical proposals and satisfy capacity and experience requirements shall have their technical proposals undergo detailed evaluation

4. Detailed evaluation of technical proposals shall be carried out in accordance with Clause 5 Article 38 of this Decree.

#### **Article 53. Validation and approval for the technically qualified bidders**

The list of technically qualified bidders shall be validated and approved in accordance with Article 39 of this Decree.

### **Section 5. OPENING AND EVALUATION OF FINANCIAL PROPOSALS**

#### **Article 54. Opening financial proposals**

1. Financial proposals shall be opened in accordance with Article 40 of this Decree.

2. The following information shall be read aloud at the opening ceremony:

a) The bidder's name, quantity of original copies and photocopies of the financial proposal;

b) The letter of bid in the financial proposal; validity period of the financial proposal;

c) Total cost of project execution proposed by the bidder (M<sub>1</sub>);

d) Cost of compensation, assistance and relocation proposed by the bidder (M<sub>2</sub>);

dd) The bidder's proposed state budget contribution in addition to the bidder's liabilities to state budget prescribed by applicable law (M<sub>3</sub>).

e) The bidder's proposed increase in M<sub>3</sub>, if any;

g) The passing score;

h) Relevant information.

#### **Article 55. Evaluation of financial proposals**

Financial proposals shall be evaluated in accordance with Article 41 of this Decree. The validity of the letter of bid in the financial proposal shall be evaluated according to the following criteria:

1. The letter of bid shall bear the signature and seal (if any) of the bidder's legal representative as required by the bidding documents;

2. The values in the bids must be specific, expressed in both numbers and words, rational, logical and consistent, and are not associated with conditions that are disadvantageous to the authorities or procuring entity, including:

a) Total cost of the project proposed by the bidder (M<sub>1</sub>);

b) Cost of compensation, assistance and relocation proposed by the bidder (M<sub>2</sub>);

c) The bidder's proposed state budget contributions in addition to the bidder's liabilities to state budget prescribed by applicable law (M<sub>3</sub>);

d) The bidder's proposed increase in M<sub>3</sub>, if any.

3. In case the investor is a joint venture, the letter of bid shall bear the signatures and seals (if any) of legal representatives of all joint venture members, or the signature of the lead member of the joint venture if authorized in the joint venture agreement.

#### **Article 56. Rules for choosing the successful bidder**

A bidder will be proposed as successful bidder when the following conditions are fully satisfied:

1. The bid is valid.
2. The bidder's capacity and experience are qualified.
3. The technical proposal is qualified.
4. All the following conditions are satisfied:
  - a)  $M_1 \geq m_1$ ;
  - b)  $M_2 \geq m_2$ ;
  - c)  $M_3 \geq m_3$  and is the highest.

### **Section 6. SUBMISSION, VALIDATION, APPROVAL AND PUBLISHING OF INVESTOR SELECTION RESULT; CONTRACT NEGOTIATION AND CONCLUSION**

#### **Article 57. Submission, validation, approval and publishing of investor selection result**

1. The investor selection result shall be submitted, validated and approved in accordance with Clauses 1, 2, 3 Article 43 of this Decree.
2. In case an investor is selected, the decision to approve the investor selection result shall contain the following information:
  - a) The project's name, objectives and scale;
  - b) Name of the successful bidder (the selected investor);
  - c) The estimated project execution schedule;
  - d) The project's location, land area, land use purposes and duration;
  - dd) The total estimated cost of the project (excluding cost of compensation, assistance and relocation, land levy, land rent);
  - e) Estimated land levy or land rent payable by the investor;
  - g) Other information (if any).
3. In case the bidding process is cancelled according to Clause 1 Article 17 of the Law on Bidding, the approval decision or cancellation decision shall specify the reasons for cancellation and responsibility of the parties.
4. After the investor selection result approval decision is available, the procuring entity shall publish the information specified in Point d Clause 1 Article 4 and Clause 2 Article 5 of this Decree; send a notice of investor selection result to the bidders within the time limit specified in Clause 8 Article 6 of this Decree. The notice of investor selection result shall contain:
  - a) The information specified in Clause 2 of this Article;
  - b) The list of unsuccessful bidders and reasons for the elimination of each one;
  - c) The plan for negotiation and conclusion of the contract with the selected investor.
5. After the approval decision is available, the investor shall issue a decision to establish a project management enterprise to execute the project or directly execute the project. The management, operation and dissolution of the project management enterprise shall comply with regulations of law on enterprises, investment and project execution contract.

#### **Article 58. Contract negotiation**

1. The first-ranked bidder will be invited to negotiate the contract. In case the first-ranked bidder does not come or refuses to come to negotiate the contract, the bid security will not be refunded.
2. Basis for contract negotiation:
  - a) The bid evaluation report;
  - b) The bid, clarifying and revising documents (if any) provided by the bidder;
  - c) The bidding documents.
3. Rules for contract negotiation:
  - a) Do not negotiate the contents that are already conformable with the bidding documents;



b) The contract negotiation must not change the basic contents of the bid.

4. Contents of contract negotiation:

a) Negotiate the contents that are not adequately detailed or consistent between the bidding documents and the bid, the discrepancies in the bid that may lead to disputes or affect the responsibility of the parties during contract execution;

b) Negotiate the issues that arise during the investor selection process (if any) in order to complete details of the project;

c) Negotiate the schedule for transfer of construction area; transfer of payment for compensation, assistance and relocation and state budget contribution to competent authorities;

d) The basis for determination of land levy or land rent according to land laws; method for land pricing as the basis for determination of land levy or land rent at the time of land allocation or land lease; input parameters or how to determine input parameters according to the applied pricing method;

dd) Other necessary issues.

5. During the contract negotiation process, the parties shall complete the basis for contract conclusion, draft the contract, and changes to special terms and conditions of the contract (if any).

6. In case the contract negotiation is not successful, the procuring entity shall request the competent person to consider cancelling the investor selection result and invite the next-ranked bidder to negotiate the contract. In case the process of contract negotiation with the next-ranked bidder is not successful, the procuring entity shall request the competent person to consider cancelling the bidding process in accordance with Clause 1 Article 17 of the Law on Bidding.

#### **Article 59. Contract conclusion and publishing of contract information**

1. Rules for contract conclusion

a) The successful bid price shall be the contract value and the basis for contract execution and supervision thereof.

b) The land levy or land rent determined in accordance with land laws plus state budget contribution shall be recognized as market price at the time of land allocation or land lease specified in the contract.

2. The contract shall be concluded in accordance with Article 69, 70, 71, 72 of the Law on Bidding.

3. Within 07 working days from the day on which the contract is concluded, the procuring entity shall publish information about the contract on the national bidding network. Information published:

a) Name of the project; contract number; contract conclusion date;

b) Name and address of the competent authority;

c) Name and address of the investor;

d) The project's objectives and scale;

dd) The estimated project execution schedule;

e) The project's location, land area, land use duration;

g) The total estimated cost of the project (excluding cost of compensation, assistance and relocation, land levy, land rent);

h) The estimated land levy or land rent; method for land pricing as the basis for determination of land levy or land rent at the time of land allocation or land lease; input parameters or how to determine input parameters according to the applied pricing method;

i) Other information (if any).

#### **Article 60. Initiation of a land-using project**

1. After the contract is concluded, the investor shall cooperate with a specialized agency in proposing land expropriation and the plan for compensation, assistance and relocation to a competent authority in accordance with land laws. The investor shall pay  $M_2$  and  $M_3$  amounts as proposed in the bid to the competent authority according to the project progress. Interest shall not be charged on the payment for compensation, assistance and relocation.

2. Procedures for land allocation/land lease; determination of land levy/land rent:

a) After the compensation, assistance and relocation amount has been paid, the procedures for land allocation/land lease specified in Clause 3 Article 68 of the Government's Decree No. 43/2014/NĐ-CP and its revising or replacing document (if any) shall apply.

b) The provincial land authority shall organize the determination of land levy/land rent, submit a report

to the land pricing council before submission to the People's Committee of the province for approval.

3. The selected investor shall initiate the land-using project in accordance with the contract, regulations of law on investment, construction, land, planning, housing real estate trading and relevant laws.

## **Chapter V**

### **DIRECT CONTRACTING AND SPECIAL INVESTOR SELECTION PROCESS**

#### **Section 1. DIRECT CONTRACTING FOR PPP PROJECTS**

##### **Article 61. Preparation for investor selection**

1. Preparation of request for proposals

a) Basis for preparation of request for proposals:

The basis for preparation of the request for proposals are the documents specified in Clause 1 Article 28 of this Decree.

b) The request for proposals shall contain:

- Overall information about the project and instructions for investor;

- The project requirements according to the approved feasibility study (or pre-feasibility study for high technology projects);

- Project execution requirements relevant to protection of national sovereignty, border and islands in case of direct contracting prescribed in Point c Clause 3 Article 9 of this Decree;

- Proposal evaluation criteria, including criteria for evaluating the investor's capacity and experience, technical criteria, financial criteria and methods for evaluation thereof;

- Bid forms; conditions of the contract and the draft contract;

- The criteria and evaluation method specified in Article 29 of this Decree though financially qualified bidders need not to be ranked; evaluated price is not required for BT projects.

2. Validation and approval of request for proposals and selection of investor:

a) The request for proposals shall be validated in accordance with Clause 2 Article 75 of this Decree prior to approval;

b) Approval for the request for proposals shall be made in writing on the basis of the request for approval and the report on validation of the request for proposals;

c) In the cases of direct contracting prescribed in Point a Clause 4 Article 22 of the Law on Bidding and Point a Clause 3 Article 9 of this Decree, an investor will be selected to receive the request for proposals when qualified as prescribed in Point a, b, c, d, dd, e, g Clause 1 Article 5 of the Law on Bidding and has adequate capacity and experience for project execution;

d) In the cases of direct contracting prescribed in Point b Clause 4 Article 22 of the Law on Bidding and Point b, c Clause 3 Article 9 of this Decree, an investor will be selected receive the request for proposals when qualified as prescribed in Point a, b, c, d, e, g Clause 1 Article 5 of the Law on Bidding and has adequate capacity and experience for project execution.

##### **Article 62. Organization of investor selection**

1. The request for proposals shall be issued to the selected investor.

2. The investor shall prepare and submit the proposal accordingly.

##### **Article 63. Proposal evaluation**

The proposal shall be evaluated according to the criteria and methods specified in the request for proposals. During the process of evaluation, the procuring entity shall invite the investor to visit to clarify or make necessary revisions to the proposal.

##### **Article 64. Rules for investor selection**

The investor will be proposed for direct contracting when the following conditions are fully satisfied:

1. The proposal is valid;

2. The investor's capacity and experience are qualified;

3. The technical proposal is qualified;

4. One of the following conditions is satisfied:

a) If service price-based method is applied, the service price does not exceed the price specified in the approved feasibility study report (or pre-feasibility study report for high technology projects) and

complies with pricing laws;

b) If state investment-based method is applied, the proposed state investment does not exceed the value specified in the approved feasibility study report (or pre-feasibility study report for high technology projects);

c) If state interest-based method is applied, the proposed state budget contribution or contract duration does not exceed that specified in the approved feasibility study report (or pre-feasibility study report for high technology projects).

d) In case of a BT project, the bid price after error correction and adjustment of deviations minus discounts (if any) does not exceed the BT project value specified in the approved request for proposals.

5. In the cases of direct contracting specified in Point c Clause 3 Article 9 of this Decree, the project execution plan proposed by the investor shall satisfy requirements for protection of national sovereignty, border and islands in addition to the conditions specified in Clause 1, 2, 3, 4 of this Article.

#### **Article 65. Submission, validation, approval and publishing of direct contracting result**

Article 43 of this Decree shall apply to submission, validation, approval and publishing of direct contracting result.

#### **Article 66. Contract negotiation, conclusion and publishing of contract information**

1. Article 44 of this Decree shall apply to contract negotiation.

2. Article 45 of this Decree shall apply to contract conclusion and publishing of contract information.

### **Section 2. DIRECT CONTRACTING FOR LAND-USING PROJECTS**

#### **Article 67. Preparation for investor selection**

1. Preparation of request for proposals:

a) Basis for preparation of request for proposals:

- The list of projects that need land expropriation as prescribed by land laws; the urban development program (if any) as prescribed by urban development laws;

- The socio-economic development or industry development plan; the construction planning with a ratio of 1/2.000 or 1/500 (if any), or the urban sector planning with a ratio of 1/2.000 or 1/5.000 as prescribed by law;

- The approved plan for investor selection;

- Applicable regulations of law on land, housing, real estate trade, investment, construction and relevant laws.

b) The request for proposals shall contain the information specified in Clause 2 Article 47 of this Decree. The criteria and evaluation method specified in Article 48 of this Decree shall apply though financially qualified bidders need not to be ranked.

2. Validation and approval of request for proposals and selection of investor:

a) The request for proposals shall be validated in accordance with Clause 2 Article 75 of this Decree prior to approval;

b) Approval for the request for proposals shall be made in writing on the basis of the request for approval and the report on validation of the request for proposals;

c) In the cases of direct contracting prescribed in Point b Clause 4 Article 22 of the Law on Bidding and Clause 3 Article 10 of this Decree, an investor will be selected to receive the request for proposals when qualified as prescribed in Point a, b, c, d, e, g Clause 1 Article 5 of the Law on Bidding and has adequate capacity and experience for project execution.

#### **Article 68. Organization of investor selection**

1. The request for proposals shall be issued to the selected investor.

2. The investor shall prepare and submit the proposal accordingly.

#### **Article 69. Evaluation of proposals**

The proposal shall be evaluated according to the criteria specified in the request for proposals. During the process of evaluation, the procuring entity shall invite the investor to visit to clarify or make necessary revisions to the proposal.

#### **Article 70. Rules for investor selection**

A bidder will be proposed as successful bidder when the following conditions are fully satisfied:

1. The proposal is valid;
2. The investor's capacity and experience are qualified;
3. The technical proposal is qualified;
4. All of the following conditions are satisfied:
  - a)  $M_1 \geq m_1$ ;
  - b)  $M_2 \geq m_2$ ;
  - c)  $M_3 \geq m_3$ .

**Article 71. Submission, validation, approval and publishing of direct contracting result**

Article 57 of this Decree shall apply to submission, validation, approval and publishing of direct contracting result.

**Article 72. Contract negotiation, conclusion and publishing of contract information**

1. Contract negotiation shall be carried out in accordance with Clause 1, 2, 3, 4, 5 Article 58 of this Decree.
2. Article 59 of this Decree shall apply to contract conclusion and publishing of contract information.
3. The selected investor shall execute the project in accordance with Article 60 of this Decree.

**Section 3. SPECIAL INVESTOR SELECTION PROCESS**

**Article 73. Validating and approving plan for application of investor selection process**

1. A competent person shall prepare the proposal for application of special investor selection process, submit it to the Prime Minister and the Ministry of Planning and Investment for validation.
2. Within 30 days from the receipt of adequate documents, the Ministry of Planning and Investment shall validate the plan and submit a report to the Prime Minister.
3. On the basis for the competent person's proposal and the validation report submitted by the Ministry of Planning and Investment, the Prime Minister shall consider approving the plan for application of special investor selection process.

**Article 74. Proposal for application of special investor selection process**

1. The written request for application of special investor selection process shall contain the following information:
  - a) Basic information about the project;
  - b) The reasons that the none of the methods of investor selection specified in Article 20 and Article 22 of the Law on Bidding, Article 9 and Article 10 of this Decree cannot be applied;
  - c) The plan for application of special investor selection process, including the steps of investor selections, solutions for the special issues and individuality of the project to ensure investment efficiency).
2. Relevant legal documents.
3. Other describing documents (if any).

**Chapter VI**

**VALIDATION CONTENTS, VALIDATION AND APPROVAL RESPONSIBILITIES IN INVESTOR SELECTION**

**Article 75. Validating prequalification documents, bidding documents, request for proposals**

1. Validating the prequalification documents:
  - a) The application for validation and approval consists of:
    - The procuring entity's written request for approval for the prequalification documents;
    - The draft prequalification documents;
    - Photocopies of documents that are legal basis for prequalification;
    - Relevant documents.
  - b) Validation contents:
    - Inspection of documents that are the basis for preparation of prequalification documents;
    - Inspection of the relevance of the prequalification documents for the project scale, objectives, scope of work and duration; its conformity to bidding laws and relevant laws;

- Dissenting opinions (if any) between the organizations and individuals participating in the preparation of the prequalification documents;

- Other relevant contents.

c) An validation report shall contain:

- Overalls about the project and legal basis for preparation of the prequalification documents;

- Opinions of the validating units on the legal basis, conformity with bidding laws and relevant laws; assenting and dissenting opinions about the draft prequalification documents;

- Opinions of the validating units on approval for the prequalification documents; what to do if the prequalification documents is found to be unconfirmable with bidding laws and relevant laws; what to do if the prequalification documents are not qualified for approval;

- Other opinions (if any).

d) Before signing the validation report, the validating unit need to hold a meeting between the parties to resolve the issues if necessary.

2. Validating bidding documents and request for proposals:

a) The application for validation and approval consists of:

- The procuring entity's written request for approval for the bidding documents/request for proposals:

- The draft bidding documents/request for proposals;

- Photocopies of the decision to approve the investor selection plan and the decision to approve the prequalification result (if any);

- Relevant documents.

b) Validation contents:

- Inspection of documents that are the basis for preparation of bidding documents/request for proposals;

- Inspection of the relevance of the bidding documents/request for proposals for the project scale, objectives, scope of work and duration; its conformity to bidding laws and relevant laws;

- Dissenting opinions (if any) between the organizations and individuals participating in the preparation of the bidding documents/request for proposals;

- Other relevant contents.

c) An validation report shall contain:

- Overalls about the project and legal basis for preparation of the bidding documents/request for proposals;

- Opinions of the validating units on the legal basis, conformity with bidding laws and relevant laws; assenting and dissenting opinions about the draft bidding documents/request for proposals;

- Opinions of the validating units on approval for the bidding documents/request for proposals; what to do if the bidding documents/request for proposals is found to be unconfirmable with bidding laws and relevant laws; what to do if the bidding documents/request for proposals are not qualified for approval;

- Other opinions (if any).

d) Before signing the validation report, the validating unit need to hold a meeting between the parties to resolve the issues if necessary.

## **Article 76. Validation of prequalification result, list of technically qualified bidders and investor selection result**

1. General principles:

a) The prequalification result, list of technically qualified bidders and investor selection result must be validated prior to approval;

b) In case of single-stage one-envelop process, only validate the investor selection result;

c) In case of single-stage two-envelop process, the list of technically qualified bidders must be validated prior to approval;

d) The list of ranked bidders shall not be validated prior to approval; the list will be approved at the request of the procuring entity;

dd) Before signing the validation report, the validating unit may hold a meeting between the parties to resolve the issues if necessary.

## 2. Validation of prequalification result:

### a) An application for validation includes:

- The report on evaluation of prequalification applications;
- A document expressing the procuring entity's opinions on the opinions and recommendations of the expert team;
- Photocopies of the prequalification documents, bid closing and bid opening records, prequalification applications and other necessary documents.

### b) Validation contents:

- Documents that are the basis for prequalification;
- Punctuality during the prequalification process;
- Conformity with regulations of prequalification documents and law during the prequalification process.

### c) The validation report shall contain:

- Overalls about the project and legal basis for the investor selection;
- Brief summary of the process and proposals regarding the prequalification result;
- Remarks on conformity with regulations of bidding laws and relevant laws during the prequalification process;
- Assenting or dissenting opinions about of the prequalification result; recommendations for violations against bidding laws or insufficient grounds for reaching a verdict;
- The validating unit's opinions about the competitiveness, fairness and transparency of the prequalification process;
- The validating unit's opinions and proposals;
- Other opinions.

## 3. Validation of the list of technically qualified bidders:

### a) An application for validation includes:

- The procuring entity's document regarding the result of technical proposal evaluation;
- The report on technical proposal evaluation result;
- Photocopies of the bidding documents, bid closing and bid opening records, technical proposals and other necessary documents.

### b) Validation contents:

- Evaluation of technical proposals; conformity of bidding laws and relevant laws during the process;
- Other relevant contents.

### c) The validation report shall contain:

- Brief summary of the investor selection process from shortlisting (if any) to submission of the list of technically qualified bidders;
- Remarks on conformity with regulations of bidding laws and relevant laws during the investor selection process;
- The validating unit's opinions about the competitiveness, fairness, transparency and efficiency of the investor selection process;
- Proposals and recommendations to the procuring entity and the expert team;
- Assenting or dissenting opinions about of the technical proposal evaluation result; recommendations for violations against bidding laws or insufficient grounds for reaching a verdict;
- Other opinions.

## 4. Validation of investor selection result:

### a) An application for validation includes:

- The procuring entity's document regarding the investor selection result;
- The report on bid/proposal evaluation;
- Photocopies of the bidding documents/request for proposals, bid closing and bid opening records, bids/proposals and other necessary documents.

b) Validation contents:

- The relevance and conformity of the bidding documents/request for proposals; conformity with bidding laws and relevant laws;
- Punctuality during the contract negotiation process;
- Conformity with regulations of law on submission of investor selection result.

c) The validation report shall contain:

- Overalls about the project and legal basis for the investor selection;
- Brief summary of the investor selection process from shortlisting (if any) to submission of the investor selection result;
- Remarks on conformity with regulations of bidding laws and relevant laws during the investor selection process;
- The validating unit's opinions about the competitiveness, fairness, transparency and efficiency of the investor selection process;
- Proposals and recommendations to the procuring entity and the expert team;
- Assenting or dissenting opinions about of the investor selection result; recommendations for violations against bidding laws or insufficient grounds for reaching a verdict;
- Other opinions.

**Article 77. Responsibilities of Ministers, heads of ministerial-level agencies, Governmental agencies and Presidents of the People's Committees of provinces**

1. Regarding PPP projects under their management, Ministers, heads of ministerial-level agencies, Governmental agencies and Presidents of the People's Committees of provinces have the responsibility for:

a) Approval for investor selection plans and investor selection results;

b) Approval for prequalification documents, prequalification results, bidding documents, request for proposals, list of technically qualified bidders, list of ranked bidders (this task may be authorized to the head of a specialized agency affiliated to the People's Committee of the province, or to the President of the People's Committee of a district);

c) Performance of other tasks that are responsibilities of the competent persons specified in Article 73 of the Law on Bidding.

2. b) Regarding land-using projects, Presidents of the People's Committees of provinces have the responsibility for:

a) Approval for the list of land-using projects;

b) Approval for investor selection plans and investor selection results;

c) Approval for prequalification documents, prequalification results, bidding documents, request for proposals, list of technically qualified bidders, list of ranked bidders (this task may be authorized to the head of a specialized agency affiliated to the People's Committee of the province, or to the President of the People's Committee of a district);

d) Performance of other tasks that are responsibilities of the competent persons specified in Article 73 of the Law on Bidding.

**Article 78. Responsibilities of heads of organizations affiliated to ministries, ministerial-level agencies, Governmental agencies and specialized agencies affiliated to the People's Committee of the provinces, and Presidents of the People's Committees of districts**

1. Performance of tasks that are responsibilities of the procuring entity as prescribed in Article 75 of the Law on Bidding.

2. Performance of other investor selection tasks as authorized by their superiors.

**Article 79. Responsibilities of validating units**

1. The Ministry of Planning and Investment shall validate investor selection plans in special cases approved by the Prime Minister according to Article 26 of the Law on Bidding and other cases as requested by the Prime Minister.

2. A Minister or head of the ministerial-level agency or Governmental agency shall request their affiliates to validate:

a) Investor selection plans and investor selection results of the projects for which the Minister or head of the ministerial-level agency or Governmental agency is the competent person;

b) Prequalification documents, prequalification results, bidding documents, request for proposals, list of technically qualified bidders that are approved by the Minister or head of the ministerial-level agency or Governmental agency.

3. The Department of Planning and Investment of a province shall validate:

a) Investor selection plans and investor selection results of the projects for which the President of the People's Committee of the province is the competent person;

b) Prequalification documents, prequalification results, bidding documents, request for proposals, list of technically qualified bidders that are approved by the President of the People's Committee of the province.

4. In case of authorization prescribed in Point b Clause 1 and Point c Clause 2 Article 77 of this Decree, the authorized unit or the planning – finance department of a specialized agency affiliated to the People's Committee of the province or the People's Committee of the district shall validate the prequalification documents, bidding documents, request for proposals, prequalification result and list of technically qualified bidders.

## **Chapter VII**

### **HANDLING COMPLAINTS AND VARIOUS SITUATIONS DURING INVESTOR SELECTION PROCESS**

#### **Article 80. Handling situations**

1. In case the investor selection plan has to be revised, the revision procedures shall be completed before opening technical proposals (for competitive bidding) or the proposal (for direct contracting)

2. For PPP projects of national important and Group A projects, and in case of urgency that might affect investment efficiency, the competent person shall decide whether to apply international competitive bidding without prequalification as long as competitiveness, fairness, transparency and efficiency are ensured. In this case, the bidding documents shall include the bidders' capacity and experience requirements.

3. For PPP projects of Group B and Group C, the competent person shall decide whether to carry out domestic prequalification before preparing the investor selection plan, as long as competitiveness, fairness, transparency and efficiency are ensured.

4. In case no prequalification applications or bids are submitted at the bid closing, the procuring entity shall inform the competent person who will decide whether to:

a) Extend the bid closing time for up to 30 more days; or

b) Cancel the bidding process and request the procuring entity to revise the prequalification documents, bidding documents and reorganize the investor selection, or change the type of investment because the project does not attract any investor.

5. In case no applications are submitted at the end of the time limit for applying for execution of a land-using project, the Department of Planning and Investment shall request the President of the People's Committee of the province to decide whether to:

a) Extend the time limit; or

b) Plan the reannouncement of the project information.

6. In case of direct contracting, the investor may propose an earlier bid closing and bid opening time than that specified in the request for proposals. In this case, the procuring entity shall inform the competent person for approval.

7. In case the successful bidder fails to satisfy the technical and financial criteria specified in Clause 2 Article 70 of the Law on Bidding by the time the contract is concluded, the next-ranked bidder will be invited to negotiate the contract. In this case, the invited bidder shall restore the effect of the bid and bid security (if expired or returned)

8. In case all bidders are equally ranked after financial evaluation, the bidder that has the highest technical score will be first ranked.

9. In case all bidders are technically qualified and propose higher service price or state budget contribution than that specified in the approved feasibility study report (or pre-feasibility study report for high technology PPP projects), the competent person shall decide whether to:

a) Allow the bidders to resubmit the financial proposals;

b) Allow the bidders to resubmit the financial proposals and reconsider the service price or state budget contribution specified in the approved feasibility study report (or pre-feasibility study report for high technology PPP projects), if necessary.



10. Ministries and ministerial agencies shall provide guidance on prequalification for PPP projects other than those specified in Clause 3 Article 9 of the Government's Decree No. 63/2018/ND-CP on a case-by-case basis while ensuring competitiveness, fairness, transparency and efficiency.

11. In case the bidding process is cost estimate-based and the investor proposes changes to the design, construction plan, newer or more effective technology, the competent person shall consider approving the bidder's proposal if it is appropriate for the construction or service requirements, ensure project schedule and the investor bears the cost difference.

12. In case a bidder proposes the highest  $M_3$  but  $M_1 < m_1$  for a land-using project, the procuring entity shall request the bidder to clarify the pricing components and consider the following factors:

- a) Economic factors relevant to application of new and advanced technology to construction, manufacture or service provision that give the bidder the advantage of cost;
- b) Applied economic solutions or special advantage of the bidder that result in cost reduction.

If all of these conditions are satisfied, the bid will not be eliminated. The bidder that receives assistance from any organization or individual that results in unfair competition will be eliminated.

13. The bidder that wishes to change the bidder's status in the shortlist (in case of prequalification) shall send a written notice to the procuring entity at least 07 working days before the bid closing date. In this case, the procuring entity is entitled to decide the change in the bidder's status as follows:

- a) Accept addition of joint venture member outside of the shortlist;
- b) If at least 03 bidders are shortlisted, the shortlisted bidders may be allowed to form a joint venture as long as there are at least 03 remaining bidders.

14. The procuring entity shall inform the competent person of other situations to ensure competitiveness, fairness, transparency and efficiency are ensured.

#### **Article 81. Conditions for handling complaints**

1. The complaint is made by a bidder.
2. The complaint form bears the signature of the person who signs the letter of bid or the bidder's legal representative, and a seal (if any).
3. The person responsible for handling complaints receives the complaint form according to Clauses 3, 4, 5 Article 92 of the Law on Bidding.
4. The issue complained against has not been brought to court by the bidder.
5. The complaint handling cost mentioned in Clause 6 Article 7 of this Decree shall be paid to the standing assistance team of the counseling board in case a complaint against the investor selection result is handled by the competent person.

#### **Article 82. Counseling board**

1. Chairperson of the counseling board:

a) The chairperson of the central-level counseling board is a competent representative of the Ministry of Planning and Investment. The central-level counseling board shall handle complaints relevant to projects of national importance whose decision on investment guidelines are decided by the National Assembly, Group A and equivalent projects;

b) The chairperson of the counseling board of a Ministry, ministerial agency or governmental agency (hereinafter referred to as "ministerial counseling board") is the head of the bidding management unit of that agency. The chairperson of the provincial-level counseling board is the Director of the Department of Planning and Investment. Ministerial- and provincial-level counseling boards shall handle complaints of PPP projects whose investment guidelines are decided by Ministries, ministerial agencies, governmental agencies and provincial authorities (or feasibility study reports for PPP projects of Group C), except for the projects mentioned in Point a of this Clause.

2. Members of a counseling board:

a) Members of a central-level counseling board are personnel of the bidding management unit of the Ministry of Planning and Investment, representatives of competent authorities and relevant professional associations. Members of a ministerial-level counseling board are personnel of the bidding management unit of the same agency, representatives of competent authorities and relevant professional associations. Members of a provincial-level counseling board are personnel of the Department of Planning and Investment, representatives of competent authorities and relevant professional associations.

b) The chairperson of the counseling board may invite other individuals to participate as members of the counseling board depending on each project.

c) A counseling board member must not be the parent, parent-in-law, spouse, natural child, adopted

child, son- or daughter-in-law, or sibling of the person who signs the complaint form or any individual that directly participates in bid/proposal evaluation or any individual that directly validates the list of technically qualified bidders, investor selection result, or the person who signs the approval for the investor selection result.

3. Operation of the counseling board:

a) The chairperson of the counseling board shall issue a decision to establish the counseling board within 05 working days from the day on which the bidder's complaint form is received. The counseling board shall operate on a case-by-case basis;

b) The counseling board shall work on the principle of collectives, vote under the majority rule and report to the competent person; each member has the right to express and is legally responsible for their opinions.

4. Standing assistance team of the counseling board:

a) The standing assistance team of the central-level counseling board is the bidding management unit of the Ministry of Planning and Investment. The standing assistance team of the ministerial-level counseling board is the bidding management unit of the same agency. The standing assistance team of the provincial-level counseling board is the bidding management unit of the Department of Planning and Investment. The standing assistance team members do not include the individuals that directly participate in the validation of the investor selection result of the same project.

b) The standing assistance team shall perform administrative tasks assigned by the chairperson of the counseling board; receive and manage the fees paid by the complaining bidder as per regulations in Clause 6 Article 7 of this Decree.

**Article 83. Handling complaints against investor selection result**

1. The time limit for handling a complaint prescribed in Clause 3 and Clause 4 Article 92 of the Law on Bidding begins when the complaint form is received by the administrative department of the person responsible for handling complaints.

2. The person responsible for handling complaints shall inform the bidder in case the complaint is rejected because the conditions specified in Article 81 of this Decree are not fully satisfied.

3. The bidder may withdraw the complaint during the process, provided there is a written decision on complaint withdrawal

4. The written response to the complaint shall contain a verdict regarding the issued complained against. If the bidder's complaint is found to be true, solutions and time limit must be specified, in which case the assistance team shall request the jointly responsible organizations and individuals to pay the complaining bidder an amount equal to the fee paid by the complaining bidder to the counseling board. If the bidder's complaint is found to be false, the written response shall contain explanation.

**Chapter VIII**

**ACTIONS AGAINST VIOLATIONS OF LAW; INSPECTION, SUPERVISION OF BIDDING FOR INVESTOR SELECTION**

**Section 1. Actions against violations of law**

**Article 84. Penalties**

1. Warnings and fines shall be imposed upon organizations and individuals that violate bidding laws in accordance with regulations of law on imposition of administrative penalties for violations against regulations on planning and investment

2. Organizations and individuals that violate Article 89 of the Law on Bidding will be banned from bidding.

3. Individuals that commit criminal offences against bidding laws shall face criminal prosecution.

4. Officials who violate bidding laws shall also be dealt with in accordance with regulations of law on officials.

**Article 85. Ban from bidding**

An organization or individual may be banned from bidding for a specific period of time:

1. Any of the violations specified in Clauses 1, 2, 3, 4, 5 Article 89 of the Law on Bidding will lead to a ban of 03 - 05 years.

2. Any of the violations specified in Points a, b, c, d, h Clause 6 Article 89 of the Law on Bidding will lead to a ban of 01 - 03 years.

3. Any of the violations specified in Clause 7 Article 89 of the Law on Bidding will lead to a ban of 06 –

12 months.

#### **Article 86. Cancellation, suspension, rejection of investor selection result**

1. Cancellation of bidding process is a measure taken by a competent person against violations of bidding laws and relevant laws by participants in the bidding process.

The competent person shall issue a decision on cancellation of bidding process in the cases specified in Article 17 of the Law on Bidding.

2. Suspension, rejection of investor selection result, invalidation of bidding-related decisions:

a) The bidding will be suspended and the investor selection result will be rejected if there is evidence that the violation committed by a participant in the bidding against bidding laws or relevant laws results in failure to achieve the bidding objectives or falsifies the investor selection result.

b) Suspension will be imposed as soon as such a violation is committed and before the investor selection result is approved. Rejection of the investor selection result will be imposed during the period from the day on which the investor selection result is approved to the contract conclusion date;

c) The written decision on suspension or rejection of investor selection must specify the reasons, solutions and time limit for rectification;

d) Invalidation of a procuring entity's decision will be decided by the competent person when the decision is found to be unconfirmable with bidding laws and relevant laws.

#### **Article 87. Compensation for damage caused by violations against bidding laws**

The organization or individual that violates bidding laws and causes damage shall pay compensation in accordance with regulations of law on damages and relevant laws.

### **Section 2. INSPECTION AND SUPERVISION**

#### **Article 88. Inspection of bidding process**

1. Inspections include periodic inspections and unscheduled inspections that are carried out whenever there is a complaint or when requested by the Prime Minister, the President of the People's Committee of the province, competent person of a bidding authority prescribed in Clause 2 of this Article, whether directly or by requesting a report.

2. Ministers, heads of ministerial-level agencies, Governmental agencies, Presidents of the People's Committees of provinces; Directors of Provincial Departments of Planning and Investment, heads of specialized agencies affiliated to the People's Committees of provinces; Presidents of the People's Committees of districts shall preside over the inspection of bidding for projects under their management and the projects they decide to ensure speedup progress, improve efficiency, detect and take actions against violations against bidding laws.

3. The Ministry of Planning and Investment shall organize inspection of bidding nationwide. Other Ministries, ministerial-level agencies, Governmental agencies, the People's Committees of provinces, Provincial Departments of Planning and Investment, specialized agencies affiliated to the People's Committees of provinces, the People's Committees of districts shall organize bidding inspection when requested by the competent person of a bidding inspection authority. Departments of Planning and Investment shall assist the People's Committees of provinces in organizing bidding inspection in their provinces.

4. Bidding inspection contents:

a) Periodic inspection:

- Issuance of guidelines for investor selection; hierarchy of power in investor selection.

- Provision of training in bidding;

- Issuance of certificates of training in bidding, bidding practicing certificates;

- The process of preparing and approving the investor selection plan, prequalification documents, bidding documents, request for proposals, prequalification result, investor selection result;

- Contents of the concluded contract and conformity with the legal basis during the process of project conclusion and execution;

- The sequence and progress of project execution according to the approved investor selection plan;

- Bidding-related reporting;

- Performance of bidding inspection and supervision tasks.

b) Unscheduled inspection: the chief inspector shall decide the inspection contents according to the request for inspection and the inspection decision.

5. An inspection report and verdict shall be made after the inspection ends. The inspecting authority

shall monitor the rectification of weaknesses (if found) specified in the verdict. Propose actions against violations if found or transfer the case to an investigation authority for handling.

6. The verdict shall contain:

- a) The performance of bidding tasks by the inspected unit;
- b) The inspection contents;
- c) Remarks;
- d) Verdict;
- dd) Recommendations;

#### **Article 89. Supervision of bidding process**

1. Supervision shall be carried out when a Minister, heads of ministerial-level agency or governmental agency authorizes the head of an organization affiliate thereto; when the President of the People's Committee of the province authorizes the head of a specialized agency affiliated thereto or the President of the People's Committee of a district to act as the competent person who has the power to supervise and take actions against violations of bidding laws and relevant laws. 2. The competent person shall appoint an individual or unit licensed for bidding management to participate in supervision of the tasks specified in Clause 3 of this Article to ensure conformity with bidding laws.

3. The following bidding tasks shall be supervised:

- a) Preparation, validation and approval of prequalification documents, bidding documents, request for proposals;
- b) Evaluation of prequalification applications, bids, proposals;
- c) Validation and approval of prequalification result, investor selection result;
- d) Negotiation and conclusion of the contract.

4. Supervision method:

- a) The procuring entity shall inform the bidders that bought the prequalification documents, bidding documents or request for proposals the name and address of the supervising entity;
- b) The procuring entity shall provide information about the process of investor selection to the supervising entity when receiving written request;
- c) When a violation is found, the supervising entity shall send a written notice to the competent person, who will take necessary actions to ensure the efficiency of the investor selection process.

5. Responsibilities of the supervising entity:

- a) Be honest and objective; do no harass the authorized person and procuring entity during the supervision process;
- b) Request the authorized person and procuring entity to provide documents serving the supervision process;
- c) Receive information from the investor, organizations and individuals relevant to the selection of investor in the project under supervision;
- d) Protect confidentiality of information as per regulations;
- dd) Perform other obligations prescribed by bidding laws and relevant laws.

### **Chapter IX**

## **IMPLEMENTATION CLAUSES**

#### **Article 90. Transition clauses**

1. In case a PPP project of Group B applies international competitive bidding without prequalification and is not put out to bidding before the effective date of this Decree, the competent person shall consider applying international competitive bidding or change the investor selection method in accordance with Point c Clause 2 Article 9 of this Decree.

2. In case a land-using project has a total estimated cost (excluding cost of compensation, assistance and relocation, land levy, land rent) from 120.000.000.000 VND to under 800.000.000.000 VND, applies international competitive bidding without prequalification, and is not bid for before the effective date of this Decree, the competent person shall consider applying international competitive bidding or domestic competitive bidding.

3. Regulations of the Government's Decree No. 30/2015/NĐ-CP and its guiding Circulars shall apply to prequalification documents issued before the effective date of this Decree.

4. Regulations of the Government's Decree No. 30/2015/NĐ-CP and its guiding Circulars shall apply to bidding documents and requests for proposals issued before the effective date of this Decree.

#### **Article 91. Guidance for implementation**

1. The Ministry of Planning and Investment shall:

a) Preside over the development and issuance of model bidding-related document, including: model prequalification documents, bidding documents, request for proposals for selection of investors in PPP projects; bidding documents, request for proposals for selection of investor in land-using projects; reporting forms and other set forms;

b) Establish the road map and provide detailed instructions on how to prepare applications for execution of land-using projects and submit prequalification applications for PPP projects on national bidding network according to Point b Clause 4 Article 12 and Point a Clause 1 Article 21 of this Decree;

c) Take charge and cooperate with relevant authorities in developing the national bidding network and implementation road map; establish the mechanism for its management and operation; provide guidance on investor selection through the network;

d) Provide guidance on implementation of other contents of the Decree to facilitate state management of investor selection.

2. The Ministry of Finance shall provide guidance on management and use of funds relevant to investor selection.

3. Other Ministries, ministerial-level agencies, Governmental agencies and the People's Committees of provinces shall:

a) Take charge and cooperate with the Ministry of Planning and Investment in proving model documents for selection of investors in PPP projects of Group C in their fields;

b) Provide guidance on implementation of certain contents of this Decree (if necessary), ensuring conformity with the Law on Bidding No. 43/2013/QH13 and this Decree;

c) Submit annual reports on investor selection to the Ministry of Planning and Investment, which will submit a consolidated report to the Prime Minister. For projects that apply direct contracting and special investor selection process, the report shall include the evaluation of the investor selection result according to the objectives, reasons, conditions, progress and execution plan.

4. Ministers, heads of ministerial-level agencies and Governmental agencies, Presidents of the People's Committees shall designate persons in charge of investor selection and assign one or some of their units to manage investor selection in their fields or their administrative divisions. The issues that are not regulated by this Decree shall be reported to the Prime Minister for consideration.

#### **Article 92. Effect**

1. This Decree comes into force from April 20, 2020.

2. This Decree replaces the Government's Decree No. 30/2015/NĐ-CP dated March 17, 2015 elaborating some Articles on investor selection of the Law on Bidding./.

**ON BEHALF OF THE GOVERNMENT  
PRIME MINISTER**

**Nguyen Xuan Phuc**