

NATIONAL ASSEMBLY

Law No. 43/2013/QH13

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

Hanoi, November 26, 2013

LAW

ON PROCUREMENT

Pursuant to the Constitution of the Socialist Republic of Vietnam;

National Assembly promulgates the Law on Procurement.

Chapter 1.

GENERAL PROVISIONS

Article 1. Scope of regulation

This Law provides for state management of procurement; responsibilities of concerned parties and activities of procurement, including:

1. Selection of provider of consulting services, non-consulting services, goods, works for:
 - a) Projects on development investment financed by state of regulatory agencies, political organizations, socio-political organizations, professional-socio-political organizations, socio-professional organizations, social organizations, units of People's armed forces, and public non-business units;
 - b) Projects on development investment of state-owned enterprises;
 - c) Projects on development investment other than cases defined at point a and point b of this Clause which are financed by state, state-owned enterprises with level equal to 30% or more or less than 30% but more than 500 billion VND in total investment of project.
 - d) Procurement financed by state aiming to maintain regular activities of regulatory agencies, political organizations, socio-political organizations, socio-political-occupational organizations, social organizations, socio-occupational organizations and units of the People's armed forces, and public non-business units;
 - dd) Procurement financed by state aiming to supply products and services in serve of public purpose;
 - e) Purchase of national reserve goods financed by state;
 - g) Purchase of drugs, medical supplies financed state; medical insurance fund, revenues from services of medical examination and treatment and other lawful revenues of public health facilities;
2. Selection of providers of consulting services, non-consulting services, goods on Vietnam's territory for implementation of overseas direct-investment projects of Vietnamese enterprises which are financed by state with level equal to 30% or more or less than 30% but more than 500 billion VND in total investment of project.

3. Selection of investors to perform the investment projects in form of public-private partnership (PPP), investment projects with land use;
4. Selection of bidders in petroleum field, except for selection of bidders to supply petroleum services related directly to activities of search, exploration and development of mines and petroleum exploitation as prescribed by law on petroleum.

Article 2. Subjects of application

1. Organizations and individuals that participate in or related to activities of procurement defined in Article 1 of this Law.
2. Organizations and individuals that have activities of procurement not within the governing scope of this Law may choose to apply this Law. In case of choosing to apply, organizations and individuals must observe the concerned provisions of this law and ensure fairness, transparency and economic efficiency.

Article 3. Application of Law on procurement, International treaties and international agreements

1. Procurement activities must comply with the provisions of this Law and other related laws.
2. In case of selecting by bidding for provision of raw materials, fuel, materials, supplies, consulting services, non-consulting services in order to ensure the continuity for production and business and procurement with the aim to maintain regular activities of state-owned enterprises; performance of packages of investment projects in the form of public-private partnership, investment projects with land use of the selected investors, enterprises must promulgate regulations on choosing bidders for unified application in enterprises on the basis of ensuring objective of fairness, transparency, and economic efficiency.
3. For selection of bidders/investors for projects financed by official development assistance (ODA) capital, concessional loans arising from International treaties, international agreements between Vietnam and donors, international treaties, international agreements shall be applied.
4. If International treaties to which the Socialist Republic of Vietnam is a contracting party have provisions on selection of bidders and investors different from this Law, such International treaties shall prevail.

Article 4. Interpretation of terms

For the purpose of this Law, the following terms are construed as follows:

1. *Bid Security* means the bidder or investor provides security by one of the security methods of paying a deposit, escrow or providing a letter of guarantee of credit institutions or foreign banks' branches which are established under Vietnamese law in order to secure the liability in the bid participation of bidder or investor for a definite term as stipulated in the Bid Documents, Request for Proposals.
2. *Performance Security* means the bidder or investor provides security by one of the security methods of paying a deposit, escrow or providing a letter of guarantee of credit institutions or foreign banks' branches which are established under Vietnamese law in order to secure the liability of the Contract performance by bidder or investor.

3. *Procuring Entity* means a professional agency or organization with sufficient capability to perform bidding activities, including:

- a) Investor or organization which is decided for establishment or selected by the investor;
- b) Budget estimate unit directly using capital source for recurrent procurement;
- c) The centralized procurement unit;
- d) Competent regulatory agencies or the affiliated organizations which are selected by the competent regulatory agencies.

4. *Investor* means the entity owning the financing capital or the entity assigned responsibility to represent such owner, or the borrower directly managing and implementing project.

5. *Digital certificate* means electronic certificate granted by providers of digital signature certificate service in order to perform online bidding on National E-procurement System.

6. *Competent regulatory agencies mean agencies signing contracts with investors.*

7. *Short list means* list of bidders/investors winning prequalification for competitive bidding with prequalification; list of bidders invited for bid participation for limited bidding; list of bidders with EOI responses meeting requirements of EOI requests.

8. *Consulting service* means one or a number of activities including: preparation, assessment of the planning report, collective development diagram, architecture; survey and making of pre-feasibility study report, feasibility study report, environmental impact assessment report; survey and making of engineering, estimate; preparation of EOI requests, Prequalification Document, Bids, Requests for Proposals; assessment of EOI responses, Prequalification Application, Bidding Documents, Proposals; verification, appraisal; supervision; management of project; arranging finance; audit, training, transfer of technologies; other consulting services.

9. *Non-consulting service* means one or a number of activities including: logistics, insurance, advertisement, installation not belong to Clause 45 of this Article, pre-acceptance test and operation run, holding of training, maintenance, drawing maps and other activities not being consulting services defined at clause 8 of this Article.

10. *Project management enterprise* means enterprise which is established by investor for performance of investment project in form of private-public partnership or investment project with land use.

11. *Development investment projects (hereinafter collectively referred to as projects) include:* programs or projects on investment in new construction; projects on renovation, upgrading, expansion of projects invested in construction; projects on procurement of assets, including equipment, machinery without installation; projects on repair, upgrading of assets, equipment; projects, schemes on planning; projects, subjects on scientific research, technology development, application of technologies, technical support, basic survey; other programs, projects, or schemes on development investment.

12. *Procurement* means the process of selecting a bidder to sign and implement contract of provision of consulting services, non-consulting services, procurement of goods, works; selecting an investor to sign and implement contract of investment project in form of public-private partnership, investment project with land use on the basis of ensuring competitiveness, fairness, transparency and economic efficiency.

13. *Online procurement* means bidding which is performed via use of National E-procurement System.

14. *International bidding* means bidding in which both foreign and domestic bidders and investors may participate.

15. *Domestic bidding* means bidding in which only domestic bidders and investors may participate.

16. *Package price* means the value of a package approved in the plan on selecting bidders.

17. *Bid price* means the price stated by a bidder in application for bid participation, quotation, including all costs for performance of package as required by Bids, Request for Proposals.

18. *Evaluated bid price* means a bid price after the error correction and adjustment of deviation as required in Bids, less the value of discount (if any), plus elements to convert on a same ground for whole use life cycle of goods and works. Evaluated bid price is used to rank Bidding Documents for packages of procurement of goods, works and the mixed packages applying form of competitive bidding or limited bidding.

19. *Proposed successful bid* means bid price of the bidder who are proposed to win bid after the errors have been rectified and discrepancies have been adjusted as required by the Bids, Requests for Proposals, minus the value of discount (if any).

20. *Successful bid* means the price approved in the results of selection of bidder.

21. *Contract Price* means the price stated in written contract as the basis for advance payment, payment, liquidation and finalization of contract.

22. *Package* means a part of, or entire project, estimate of procurement; a package may comprise items for the procurement of similar goods for a number of projects or a one-off procurement, procurement for a period in recurrent procurement, centralized procurement of goods.

23. *Mixed package* means a package comprising of engineering and goods provision (EP); engineering, works (EC); goods provision and works (PC); engineering, goods provision, works (EPC); making project, engineering, goods provision, works (turnkey).

24. *Package with small scale* means a package with price in limitation prescribed by the Government.

25. *Goods* include machinery, equipment, raw materials, fuel, materials, supplies, accessories; consumables; drugs, medical supplies used for medical establishment.

26. *National E-procurement System* means an information technology system which is set up and managed by the state management agency of bidding activities with the aim to perform unified management of information on bidding and online bidding.

27. *EOI requests, Prequalification Documents* mean all documents including requirements on qualifications of bidders/investors as the basis for the Procuring Entity to select list of bidders/investors winning prequalification, list of bidders with EOI responses meeting requirements of EOI requests.

28. *EOI responses, Applications* mean all documents which are made by bidders/investors and submitted to the Procuring Entity at the requirements of EOI requests, Prequalification Documents.

29. *Bid Documents* mean all of the documents used for open or limited bidding stipulating the requirements for a project, package and providing the legal basis for bidders/investors to prepare their Bids and for the Procuring Entity to assess Bids aimed at selection of a winning bidder/investor.

30. *Request for Proposals* mean all of the documents used for Direct Contracting, Direct Procurement, Shopping Method including the requirements for a project, package and providing the basis for bidders/investors to prepare their Proposals and for the Procuring Entity to assess Proposals aimed at selection of a winning bidder/investor.

31. *Bids, Proposals* mean all documents which are made by bidders/investors and submitted to the Procuring Entity at the requirements of the Bidding Documents, Requests for Proposals.

32. *Contract* means a document signed between the investor and the selected bidder in performance of package under project; between Procuring Entity and the selected bidder in recurrent procurement; between the centralized-procurement units or unit with procurement need with the selected bidder in the centralized procurement; between competent regulatory body with the selected investor or between the competent regulatory body and the selected investor and project enterprise in the investor selection.

33. *Protest* means a request from any bidder/investor participating in bidding for reconsideration of the results of selection of bidder, results of selection of investor and regarding any other relevant matter during the process or selecting contractor, investor when such bidder or investor considers his rights and interests have been adversely affected.

34. *Competent person* means person who decides on the approval of project or person who decides on procurement as prescribed by law. In case of selection of investor, the competent person means the head of competent regulatory body as prescribed by law.

35. *Contractor* means a bidder liable for its participation in bidding which gives its name to a tender, and which directly signs in and implements a contract if selected. Contractor may be an individual contractor or JV's Party.

36. *Subcontractor* means a contractor performing part of the work of a package on the basis of a contract signed with the Contractor. The special Subcontractor means a Subcontractor performing special works of a package proposed by the Contractor in Bid, Proposal on the basis of requirements stated in Bid, Request for Proposals.

37. *Foreign Contractor* means an organization established under foreign law or an individual of foreign nationality making a bid in Vietnam.

38. *Domestic Contractor* means an organization established under Vietnamese law or individual of Vietnamese nationality making a bid.

39. *Public products and services* mean the essential products and services for economic-social life of country, population communities or assurance of national defense and security which the State must organize implementation in the fields: health, education - training, culture, information, communications, science – technology, natural resources - environment, transport and other fields as prescribed by Government. Public products and services include the public-interest products and services, and services for public career.

40. *Appraisal in the course of selecting contractor or investor* means check and assessment plan on selecting bidders/investors, EOI requests, Prequalification Documents, Bidding Documents,

Request for Proposals and results of invitation for expression of interest, results of prequalification, results of selection of bidder/ investor as the basis for the authorized person to consider and make a decision on approval in accordance with this Law.

41. *Deadline for submission of bids* means the expiry time of receiving EOI responses, Applications, Bids, Proposals.

42. *Validity period of Bids, Proposals* means number of days stipulated in Bid, Request for Proposals and calculated from the deadline for submission of bids to the end effect day as prescribed in Bidding Documents, Requests for Proposals. From the deadline for submission of bids until ending of 24 hours of day of deadline for submission of bids is calculated as 01 day.

43. *Expert group* includes individuals with qualifications set up by the Procuring Entity or the bid consultancy unit in order to assess EOI responses, Applications, Bids, Proposals and perform other tasks during selection of bidders/investors.

44. *State capital* includes state budget funds; national bonds, Governmental bonds, bonds of local authorities; official development assistance capital, concessional loans from donors; fund for development of non-business activities; credit facilities for investment and development of the State; credit facilities guaranteed by the Government, loans guaranteed by assets of state; investment and development funds of State-owned enterprises, and value of land-use right.

45. *Works* include construction and installation of works and work items.

Article 5. Eligibility of bidders/investors

1. A bidder or investor being an organization shall be deemed to be eligible when it satisfies the following conditions:

- a) Having registration for establishment and operation issued by the competent authority of country where it is operating;
- b) Keeping independent accounting records;
- c) Not undergoing dissolution process, are not thrown into bankruptcy, and do not incur bad debts as prescribed by law.
- d) Having registered on National E-procurement System;
- dd) Ensuring the competitiveness in bidding as prescribed in Article 6 hereof;
- e) Not being banned from bidding;
- g) Its name is stated in short list for case where the short list has been selected;
- h) Being in a joint venture with domestic contractors or employment of domestic subcontractors in case of a foreign contractor making an international bidding in Vietnam, unless the domestic contractor cannot acquire the competencies necessary to perform any portion of the package.

2. A bidder or investor being an individual shall be deemed to be eligible when it satisfies the following conditions:

- a) Having full legal capacity as per the law of the country of which such individual is a citizen;
- b) Having an appropriate professional certificate as prescribed by law;
- c) Having lawful registration for operation as prescribed by law;

- d) Not facing a criminal prosecution;
- d) Not being banned from bidding.

3. Bidders and investors with eligibility as prescribed in Clause 1 and Clause 2 of this Article may make a bid as an independent bidder/investor or in a joint venture; in case of joint venture, it must have written agreement among members, in which clearly stating responsibilities of the leading JV's Party and general responsibilities, particular responsibilities of each JV's Party.

Article 6. Ensuring competitiveness in bidding

1. Bidders submitting EOI responses, Applications must be legally and financially independent with consulting bidders for making EOI requests, Prequalification Documents; assessment of EOI responses, Applications; appraisal for results of invitation for interest, results of prequalification.

2. Bidders making a bid must be legally and financially independent with the following parties:

- a) Investor, Procuring Entity;
- b) The consulting bidders for the making, verification, and appraisal of dossiers of design and estimate; the making, verification of Bidding Documents, Request for Proposals; assessment of Bids, Proposals; appraisal of results of selecting bidder of such package;
- c) Other bidders that participate in same package for limited bidding.

3. A consulting bidder who supervises execution of a contract must be legally and financially independent from the bidder who performs the contract, the consulting bidder who verifies such package.

4. Investors making a bid must be legally and financially independent with the following parties:

- a) The consulting bidders for bidding for investment projects in form of public-private partnership (PPP), investment projects with land use, until day of signing the project contract;
- b) The consulting bidder that verifies the investment project in form of public-private partnership (PPP), investment project with land use, until day of signing the project contract;
- c) Competent regulatory agencies, and the Procuring Entity.

5. The Government shall elaborate this Article.

Article 7. Conditions for issuing the Bidding Documents, Request for Proposals

1. The Bidding Documents, Request for Proposals of a package may be only issued to select bidders when having full the following conditions:

- a) The approved plan on selection of bidders;
- b) The approved Bidding Documents, Request for Proposals include contents of requirements on procedures for bidding, Bid Data Sheet; criteria for evaluation, forms of bidding, volume table of bid invitation; requirements on progress, techniques, quality; general conditions, particular conditions of contracts, model contracts and other necessary contents;
- c) Invitation to Bid, Notice of Proposed Procurement or short list must be published as prescribed by this Law;
- d) Capital sources for package are allocated under the time for performance of package;

dd) Content, list of goods, services and estimates already been approved by competent person in case of recurrent procurement and centralized procurement;

e) Ensuring the handing over of construction ground under time for performance of package.

2. Bidding Documents, Request for Proposals of a project may be only issued to select investors when having full the following conditions:

a) Project under list of projects announced by Ministries, Ministerial agencies, Governmental agencies, the People's Committees of provinces or central-affiliated cities as prescribed by law or projects proposed by investors;

b) The approved plan on selection of bidders;

c) The approved Bidding Documents, Request for Proposals;

d) Invitation to Bid, or short list must be published as prescribed by this Law.

Article 8. Information of bidding

1. All information must be published on National E-procurement System, bidding newspapers including:

a) The plan on selection of bidders/investors;

b) Notice of invitation for expression of interest, notice of invitation for prequalification;

c) Notice of Proposed Procurement, Invitation to Bid;

d) Short list;

dd) Results of selection of bidders/investors;

e) Results of bid opening for online bidding;

g) Information on handling of violations of law on procurement;

h) Legal documents on bidding;

i) List of investment projects in the form of public-private partnership, projects with land use;

k) The database of bidders/investors, bidding experts, lecturers of bidding, and establishments of training on bidding;

l) Other relevant information.

2. The information defined at Clause 1 this Article is encouraged to publish on websites of Ministries, sectors and localities or on other means of mass media.

3. The Government shall elaborate this Article.

Article 9. Language of bid

Language to be used in bidding shall be Vietnamese in the case of domestic bidding, and English or Vietnamese and English in the case of international bidding.

Article 10. Currencies of bid

1. For domestic bidding, bidders are only allowed to have bid quotation in Vietnam dong.

2. For international bidding:

- a) Bidding Documents, Request for Proposals must state the currency for bidding in Bids, Proposals but not exceeding three currencies; for a specific work item, only give bid quotation in a currency kind;
- b) In case where Bidding Documents, Request for Proposals stipulate that bidders may have bid quotation in two or three currencies when assessing Bids, Proposals, quotation must be converted into a currency kind; if having Vietnam dong used in such currencies, quotation must be converted into Vietnam dong. Bidding Documents, Request for Proposals must stipulate the convertible currency, time and bases to determine the exchange rate for converting;
- c) For domestic costs involving performance of package, bidders must have a bid quotation in Vietnam dong;
- d) For overseas costs involving performance of package, bidders may have a bid quotation in foreign currency.

Article 11. Bid Security

1. Bid Security shall apply in the following cases:

a) Competitive bidding, limited bidding, and Shopping Method for procurement of non-consulting service provision, goods procurement, works, and mixed package;

b) Competitive bidding and Direct Contracting for selection of investor.

2. Bidders and investors must conduct measures for Bid Security before deadline for submission of bids for Bids, Proposals; case of applying method of two-stage bidding, bidders must provide a Bid Security during stage two.

3. Value of Bid Security is stipulated as follows:

a) For selection of bidder, value of Bid Security is stipulated in Bidding Documents, Request for Proposals under a defined amount of between 1% and 3% of package price basing on the scale and nature of each particular package;

b) For selection of investor, value of Bid Security is stipulated in Bidding Documents, Request for Proposals under a defined amount of between 0.5% and 1.5% of total investment basing on the scale and nature of each particular project.

4. The validity period of Bid Security is stipulated in Bid, Request for Proposals equal to the validity period of the Bids, Proposals plus thirty (30) days.

5. In case of extending the period of validity of Bids, Proposals after deadline for submission of bids, and the Procuring Entity must require bidders/investors to extend the period of validity of their Bid Security for an equivalent term. In such a case, bidders/investors must extend the period of validity of their Bid Security and not be permitted to change the contents of their submitted Bids, Proposals. If any bidder or investor refuses to extend the period of validity, his Bid, Proposal will be no valid longer and be rejected, the party calling for tenders shall return or release the bidding guarantee to the bidder/investor within 20 days, since the Procuring Entity receives a written refusal for extension.

6. If a joint venture makes a bid, every JV's Party may perform separate Bid Security or make agreement in which one member will be responsible for implementation of its Bid Security or for Bid Security of JV's Parties. Total value of Bid Security is not lower than the value required in

Bidding Documents, Request for Proposals. If any JV's Party violates Clause 8 of this Article, Bid Security of all JV's Parties will not be returned.

7. The Procuring Entity shall return or release Bid Security to bidders or investors who are not selected under the duration specified in Bid, Request for Proposals but not exceeding 20 days, after the day of approving result of selection of bidder/ investor. For the selected bidder/investor, his Bid Security will be returned or released after he provides a Performance Security as prescribed in Article 66 and Article 72 of this Law.

8. A Bid Security shall not be returned in the following cases:

a) The bidder or investor withdraws Bid, Proposal after deadline for submission of bids when the Bid, Proposal still remains valid;

b) The bidder or investor violates law on procurement which leads to be cancelled bid as prescribed at Clause 4 Article 17 of this Law;

c) The bidder or investor fails to provide a Performance Security as prescribed at Article 66 and Article 72 of this Law;

d) The bidder fails or refuses to negotiate and finalize the contract, within a period of twenty (20) days from the date of receipt of notification of winning bid from the Procuring Entity or has negotiated and finalized the contract but refuses to sign the contract except for force majeure cases;

dd) The investor fails or refuses to negotiate and finalize the contract, within a period of thirty (30) days from the date of receipt of notification of winning bid from the Procuring Entity or has negotiated and finalized the contract but refuses to sign the contract except for force majeure cases.

Article 12. Time limits applicable during selection of bidders/investors

1. Time limits applicable during selection of bidders:

a) The maximum time for approval of plan on bidder selection shall be 05 working days after receiving report on appraisal;

b) EOI requests, Prequalification Documents, Bidding Documents, Request for Proposals shall be issued after 03 working days from the first day of publishing notice of invitation for submission of EOI responses, notice of prequalification invitation, Invitation to Bid, Notice of Proposed Procurement, sending of Invitation to Bid before deadline for submission of bids;

c) Duration for preparing EOI responses shall be at least 10 days for domestic bidding and 20 days for international bidding, from the first day when EOI requests are issued until deadline for submission of bids; Bidders must submit EOI responses before deadline for submission of bids;

d) Duration for preparing Applications shall be at least 10 days for domestic bidding and 20 days for international bidding, from the first day when Prequalification Documents are issued until deadline for submission of bids. Bidders must submit Applications before deadline for submission of bids;

dd) Duration for preparing Proposals shall be at least 05 working days, from the first day when Requests for Proposals are issued until deadline for submission of bids. Bidders must submit Proposals before deadline for submission of bids;

e) Duration for preparing the Bids shall be at least 20 days for domestic bidding and 40 days for international bidding, from the first day when Bidding Documents are issued until deadline for submission of bids. Bidders must submit the Bids before deadline for submission of bids;

g) The maximum time allowed for assessment of EOI responses, Applications shall be 20 days, for Proposals shall be 30 days, for Bids shall be 45 days in the case of domestic bidding, as from the deadline for submission of bids until the date the Procuring Entity submits to investor for approving the results of contractor selection. The maximum time allowed for assessment of EOI responses, Applications shall be 30 days, for Proposals shall be 40 days, for Bids shall be 60 days in the case of international bidding, as from the deadline for submission of bids until the date the Procuring Entity submits to investor for approving the results of contractor selection. In necessary case, time for assessment of dossiers of Bid, Proposal may be prolonged but not exceed 20 days and must ensure time for performance of project;

h) The maximum time for appraisal shall be 20 days for each content of appraisal: plan on selection of bidder, EOI requests, Prequalification Documents, Bidding Documents, Request for Proposals, result of selection of bidder after receiving full the submitted documents;

i) The maximum time for approving EOI requests, Prequalification Documents, Request for Proposals, Bidding Documents shall be 10 days, as from the date of receiving the written request for approving EOI requests, Prequalification Documents, Request for Proposals, Bidding Documents of the Procuring Entity or the appraisal report in case of having appraisal requirement;

k) The maximum time for approving or giving the handling opinion on result of bidder selection shall be 10 days, as from the date of receiving the written request for approving the result of bidder selection of the Procuring Entity or the appraisal report in case of having appraisal requirement;

l) The maximum period of validity of a Bid, Proposal shall be 180 days as from the deadline for submission of bids; in case of package with bid scale, complex nature, package under two-stage bidding method, the maximum period of validity of a Bid shall be 210 days, as from the deadline for submission of bids. In necessary cases a bidder may request extension of the period of validity of his Bid, Proposals, and must ensure progress of project;

m) Time for sending a document to modify a Bid to bidders already received Bid shall be 10 days minimally for domestic bidding and 15 days minimally for international bidding before day of deadline for submission of bids; for modification of dossier of invitation for expression of interest, Prequalification Document, Request for Proposals, it shall be 03 working days minimally before day of deadline for submission of bids. If time for sending a document to modify dossiers fail to meet provision at this point, the Procuring Entity shall perform extension of deadline for submission of bids time respectively in order to ensure provision on time for sending a document to modify a dossier of invitation for expression of interest, dossier of prequalification invitation, Bid or Request for Proposals;

n) Time-limit for sending notice of contractor selection result to bidders bidding via post, facsimile shall be 05 working days, as from the date of approving the result of bidder selection.

2. The Government shall elaborate Time limits applicable during selection of bidder for packages with small scale, packages with participation of community; Time limits applicable during selection of investor; Time limits applicable during selection of bidder or investor via network.

Article 13. Expenses associated with bidding

1. Expenses associated with the process of selection of bidder include:
 - a) Expenses associated with preparation of EOI responses, Applications, Bids, Proposals and participation in bidding shall be borne by bidders;
 - b) Expenses associated with process of bidder selection shall be included in total investment or estimated budget of procurement;
 - c) EOI requests, Prequalification Documents shall be issued to bidders free of charge;
 - d) Bidding Documents, Requests for Proposals shall be sold or issued free of charge to bidders.
2. Expenses associated with the process of selection of investor include:
 - a) Expenses associated with preparation of Applications, Bids, Proposals and participation in bidding shall be borne by investors;
 - b) Expenses associated with process of investor selection shall be financed by state, other lawful capital sources and included in total investment;
 - c) The investor who is selected to perform project must pay expenses associated with process of investor selection;
 - d) Prequalification Documents, Bidding Documents, Requests for Proposals shall be sold to investors.
3. Expenses associated with the process of online bidding include:
 - a) Expenses associated with participation in National E-procurement System, expenses associated with publishing information of bidding and other expenses;
 - b) Expenses associated with submission of a bid, organization of bid as prescribed at Clause 1 and Clause 2 of this Article.
4. The Government shall elaborate this Article.

Article 14. Preferential treatment in selection of bidders

1. Bidders shall be enjoyed preferential treatment when participating in domestic or international bidding to supply goods of which costs for domestic production occupy 25% or more.
2. Entities entitled to preferential treatment in international bidding to supply the consulting services, non-consulting services, construction include:
 - a) Domestic bidders with individual status or in a joint venture;
 - b) Foreign bidders in joint venture with domestic bidders in which the domestic bidders take over from 25% or more of work value of package.
3. Entities entitled to preferential treatment in domestic bidding to supply the consulting services, non-consulting services, construction include:
 - a) Bidders employing female laborers of 25 % or more of laborer quantity;
 - b) Bidders employing laborers being invalids, disable people of 25 % or more of laborer quantity;

c) Bidders being small-size enterprises.

4. Preferential treatment is calculated to apply during assessing the Bids, Proposals in order to compare, rank the Bids, Proposals according to one of the following methods:

a) Plus more points into the assessment point of bidders belonging to entities entitled to preferential treatment;

b) Plus more amount into bid price or assessment price of bidders not belonging to entities entitled to preferential treatment.

5. Entities and content or preferential treatment in selection of bidder specified in this Article shall not apply in case where International treaties in which the Socialist Republic of Vietnam is a contracting party or international agreements between Vietnam and donors otherwise provides for preferential treatment in selection of bidder.

6. The Government shall elaborate this Article.

Article 15. International bidding

1. International bidding shall be held to select bidder only when it meets one of the following conditions:

a) The donor of package requests for holding international bidding;

b) Packages for procurement of goods where the goods are not yet able to be manufactured domestically or able to be manufactured but fail to meet technical, quality or price requirements. In case of common goods, already been imported and offered for sale in Vietnam, do not organize international bidding;

c) Packages of providing consulting service, non-consulting service, works, mixture provision which domestic bidders are not able to satisfy requirements of package performance.

2. Investment projects in form of public-private partnership (PPP), investment projects with land use, except for cases limited investment as prescribed by law on investment.

3. The Government shall elaborate this Article.

Article 16. Conditions for individuals to participate in bidding activities

1. Individuals participating in bidding activities must possess certificate of training on bidding and have professional expertise, capability, experiences, language appropriate to the requirements of the package, project, except for individuals belonging to bidders/investors.

2. Individuals who directly participate in making EOI requests, Prequalification Documents, Bidding Documents, Requests for Proposals; assessment of EOI responses, Applications, Bids, Proposals of professional bidding organizations, enterprises, units operating in consulting for bidding, professional management board of projects must have certificate of practicing on bidding operation.

Article 17. In case of bidding cancellation

1. All Bids, Proposals failed to satisfy the requirements of the Bid Documents, Request for Proposals.

2. Alteration of the objectives or scope of the investment stated in the Bid Documents, Request for Proposals.

3. The Bid Documents, Request for Proposals failed to comply with legislation on bidding or other relevant legislation that lead to the failure of the selected bidder or investor to meet requirements to perform package, project.

4. There is evidence showing the handing, taking, brokerage of bribes, conclusion with each other in bidding, fraud, taking advantage of positions, powers aiming to interfere illegally in bidding activities that lead to the falsified result of selecting the bidder/investor.

Article 18. Responsibilities upon bidding cancellation

Organizations and individuals infringing law on procurement that lead to bidding cancellation as prescribed in Clause 3 and Clause 4 Article 17 of this Law must compensate expenses associated with related parties and be handled as prescribed by law.

Article 19. Training and capacity building on bidding

1. Facilities are entitled to hold activities of training and capacity building on bidding for individuals specified in Article 16 of this Law upon satisfying the following conditions:

- a) Be established and operate as prescribed by law;
- b) Have material facilities, documents for teaching which meet standards as prescribed by regulatory bodies on bidding activities;
- c) Have contingent of lecturers on bidding possessing certificate of practicing in bidding operation;
- d) Have name in list of facilities of bidding training on National E-procurement System.

2. Facilities of bidding training have the following responsibilities:

- a) Ensure quality of training and capacity building; supply information on their training facilities to the regulatory bodies on bidding operation;
- b) Perform activities of training and capacity building on the basis of framework programs on training in bidding and grant the certificates of bidding for learners in accordance with regulations;
- c) Store all dossiers of courses of training and capacity building in bidding which are held by them in accordance with regulations;
- d) Conduct annual reports and reports at the request of regulatory bodies of bidding operation about situation of training and capacity building in bidding.

3. The Government shall elaborate this Article.

Chapter 2.

FORMS AND METHODS OF SELECTION OF BIDDERS/INVESTORS AND PROFESSIONAL BIDDING ORGANIZATIONS

Section 1. FORMS OF SELECTION OF BIDDERS/INVESTORS

Article 20. Competitive bidding

1. Competitive bidding is form of selection of bidders/investors in which the number of participating tenders, investors shall be unrestricted.

2. Competitive bidding is applied to packages, projects under Scope of regulation of this Law, except for cases specified in Articles 21, 22, 23, 24, 25, 26 and 27 of this Law.

Article 21. Limited bidding

Limited bidding shall apply in case where a package has highly technical requirements or technical peculiarities for which only a limited number of bidders are capable of satisfying the requirements of the package.

Article 22. Direct Contracting

1. Direct Contracting for contractor shall apply in the following cases:

- a) Packages need to be performed to immediately overcome or timely handle consequences caused by force majeure event; packages need to be performed to ensure national secret; packages need to be carried out immediately to not cause damages directly to life, health and assets of population communities on geographical areas or to not severely affect to adjacent projects; procurement of purchasing drugs, chemicals, supplies, and health equipment in order to carry out the work of prevention and fighting of epidemics in urgent cases;
- b) Urgent packages need to be carried out aiming to protect national sovereignty, national borders, and islands;
- c) Packages of provision of consulting services, non-consulting services, procurement of goods which must buy from contractors performed previously due to ensuring the compatibility of technologies, copyright which not able to buy from other contractors; packages with nature of research, test; purchase of intellectual property copyright;
- d) Packages provide consulting service for making feasible study reports, construction designs which have been appointed for authors of designs of works architectures who won in selection or are selected when authors have full conditions and capability in accordance with regulations; packages of construction of statues, reliefs, monumental paintings, art works in association with author right from the creation stage to stage of construction of the works;
- dd) Packages of relocation of technical infrastructure works managed directly by a specialized unit in order to serve the work of ground clearance; packages of detection and disposal of bombs, mines, explosives in order to prepare construction of works;
- e) Packages of providing public products and services, packages with package price in the limitation allowed to apply Direct Contracting as prescribed by Government in line with economic-social conditions in each period.

2. Implementation of Direct Contracting for packages defined at points b, c, d, dd and e Clause 1 this Article must satisfy all the following conditions:

- a) Having an approved decision on investment, except for consulting packages for project preparation;
- b) Having an approved plan on selection of bidders;
- c) Having been allocated capital at the request of the time for performance of procurement;
- d) Having an approved estimate in accordance with regulation, except for case of EP, EC, EPC packages, turnkey packages;

dd) Having time for implementation of Direct Contracting as from the day of approving Request for Proposals to day of signing contract not exceeding 45 days, case of packages with big scale, complex content not exceeding 90 days;

e) Contractor who is suggested for Direct Contracting must have name in the database on contractors of regulatory bodies on bidding operation.

3. For packages under cases of Direct Contracting specified at Clause 1 this Article and satisfy conditions for Direct Contracting specified at Clause 2 this Article but still able to apply other forms of selection of bidder defined at Articles 20, 21, 23 and 24 of this Law, encouraging to apply other forms of selection of bidder.

4. Direct Contracting for investor shall apply in the following cases:

a) There is only one investor registering bidding;

b) There is only one investor able to perform due to concerning intellectual property, commercial secret, technologies or capital arrangement;

c) Investor proposing project satisfy requirements of implementation project with feasibility and highest efficiency in accordance with regulations of Government.

Article 23. Shopping Method

1. Shopping Method shall apply to packages with value in limitation as prescribed by Government and belonging to one of the following cases:

a) Package of procurement of non-consulting services which are commonly used and simple;

b) Package of procurement of goods which are commonly used goods, readily available on the market, have standardized technical features and are similar to each other in quality;

c) Package of procurement of simple works which have had the approved construction drawing design.

2. Shopping Method is performed when satisfying all following conditions:

a) Having an approved plan on selection of bidders;

b) Having an approved estimate in accordance with regulation;

c) Having been allocated capital at the request of the time for performance of package.

Article 24. Direct Procurement

1. Direct Procurement shall apply to packages of procurement of similar goods of a same project, estimated budget of procurement or of other project, estimate of procurement.

2. Direct Procurement shall be performed when satisfying all following conditions:

a) The contractor has won bidding through open or limited bidding and has signed performance contract of previous package;

b) The package has similar content, nature, and scale less than 130% of package signed contract previously;

c) The unit price of the items of a package for which the form of Direct Procurement is applied shall not exceed the unit price of the corresponding items of the previous similar package for which a contract was signed;

d) Time-limit from signing contract of previous package to day of approving result of Direct Procurement does not exceed 12 months.

3. If contractor performed the previous contract is not able to continue performance of package of Direct Procurement, form of Direct Procurement shall be applied to other contractor if such contractor satisfies requirements on capability, experiences, techniques and price according to the previous Bid and result of selection of bidder.

Article 25. Force Account

Force Account shall apply to packages of projects and estimates of procurement in case organizations directly managing and using such packages have technical and financial capability, and experiences satisfying requirements of packages.

Article 26. Selection of bidders/investors in special cases

In the case of a package, project with particular requirements for which the forms of selection of bidder/ investor stipulated in articles 20, 21, 22, 23, 24 and 25 of this Law cannot be applied, the competent person shall prepare a plan for selection of bidder/ investor and submit it to the Prime Minister for consideration and decision.

Article 27. Community's participation in performance

Population communities, organizations, teams, groups of workers in localities where have packages may be assigned to perform entire or part of such procurement in the following cases:

1. Packages under the national objective programs, support programs of hunger elimination, poverty reduction for districts, communes in mountainous, deep-lying and remote areas, islands, areas with special difficulty-stricken economic-social conditions;

2. Packages with small scale which population communities, organizations, teams, groups of workers may undertake.

Section 2. METHODS OF SELECTION OF BIDDERS/INVESTORS

Article 28. The single-stage one-envelope bidding procedure

1. The single-stage one-envelope bidding procedure shall apply in the following cases:

a) Competitive bidding, limited bidding for procurement of non-consulting service provision; procurement of procurement of goods, works, mixed packages with small scale;

b) Shopping Method for procurement of non-consulting service provision, goods procurement, works;

c) Direct Contracting for procurement of the consulting service provision, non-consulting service provision, goods procurement, construction, mixed packages;

d) Direct Procurement for procurement of goods procurement;

dd) Direct Contracting for selection of investor.

2. Bidders/investors may submit Bids, Proposals including Technical Proposal and Financial Proposal at the request of Bidding Documents, Requests for Proposals.

3. The bid opening shall be conducted once for all Bids, Proposals.

Article 29. The single-stage two-envelope bidding procedure

1. The single-stage two-envelope bidding procedure shall apply in the following cases:

a) Competitive bidding, limited bidding for procurement of consulting services, non-consulting services, goods procurement, works, mixed packages;

b) Competitive bidding for selection of investor.

2. Bidder or investor may submit concurrently both envelopes of Technical Proposal and Financial Proposal in a separate form at the request of Bid.

3. Bid opening shall be conducted twice. Technical Proposal shall be opened as soon as deadline for submission of bids. Bidders or investors satisfying the technical requirements shall have the envelope of Financial Proposal opened for assessment.

Article 30. The two-stage one-envelope bidding procedure

1. The two-stage one-envelope bidding procedure shall apply in cases of competitive bidding, limited bidding for package of procurement of goods, works, mixed packages with big scale and complex nature.

2. In the first stage, bidders may submit Technical Proposal and Financial Proposal at the request of Bidding Documents but not yet had Bid Price. On the basis of exchange with each contractor participating in this stage, the envelope shall be determined for bid invitation in second stage.

3. In second stage, bidders participated in first stage shall be invited for submission of Bids. Bids include Technical Proposal and Financial Proposal at the request of Bid for second stage, in which included Bid Price and Bid Security.

Article 31. The two-stage two-envelope bidding procedure

1. The two-stage two-envelope bidding procedure shall apply in cases of competitive bidding, limited bidding for procurement of goods, works, mixed packages with new, complex and particular techniques and technologies;

2. In first stage, bidders shall submit concurrently both envelopes of Technical Proposal and Financial Proposal in a separate form at the request of Bid. Technical Proposal shall be opened as soon as deadline for submission of bids. On the basis of assessment on Technical Proposal of bidders in this stage, to determine contents corrected in techniques in comparison with Bid and list of bidders satisfying requirements and being invited for bidding in second stage. Financial Proposal shall be opened in second stage.

3. In second stage, bidders satisfying requirements in first stage shall be invited for submission of Bids. Bids include Technical Proposal and Financial Proposal at the request of Bid for second stage corresponding to content corrected in techniques. In this stage, the envelope of Financial Proposal submitted in first stage shall be opened concurrently with Bids in second stage for assessment.

Section 3. PROFESSIONAL BIDDING ORGANIZATION

Article 32. Professional bidding organization

1. Professional bidding organization includes bidding agents, non-business units which are established with function of performing professional bidding.
2. The establishment and operation of bidding agents shall comply with legislations on enterprises.
3. The Government shall elaborate this Article.

Chapter 3.

THE PLAN AND PROCESS OF BIDDER SELECTION

Article 33. Principles of making the plan on bidder selection

1. The plan on bidder selection shall be formulated for the entire project, estimate of procurement. In case where there are inadequate conditions to formulate a plan on bidder selection for the entire project, estimate of procurement, it shall be permitted to formulate a plan on bidder selection for one or a number of packages to be performed in advance.
2. A plan on bidder selection must set out clearly the number of packages and the contents of each procurement.
3. Division of the project, estimate of procurement into different packages shall be based on the technical nature and the sequence for its implementation, ensuring unity within the project, estimate of procurement and an appropriate size of procurement.

Article 34. Formulation of plan on bidder selection

1. Bases to formulate plan on bidder selection for project:
 - a) Decision on approving project or certificate of investment and relevant documents. For packages which must be performed prior to a decision on approving project, based on decision of head of investor or head of unit assigned to perform task of preparation of project, in case the investor has not yet been identified;
 - b) Capital sources for project;
 - c) International treaties, international agreements for projects used official development assistance capital, concessional loans;
 - d) Relevant legal documents.
2. Bases to formulate plan on bidder selection for recurrent procurement:
 - a) Standards, norms of equipment, means of working of agencies, organizations, units and cadres, civil servants, public employees; equipment, means of working existing which need to be replaced, purchased for supplementation, procured new ones to serve for work;
 - b) The approved decision on procurement;
 - c) The approved capital sources and estimate for recurrent procurement;
 - d) Scheme on procurement, equipping for entire branch which has been approved by the Prime Minister (if any);

dd) Result of price evaluation of agencies and organizations with function providing service of price or quotation evaluation (if any).

3. Plan on bidder selection may be formulated after decision on approving project, estimate of procurement or concurrently with process of formulating project, estimate of procurement or before decision on approving project for procurement which need to be performed before decision on approving project.

Article 35. Content of plan on bidder selection for each package

1. Name of package:

Name of procurement presents nature, content and work scope of package, in line with contents stated in project, estimate of procurement. If package includes many separate parts, plan on bidder selection should state the name describing basic content of each part.

2. Price of package:

a) Price of package is determined on the basis of total investment or estimated budget (if any) for project; estimate of procurement for recurrent procurement. Price of package is included exactly and fully entire expenses associated with performance of package, including reserve expenses, charges, fees and taxes. Price of package may be updated in time limit of 28 days before day of bid opening if necessary;

b) For packages of consulting service provision for formulation of pre-feasible study report, feasible study report, price of package shall be defined on the basis of information on average price according to statistics of projects which have been made in a defined duration; the estimated total investment based on investment ratio norms of projects; preliminary total investment;

c) If package includes many separate parts, to clearly indicate the estimated price for each part in price of package.

3. Capital sources:

For each package, it must clearly state capital sources or methods of capital arrangement, time of capital allocation to pay for bidder; case of using official development assistance capital, concessional loans, it must clearly state name of donors and structure of capital sources, including the financed capital, domestic reciprocal capital.

4. Forms and methods of selection of bidders:

For each package, it must clearly state forms and methods of selection of bidders; selection of domestic or international contractor.

5. Beginning time of contractor selection:

Beginning time of contractor selection is calculated as from issuing Bid, Request for Proposals, and clearly indicated under month or quarter in year. In case of competitive bidding with application of short-list selection procedures, beginning time of contractor selection is calculated as from issuing EOI requests, Prequalification Documents.

6. Contract type:

Plan on selection of bidder must clarify contract type as prescribed in Article 62 of this Law as the basis for formulation of EOI requests, Prequalification Documents, Bidding Documents, Request for Proposals; and signing contract.

7. Time for contract performance:

Time for contract performance is number of days calculated from the effective date of contract until parties fulfill obligations as prescribed in contract, exclusive of duration of warranty obligation performance (if any).

Article 36. Submission for approval of plan on bidder selection

1. Responsibilities for submission for approval of plan on bidder selection:

- a) Investor for project, the Procuring Entity for recurrent procurement shall be responsible for submission of plan on bidder selection to the competent person for consideration and approval;
- b) For packages which need to be performed prior to a decision on approving project, in case where the investor is identified, unit of investor shall submit the plan on bidder selection to the head of investor for consideration and approval. In case the investor has not yet been identified, unit assigned to perform task of preparation of project shall submit plan on bidder selection to the head of its unit for consideration and approval.

2. Documents to submit for plan on bidder selection include the following contents:

- a) The performed part of work, including content of work related to preparation of project, packages performed previously with the respective value and legal bases for implementation;
- b) The part of work which is not able to apply one of form of contractor selection, including: operation of project management board, organization of compensation and ground clearance, commencement, inauguration, payment of loan interest and other affairs not able to apply form of contractor selection;
- c) The part of work in plan on bidder selection, including content of work and respective value forming packages which are performed in one of forms of contractor selection defined in Articles 20, 21, 22, 23, 24, 25, 26 and 27 of this Law. This part must clarify bases of division of project, estimate of procurement into packages. For each procurement, it must ensure to have full contents specified in Article 35 of this Law. For procurement not apply form of competitive bidding, document to submit for plan on bidder selection must clarify reason of applying other selection form;
- d) The part of work which have not yet adequate conditions for formulating plan on bidder selection (if any), in which clarifying content and value of this part of work;
- dd) Part of summing up values of part of works specified in points a, b, c and d this Clause. Total value of this part does not exceed the approved total investment of project or estimated budget of procurement.

3. Documents enclosed with report to submit for approval of plan on bidder selection:

When submitting for approval of plan on bidder selection, it must enclose copies of documents as the basis for formulation of plan on bidder selection as prescribed in Article 34 of this Law.

Article 37. Evaluation and approval of plan on bidder selection

1. Evaluation of plan on bidder selection:

- a) Evaluation of plan on bidder selection includes examination, assessment of contents as prescribed in Articles 33, 34, 35 and 36 of this Law;
- b) Organization assigned evaluation of the plan on bidder selection shall formulate report on evaluation and submit to the competent person for the approval;
- c) Organization assigned evaluation of the plan on bidder selection shall make an evaluation report and submit it to the head of investor or the head of unit assigned to perform task of preparation of project for approving plan on bidder selection in case where package needs to be performed prior to decision on approval for project.

2. The approval for plan on bidder selection:

- a) Based on the evaluation report, the competent person shall approve the plan on bidder selection in writing in order to do as basis for selection of bidder after project or estimate of procurement has been approved or concurrently with decision on approving of project, estimate of procurement in eligible case;
- b) Based on the evaluation report, the head of investor or the head of unit assigned to perform task of preparation of project shall approve plan on bidder selection in case where package needs to be performed prior to decision on approval for project.

Article 38. The process of bidder selection

1. The process of bidder selection for competitive bidding, limited bidding shall be performed as follows:

- a) Prepare for selection of bidder;
- b) Organize selection of bidder;
- c) Assess the Bids and negotiate contract;
- d) Submit, evaluate, approve and publish result of bidder selection;
- dd) Finalize and sign contract.

2. The process of bidder selection for Direct Contracting shall be performed as follows:

- a) For Direct Contracting according to the ordinary process including steps: Prepare for contractor selection; organize the contractor selection; assess Proposals and negotiate on proposals of bidders; submit, evaluate, approve and publish the result of bidder selection; finalize and sign contract;
- b) For Direct Contracting according to the reduced process including steps: Prepare and send draft contract to bidder; negotiate, finalize contract; submit, approve and publish the result of bidder selection; sign contract.

3. The process of bidder selection for Shopping Method shall be performed as follows:

- a) For Shopping Method according to the ordinary process including steps: Prepare for contractor selection; organize the contractor selection; assess Proposals and negotiate contract; submit, evaluate, approve and publish the result of bidder selection; finalize and sign contract;
- b) For Shopping Method according to the reduced process including steps: Prepare and send requirement for quotation to bidder; bidders submit quotation; assess quotations and negotiate contract; submit, approve and publish the result of bidder selection; finalize and sign contract.

4. The process of bidder selection for Direct Procurement shall be performed as follows:

- a) Prepare for selection of bidder;
- b) Organize selection of bidder;
- c) Assess the Proposals and negotiate on proposals of bidders;
- d) Submit, evaluate, approve and publish result of bidder selection;
- dd) Finalize and sign contract.

5. The process of bidder selection for Force Account shall be performed as follows:

- a) Prepare for plan on Force Account and draft contract;
- b) Finalize the plan on Force Account and negotiate, finalize contract;
- c) Sign contract.

6. The process of selection for individual consulting bidder shall be performed as follows:

- a) Prepare and send reference provisions to the individual consulting bidders;
- b) The individual consulting bidders submit dossier of scientific curriculum vitae;
- c) Assess dossier of scientific curriculum vitae of individual consulting bidders;
- d) Negotiate, finalize contract;
- dd) Submit, approve and publish result of bidder selection;
- e) Sign contract.

7. The process of bidder selection for packages with participation of community in performance shall be performed as follows:

- a) Prepare plan on selecting population communities, organizations, teams, groups of workers in localities to carry out the package.
- b) Organize selection;
- c) Approve and publish the selection result;
- d) Finalize and sign contract.

8. The Government shall elaborate this Article.

Chapter 4.

METHODS TO ASSESS BIDS, PROPOSALS; CONSIDERATION FOR RECOMMENDATION AS THE WINNING BIDDER

Article 39. Methods to assess Bids for packages of the non-consulting service provision, goods procurement, construction, mixed packages

1. Least-Cost Selection:

- a) This method applies to simple packages with small scale in which technical, financial and commercial proposals are considered as a same ground when satisfy requirements stated in Bid;

b) Criteria for evaluation of Bid include: Evaluation criteria of capability, experiences and criteria of package;

c) For the Bids which have been assessed to satisfy criteria for evaluation as prescribed at point b this Clause, Bid Prices after the errors have been rectified and discrepancies have been adjusted are basis for comparison and ranking. Contractors shall be ranked corresponding to bid price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any). The bidder with lowest price shall be ranked the first.

2. Lowest Evaluated Bid Selection:

a) This method applies to packages of which expenses may be converted on a same ground on technical, financial and commercial elements for entire use life cycle of goods or works;

b) Criteria for evaluation of Bid include: assessment criteria of capability, experiences in case of not applying prequalification; technical evaluation criteria; standards for determination of evaluated bid price.

Elements which are converted on the same ground to determine evaluated bid price include: Necessary expenses associated with operation, maintenance and other expenses related to origin of goods, loan interest, progress, quality of goods or construction works of the package, prestige of contractor through the progress and quality during implementation of previous similar contracts and other elements;

c) For Bids which have passed step of technical assessment, comparison and ranking are based on evaluated bid prices. The bidder with lowest evaluated price shall be ranked the first.

3. Quality- and Cost-Based Selection:

a) This method apply to packages of information technology, telecommunication or packages of goods procurement, works, mixed packages when both Least-Cost Selection and Lowest Evaluated Bid Selection specified at Clause 1 and Clause 2 of this Article fail to be able to apply;

b) Criteria for evaluation of Bid include: assessment criteria of capability, experiences in case of not applying prequalification; technical evaluation criteria; and the collective criteria for evaluation. The collective criteria for evaluation are formulated on the basis of combination between technical aspect and price;

c) For Bids which have passed step of technical assessment, comparison and ranking are based on the collective points score respectively. The bidder with the highest collective points score shall be ranked the first.

4. For assessment criteria of capability, experiences, use pass-fail system; for technical evaluation criteria, use Weighted Scoring Method or pass-fail system; for Quality- and Cost-Based Selection specified at Clause 3 of this Article, use Weighted Scoring Method. When using Weighted Scoring Method, the score of minimum technical requirement must be stipulated and not be less than 70% of the total points for technical aspects.

5. The Government shall elaborate this Article.

Article 40. Method to assess Bid for packages of consulting service provision

1. For consulting bidder being organization, apply one of the following methods:

a) Least-Cost Selection shall be applied to the simple consulting packages. Criteria for evaluation of Bid are technical evaluation criteria. For Bids which have passed step of technical assessment, base on bid price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any). The bidder with lowest price shall be ranked the first;

b) Fixed-Budget Selection shall be applied to the simple consulting packages, expenses associated with performance of package are determined specifically and fixed in Bid. Criteria for evaluation of Bid are technical evaluation criteria. For Bids which have passed step of technical assessment, bid price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) not exceeding expenses associated with performance of package, based on technical score for comparison and ranking. The bidder with the highest technical point shall be ranked the first;

c) Quality- and Cost-Based Selection shall be applied to the consulting packages that pay attention to quality and expenses associated with performance of package. Criteria for evaluation of Bid are technical evaluation criteria and collective criteria for evaluation. The collective criteria for evaluation are formulated on the basis of combination between technical aspect and price. When formulating the collective criteria for evaluation, it must ensure principle which the points for technical aspects shall account for between 70% and 80% and the points for price shall account for between 20% and 30% of the collective points score, percentage of points for technical aspects plus to percentage of points for price shall be equal to 100%. The bidder with the highest collective points score is ranked the first;

d) Quality-Based Selection shall apply to consulting packages with high and particular technical requirements. Criteria for evaluation of Bid are technical evaluation criteria. When formulating technical evaluation criteria, the score of minimum technical requirement must be stipulated and not be less than 80% of the total points for technical aspects. Bidder has Bid satisfying the minimum technical score as prescribed and obtain the highest technical score shall be ranked the first and invited to come for opening Financial Proposal as basis for negotiating contract.

2. For technical evaluation criteria specified at points a, b, c and d Clause 1 of this Article, use the method of marking a score. When formulating technical evaluation criteria, the score of minimum technical requirement must be stipulated and not be less than 70% of the total points for technical aspects, except for case specified at point d Clause 1 of this Article.

3. For consulting bidders being individuals, criteria for evaluation of Bids shall be criteria for evaluation of dossiers of scientific curriculum vitae and Technical Proposal (if any). The bidder with the best dossier of scientific curriculum vitae, Technical Proposal and satisfying requirements of reference provisions shall be ranked the first.

Article 41. Methods to assess Proposals

Method to assess Proposals in Shopping Method shall comply with Least-Cost Selection specified at clause 1 article 39 of this Law.

Article 42. Consideration for recommendation as the winning bidder for packages of the consulting service provision

1. The consulting bidder being organization shall be considered for recommendation as the winning bidder upon satisfying the following conditions:

a) Having valid Bid and Proposal ;

- b) Having Technical Proposal satisfying requirements;
- c) Having bid price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) being lowest price for Least-Cost Selection; having the highest technical score for Fixed-Budget Selection and Quality-Base Selection; having the highest collective points for the Quality- and Cost-Based Selection;
- d) Having the proposed successful bid not exceeding the approved package price. If the approved estimated budget of procurement is lower than or higher than the approved package price, this estimate shall replace package price as basis for consideration for recommendation as the winning bidder.

2. The consulting bidder being individual shall be considered for recommendation as the winning bidder upon satisfying the following conditions:

- a) The bidder has the best dossier of scientific curriculum vitae, Technical Proposal (if any) and satisfying requirements of reference provisions;
- b) The bidder has the proposed successful bid not exceeding the approved package price. If the approved estimated budget of procurement is lower than or higher than the approved package price, this estimate shall replace package price as basis for consideration for recommendation as the winning bidder.

3. For bidders fail to be selected, in notice of bidder-selection result must clearly state the reason thereof.

Article 43. Consideration for recommendation as the winning bidder for bidding the non-consulting service provision, goods procurement, works and mixed packages

1. The supplier of non-consulting service, goods, works, mixed packages shall be considered for recommendation as the winning bidder upon satisfying the following conditions:

- a) Having valid Bid and Proposal ;
- b) Having qualifications satisfying requirements;
- c) Having Technical Proposal satisfying requirements;
- d) Having deficient discrepancies not exceeding 10% of Bid Price;
- dd) Having bid price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) being lowest price for Least-Cost Selection; having the lowest assessment price for Lowest Evaluated Bid Selection; having the highest collective points for the Quality- and Cost-Based Selection;
- e) The bidder has the proposed successful bid not exceeding the approved package price. If the approved estimated budget of procurement is lower than or higher than the approved package price, this estimate shall replace package price as basis for consideration for recommendation as the winning bidder.

2. For bidders fail to be selected, in notice of bidder-selection result must clearly state the reason thereof.

Chapter 5.

CENTRALIZED PROCUREMENT, REGULAR PROCUREMENT, PURCHASE OF DRUGS, MEDICAL SUPPLIES; SUPPLY OF PUBLIC PRODUCTS AND SERVICES

Section 1. CENTRALIZED PROCUREMENT

Article 44. General provisions on centralized procurement

1. Centralized procurement means a way to organize an competitive bidding in order to select contractor through a centralized procurement unit with the aim to reduce expenses, time, and focal units of bidding organization, strengthen the professionalism in bidding, and contribute in increasing economic efficiency.
2. Centralized procurement shall apply in case where goods and services need to be procured with big quantity, similar categories at one or many agencies, organizations, enterprises or investors.
3. Centralized procurement may be performed in one of the following ways:
 - a) The centralized procurement unit gathers needs of procurement, conduct the selection of bidder, directly sign contract with the selected bidder for goods or service provision;
 - b) The centralized procurement unit gathers needs of procurement, conduct the selection of bidder, sign a written framework agreement with one or many selected bidders as basis for units which have need of Direct Procurement to sign contract with the selected bidders for goods or service provision.
4. The centralized procurement unit shall conduct the selection of bidder on the basis of assigned tasks, or sign contract with units which have need for procurement.
5. The Government shall elaborate this Article.

Article 45. Framework agreement

1. Framework agreement in the centralized procurement means a long-term agreement between the centralized procurement unit with one or many selected bidders, in which include standards and conditions as basis for procurement according to each specific contract.
2. Duration for use of framework agreements shall be stipulated in plan on bidder selection but not exceed 03 years.

Section 2. RECURRENT PROCUREMENT

Article 46. Conditions for application

Regulatory agencies, political organizations, socio-political organizations, socio-political-occupational organizations, social organizations, socio-occupational organizations and units of the People's armed forces, and public non-business units may apply the recurrent procurement of goods and services upon satisfying all the following conditions:

1. Use the capital sources for recurrent procurement;
2. Goods and services under list of goods and services allowed applying recurrent procurement to maintain regular activities of agencies, organizations and units.

Article 47. Organizing selection of bidder

1. Selection of bidder in recurrent procurement shall comply with Articles 38, 39, 40, 41, 42 and 43 of this Law.
2. The Government shall elaborate regulations on on recurrent procurement.

Section 3. PURCHASE OF DRUGS AND MEDICAL SUPPLIES

Article 48. The selection of bidder for drugs and medical supplies provision

1. Form, method, plan and process of selection of bidder and method of assessment of Bid, Proposal for selection of bidder for drugs and medical supplies provision shall comply with provisions at chapter II, III and IV of this Law.
2. Selection of bidder for drugs provision shall also be performed under form of price negotiation. Form of negotiation shall be applied to packages for purchase of drugs which there are only one to two producers; original proprietary medicines, rare drugs, drugs still in time protected copyright and other particular cases.
3. A bidder shall be considered for the consulting bidder being organization shall be considered for recommendation as the winning bidder upon satisfying the following conditions:
 - a) Conditions specified at points a, b, d, dd and e Clause 1 Article 43 of this Law;
 - b) Bidder has Technical Proposal which are assessed to satisfy requirements on quality, provision, preservation and time limit for drugs use.
4. The Government shall elaborate this Article.

Article 49. Centralized purchase of drugs

1. The centralized purchase of drugs shall be performed at national level and local level.
2. The Government shall provide for the centralized purchase of drugs and roadmap to perform the centralized purchase of drugs.

Article 50. Preferential treatment in purchase of drugs

The preferential treatment in purchase of drugs shall comply with Article 14 of this Law. For drugs produced domestically, and the Ministry of Health has announced as satisfaction of such drugs for the requirements on medical treatment, price of drugs and ability of provision, in Bidding Documents, Request for Proposals shall stipulate that bidders are not permitted to offer the import drugs.

Article 51. Responsibilities of regulatory bodies in bidding of drugs and medical supplies

1. The Ministry of Health shall promulgate list of drugs involving bidding; list of drugs involving centralized bidding; and list of drugs allowed applying form of price negotiation.
2. Government shall provide for responsibilities of Ministries and sectors in bidding of drugs and medical supplies, and the disclosure of prices of drugs and medical supplies according to results of contractor selection.

Article 52. Payment of expenses associated with purchase of drugs and medical supplies

If non-public health facilities do not select to apply provisions of this Law for purchase of drugs, medical supplies, such health facilities shall only be paid from medical insurance fund according

to the drugs items and unit prices of drugs and medical supplies already won bidding of the public health facilities at provincial level in the same localities.

Section 4. PROVISION OF PUBLIC PRODUCTS AND SERVICES

Article 53. Forms of selection of bidders

The selection of bidders for provision of public products and service shall perform under forms of competitive bidding, limited bidding, and Direct Contracting, Shopping Method, Direct Procurement and Force Account.

Article 54. The process of bidder selection

1. The process of bidder selection for provision of public products and services shall be performed as follows:

- a) Prepare for selection of bidder;
- b) Organize selection of bidder;
- c) Assess the Bids, Proposals and negotiate contract;
- d) Submit, evaluate, approve and publish result of bidder selection;
- dd) Finalize and sign contract.

2. The Government shall elaborate this Article.

Chapter 6.

SELECTION OF INVESTORS

Article 55. Plan on investor selection

1. Basis for plan on investor selection:

- a) Decision on approving project;
- b) International treaties, international agreements for projects used official development assistance capital, concessional loans;
- c) Relevant documents.

2. Content of plan on investor selection:

- a) Name of project;
- b) Total investment and total capital of project;
- c) Preliminary content of amount financed by State, financial regime of State to support for implementation of project (if any);
- d) Forms and methods of selection of investors;
- dd) Beginning time of organization for investor selection;
- e) Contract type;
- g) Time for contract performance.

Article 56. The process of investor selection

1. The process of investor selection shall be performed as follows:
 - a) Prepare for selection of investor;
 - b) Organize the selection of investor;
 - c) Assess the Bids, Proposals;
 - d) Submit, evaluate, approve and publish result of investor selection;
 - dd) Negotiate, finalize and sign contract.
2. The Government shall elaborate this Article.

Article 57. Submitting, appraising and approving the plan on selection of investor, Prequalification Document, result of prequalification, Bid, Request for Proposals and result of investor selection

1. The Procuring Entity shall submit the plan on selection of investor, Prequalification Document, result of prequalification, Bid, Request for Proposals and result of investor selection to the competent persons, concurrently organize appraisal.
2. Organizing the appraisal, making report on appraisal of the plan on selection of investor, Prequalification Document, result of prequalification, Bid, Request for Proposals and result of investor selection to submit to the competent persons.
3. Based on the submitted dossier and report on appraisal, the competent persons shall approve the plan on selection of investor, Prequalification Document, result of prequalification, Bid, Request for Proposals and result of investor selection.
4. The Government shall elaborate this Article.

Article 58. Methods to assess the Bids

1. Methods to assess the Bids include: Service price-related evaluation, method of State-contributed capital, method of social benefits, state benefits and combination method.
2. Criteria for evaluation of Bid include: criteria for evaluation on capability, experiences; criteria for evaluation on technical aspect; and criteria for evaluation on financial aspect.
3. The Government shall elaborate this Article.

Article 59. Consideration for contract award in investor selection

1. The selected investors must satisfy all following conditions:
 - a) Having valid Bid and Proposal ;
 - b) Satisfying requirements on qualifications;
 - c) Satisfying technical requirements;
 - d) Satisfying financial requirements;
 - dd) Project obtains highest efficiency.
2. For investors not be selected, in notice of result of investor selection must clearly state the reason thereof.

Chapter 7.

SELECTION OF BIDDERS AND INVESTORS ONLINE

Article 60. Selection of bidders and investors online

1. When selecting bidders/investors online, the following contents and process shall be performed on National E-procurement System:

- a) Publishing information on bidding as prescribed in Article 8 of this Law;
- b) Publishing EOI requests, Prequalification Documents, Requests for Proposals;
- c) Submission of Bid Security, Performance Security, joint venture agreements;
- d) Submitting, withdrawing EOI requests, Prequalification Documents, Bids, Proposals;
- dd) Opening Bids;
- e) Assessing EOI responses, Applications, Bids, Proposals;
- g) Sign contract and pay under contract;
- h) Other relevant content.

2. The Government shall elaborate selection of bidders and investors online and the roadmap for application.

Article 61. Requirements for National E-procurement System

- 1. It must publish, not limit the access of information.
- 2. Users may realize the real time upon accessing National E-procurement System. Time on National E-procurement System is the real time and standard time in bidding through National E-procurement System.
- 3. It must operate continuously, unified, be stable and safe on information, have ability to identify users, keep confidential and entire data.
- 4. It must perform the storage of information and may retrieve histories of transactions on National E-procurement System.
- 5. It must ensure that bidders and investors cannot send EOI responses, Applications, Bids, Proposals to the Procuring Entity after deadline for submission of bids.

Chapter 8.

CONTRACT

Section 1. CONTRACT WITH CONTRACTOR

Article 62. Contract type

- 1. Lump-sum contract:
 - a) Lump-sum contract means contract with fixed price during performance for all work contents in contract. Payment for lump-sum contract shall be performed many times during implementation or once upon finishing contract. Total amounts paid to contractor until finishing obligations under contract shall be equal to the price stated in contract;
 - b) When applying the lump-sum contract, prices of packages as the basis for consideration for recommendation as the winning bidder must include expenses associated with risk elements

which may happen during the course of implementation of contract, reserve expenses associated with slippage in price. Bid Price must include all expenses associated with risk elements and expenses associated with slippage in price which may happen during the course of implementation of contract;

c) Lump-sum contract is type of basic contract. When deciding on application of contract types defined at Clause 2 and Clause 3 of this Article, the person approving the plan on bidder selection must ensure that such contract types are more appropriate than lump-sum contract. For packages of simple consulting service provision, and non-consulting service provision; packages for goods procurement, works, mixed packages with small scale must apply form of lump-sum contract;

d) For packages of works, during the course of negotiating and finalizing contract, the relevant parties need review the table of work volume under the approved design; if the bidder or the Procuring Entity detects that the tables of work quantity and volume are not exact in comparison with design, the Procuring Entity shall report to the investor for consideration to decide on adjustment of the work volume in order to ensure the conformity with design;

dd) When applying the lump-sum contract, the investor for project, the Procuring Entity for recurrent procurement, the centralized procurement units or units with need of procurement for the centralized procurement shall be responsible for the accuracy of work quantity and volume. In case of using consulting bidder to make dossier of design, Bid, Request for Proposals, in contract between investor, Procuring Entity, centralized procurement unit or unit which has need of procurement with the consulting bidder must have provisions on responsibilities of parties in handling or compensation in case of calculating wrongly the work quantity and volume.

2. Unit price contract:

Unit price contract means contract with unit price not changeable during performance of all work contents in contract. The contractor will be paid according to the practical work quantity and volume which are tested for acceptance as prescribed on the basis of the fixed unit price in contract.

3. Adjustable unit rate contract:

Adjustable unit rate contract means contract with changeable unit price based on agreements in contract for all work contents in contract. The contractor will be paid according to the practical work quantity and volume which are tested for acceptance as prescribed on the basis of the unit price in contract or the modified unit price.

4. Time-based contract:

Time-based contract means contract which is applied to packages providing consulting service. The Contract Price is calculated on the basis of working time according to month, week, day, hour and costs other than remuneration. The contractor will be paid according to the practical working time on the basis of remuneration corresponding to the title and work stated in contract.

Article 63. Contract Documents

1. Contract Documents include:

a) Contract Agreement;

b) Contract Addenda, including the detailed list of work scope, price table, and time for performance (if any);

c) Decision on approving the result of bidder selection.

2. Apart from documents specified at Clause 1 of this Article, depend on scale, nature of package, Contract Documents include one or a number of the following documents:

a) The contract finalization record;

b) The written agreement of parties about contractual conditions, including general conditions and particular conditions;

c) Bid, Proposal and documents to clarify these dossiers of the selected bidder;

d) Bid, Request for Proposals and documents amending and supplementing these dossiers.

dd) Relevant documents.

3. When having changes of contents within contract, parties must sign Contract Addenda.

Article 64. Conditions for signing contract

1. At time of signing, the Bid or Proposal of the selected bidder is still valid.

2. At time of signing, the selected bidder must ensure to meet requirements on technical and financial capability for implementation of the package. In necessary case, the investor for a project, the Procuring Entity for recurrent procurement, the centralized procurement unit or unit with need of procurement for the centralized procurement may conduct verification of information on capability of bidder, if the bidder still satisfies requirements for performance of package, parties will sign contract.

3. The investor for a project, the Procuring Entity for recurrent procurement, the centralized procurement unit or unit with need of procurement for the centralized procurement must ensure conditions on funding for advance payment, payment funding, ground for implementation and other necessary conditions for carrying out the package on the schedule.

Article 65. Contract with the selected bidder

1. After selecting contractor, the investor for a project, the Procuring Entity for recurrent procurement, the centralized procurement unit or unit with need of procurement for the centralized procurement and the selected bidder must sign contract to perform the package. For JV contractor, all JV's Parties must directly sign and affix their seal (if any) on the written contract. The contract signed between parties must comply with provisions of this Law and other provisions of relevant legislation.

2. A package may be performed according to one or many contract; in a contract may apply one or many contract kinds specified at Article 62 of this Law. In case of applying many contract kinds, it must clarify the contract kind respectively with each content of specific work.

3. Contract signed between parties must conform to content in Bid, Request for Proposals, Bid, Proposals, result of contractual negotiation, and decision on approving result of bidder selection.

4. Contract Price does not exceed the successful bid. In case of supplementing the work volume apart from Bid, Request for Proposals, leading to the excess of Contract Price in comparison with the successful bid, the Contract Price must be ensured to not exceed the approved price of

package or estimate; if project, estimate on package include many procurement, total Contract Price must ensure to not exceed total the invested capital and estimated budget already been approved.

5. The Government shall provide for content of contract involving bidding.

Article 66. Performance Security

1. Performance Security shall be applied to the selected bidders, except for contractors which provide the consulting services, the selected bidders according to form of Force Account and participation in implementation of community.

2. The selected bidder must provide a Performance Security prior to the date on which the contract takes effect.

3. Based on scale, nature of package, the value of a Performance Security shall be stipulated in the Bid Documents, Requests for Proposals at a definite level of between 2% and 10% of the successful bid.

4. The validity period of a Performance Security shall be calculated from the effective day of contract until the date parties finish contractual obligations or until the day of transfer of warranty obligations in case of having provisions on warranty. In case of extending the contract performance period, it must require the bidder to extend respectively validity period of Performance Security.

5. The contractor shall not be entitled to the return of the Performance Security in the following cases:

- a) The contractor refuses to perform the contract after the date the contract takes effect;
- b) The contractor violates agreements in contract;
- c) The contractor performs contract later than the progress due to the contractor's fault but refuse to extend the validity of Performance Security.

Article 67. Principles of adjustment to contract

1. Adjustment to contracts must be specified specifically in the written contract, written agreement on contractual conditions (if any).

2. Adjustment to contracts shall only apply within validity period of contract.

3. Adjustment to contract price shall only apply unit price contract, adjustable unit rate contract and time-based contract.

4. The adjusted contract sum shall not exceed package price or estimated budget already been approved. In case of projects, estimates on procurement including many packages, the adjusted contract sum shall not exceed the total investment, the estimated budget for procurement already been approved.

5. For contracts based on modifiable unit price, the adjustment of unit price shall be performed as from time of arising the elements causing changes of price and only be applied for the performed volume in accordance with the progress stated in contract or the adjusted progress as prescribed in Clause 6 and Clause 7 of this Article.

6. The contract time for performance shall be only adjusted in the following case:

- a) In case of force majeure, not relating to any violation or mistake of parties in contract;
 - b) Changes of the work scope, design, measures for construction due to objective requirements affect to the contract time for performance;
 - c) Handing over of ground inconsistently with agreements in contract affect to the contract time for performance but cause is not fault of contractor.
7. In case of adjustment to the contract time for performance which do not prolong the progress of finishing project, contractual parties may agree and unify such adjustments. In case of adjustment to the contract time for performance which prolong the progress of finishing project, it must report to the competent person for consideration and decision.

Section 2. CONTRACT WITH INVESTOR

Article 68. Contract type

Contracts in selection of investor include: Building-Operation-Transfer (BOT) contract, building-transfer-operation (BTO) contract, building- owning-operation (BOO) contract, building-transfer (BT) contract and other contractual kinds as prescribed by law on investment.

Article 69. Contract Documents

1. Contract Documents include:

- a) Contract Agreement;
- b) Contract Addenda (if any);
- c) Note of Contract Negotiation;
- d) Decision on approving the result of investor selection;
- dd) The written agreement of parties about terms and conditions of the contract, including general conditions and particular conditions;
- e) Bid, Proposal and documents to clarify these dossiers of the selected investor;
- g) Bid, Request for Proposals and documents amending and supplementing these dossiers;
- h) Relevant documents.

2. When having changes of contents within contract, parties must sign appendices for supplementation to contract.

Article 70. Conditions for signing contract

1. At time of signing, Bid and Proposal of the selected investor are still valid.
2. At time of signing, the selected investor must ensure to meet requirements on technical and financial capability for implementation of the project. In necessary case, the competent person may conduct verification of information on capability of investor, if the investor still satisfies requirements for implementation of project, parties will sign contract.
3. The competent regulatory agencies must ensure conditions on capital financed by state, ground for implementation and other necessary conditions for carrying out the project on the schedule.

Article 71. Contract with the selected investor

1. After selecting investor, the competent regulatory agencies shall sign contract with the selected investor or the selected investor and project management enterprise. For JV investor, all JV's Parties must directly sign and affix their seal (if any) on the written contract. The contract signed between parties must comply with provisions of this Law and other provisions of relevant legislation.

2. Contract signed between parties must conform to content in Bid, Request for Proposals, Bid, Proposals, result of contractual negotiation, and decision on approving result of investor selection and written agreement on investment.

Article 72. Performance Security

1. The selected investor must provide a Performance Security prior to the date on which the contract takes effect.

2. Based on scale, nature of project, the value of a Performance Security shall be stipulated in the Bid Documents, Requests for Proposals at a definite level of between 1% and 3% of total investment of project.

3. The validity period of a Performance Security shall be calculated from the day of officially signing contract until the date works is completed and tested for acceptance or until the date conditions of service provision guarantee are completed as prescribed in contract. In case of extending the contract performance period, it must require the investor to extend respectively validity period of Performance Security.

4. The investor shall not be entitled to the return of the Performance Security in the following cases:

- a) The investor refuses to perform the contract after the date the contract takes effect;
- b) The investor violates agreements in contract;
- c) The investor performs contract later than the progress due to the investor's fault but refuse to extend the validity of Performance Security.

Chapter 9.

RESPONSIBILITIES OF PARTIES IN SELECTION OF BIDDERS/INVESTORS

Article 73. Responsibilities of the competent person

1. To approve the plan on selection of bidder/ investor, except for case defined at point a Clause 1 Article 74 of this Law.

2. To resolve protests during selection of bidder/ investor.

3. To deal with breaches of bidding in accordance with this Law and other relevant laws.

4. To cancel bid as prescribed at Clauses 2, 3 and 4 Article 17 of this Law.

5. To suspend bid, to refuse recognition of result of selecting bidder/investor, or to declare invalidity to decisions of the investor, the Procuring Entity when detecting violations of bidding or other provisions of relevant law.

6. To inspect, supervise, monitor the work of bidding and contract performance.

7. For the selected bidder, apart from provisions at Clauses 1, 2, 3, 4, 5 and 6 of this Article, the competent person shall have the following responsibilities:

- a) To adjust tasks and competence of investor in case of failing to meet legislation on bidding and requirements of project, package;
- b) To require the investor, the Procuring Entity to supply dossiers, documents in order to serve the inspection, supervision, monitoring, settlement of protests, handling of violations on bidding and works defined at Clause 4 and clause 5 of this article;
- c) To give opinions on handling of complex circumstances at the proposal of the investor defined at point a clause 2 Article 86 of this Law.

8. For the selected investor, apart from provisions at Clauses 1, 2, 3, 4, 5 and 6 of this Article, the competent person shall have the following responsibilities:

- a) To decide on selection of the Procuring Entity;
- b) To approve Prequalification Document, result of prequalification, Bid, Request for Proposals, result of investor selection;
- c) To make a decision dealing with any exceptional situation;
- d) To sign and manage the contract performance;
- dd) To cancel bid as prescribed at Clause 1 Article 17 of this Law;
- e) To require the Procuring Entity to supply dossiers, documents in order to serve the inspection, supervision, monitoring, settlement of protests, handling of violations on bidding and works defined at Clause 4 and clause 5 of this article.

9. To decide on establishment of the Procuring Entity with personnel satisfying the conditions as prescribed by this Law in case of investor selection for recurrent procurement. If the personnel fails to satisfy, the competent person must conduct selection of a professional bidding organization to act as the Procuring Entity or to perform some of tasks of the Procuring Entity.

10. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the competent person's fault.

11. To make explanations for observance with provisions in this article at the request of superior agencies, inspection agencies, regulatory bodies on bidding activities.

12. To perform other tasks as prescribed in this Law.

Article 74. Responsibilities of the investor

1. To approve contents during contractor selection including:

- a) Plan on selection of bidders in case where the package is performed prior to decision on approving the project;
- b) EOI request, Prequalification Document, short list;
- c) Bidding Documents, Request for Proposals;
- d) List of ranked contractors;
- dd) Result of selection of bidders.

2. To sign or authorize for signing and manage the contract performance with contractor.
3. To decide on establishment of the Procuring Entity with personnel satisfying conditions as prescribed in this Law. If the personnel fail to satisfy, it must conduct selection of a professional bidding organization to act as the Procuring Entity or to perform some of tasks of the Procuring Entity.
4. To make a decision dealing with any exceptional situation.
5. To resolve protests during selection of bidders.
6. To maintain confidentiality of relevant documents during selection of bidders.
7. To archive relevant information during selection of bidders as prescribed by law on archival and regulations of Government.
8. To report the annual bidding work.
9. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the competent person's fault.
10. To cancel bid as prescribed at Clause 1 Article 17 of this Law.
11. To be legally liable before law and competent person for the process of selection of bidder.
12. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of superior agencies, inspection agencies, regulatory bodies on bidding activities.
13. If the investor currently being the Procuring Entity, the investor must take responsibilities specified in Article 75 of this Law.
14. To perform other tasks as prescribed in this Law.

Article 75. Responsibilities of the Procuring Entity

1. For contractor selection to perform packages of project:
 - a) To conduct preparations for contractor selection; to organize contractor selection, and to assess EOI responses, Applications, Bids, Proposals;
 - b) To decide on establishment of expert group;
 - c) To request bidders to clarify their EOI responses, Applications, Bids and Proposals during the process of dossier assessment;
 - d) To submit for approval of the result of short list selection and result of bidder selection;
 - dd) To negotiate and finalize contract with bidder;
 - e) To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the Procuring Entity's fault;
 - g) To maintain confidentiality of relevant documents during selection of bidders;
 - h) To ensure honesty, objectivity and impartiality throughout the process of bidder selection;
 - i) To provide information to the bidding newspaper and to the national bidding website; to provide information and relevant documents and make explanations on observance with

provisions in this Clause at the request of competent person, investor, inspection agencies, regulatory bodies on bidding activities;

k) To be legally liable before law and investor for the process of selection of bidder.

2. For selection of tenders in recurrent procurement, apart from provisions at points a, b, c, d, dd, e, g, h and i Clause 1 this Article, the Procuring Entity must take the following responsibilities:

a) To approve the Bid, Request for Proposals;

b) To approve the result of bidder selection;

c) To sign and manage the contract performance with contractor;

d) To make a decision dealing with any exceptional situation;

dd) To resolve protests during selection of bidders;

e) To cancel bid as prescribed at Clause 1 Article 17 of this Law;

g) To be legally liable before law and competent person for the process of selection of bidder;

h) To archive relevant information during selection of bidders as prescribed by law on archival and regulations of Government;

i) To provide information to the bidding newspaper and to the national bidding website; to provide information and relevant documents and make explanations on observance with provisions in this Clause at the request of competent person, inspection agencies, regulatory bodies on bidding activities;

k) To report the annual bidding work.

3. For selection of investors:

a) To conduct preparations for investor selection; to organize investor selection; to assess Applications, Bids, Proposals in accordance with this Law;

b) To decide on establishment of expert group;

c) To request investors to clarify their Applications, Bids and Proposals during the process of dossier assessment;

d) To submit for approval of Prequalification Document, result of prequalification, Bid, Request for Proposals, result of investor selection;

dd) To negotiate contract with investor;

e) To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the Procuring Entity's fault;

g) To maintain confidentiality of relevant documents during selection of investors;

h) To archive relevant information during selection of investors as prescribed by law on archival and regulations of Government;

i) To resolve protests during selection of investor;

k) To ensure honesty, objectivity and impartiality throughout the process of investor selection;

1) To provide information to the bidding newspaper and to the national bidding website; to provide information and relevant documents and make explanations on observance with provisions in this Clause at the request of competent person, inspection agencies, regulatory bodies on bidding activities.

4. To perform other tasks as prescribed in this Law.

Article 76. Responsibilities of the expert groups

1. To be honest, objective and impartial throughout the process of implementation of tasks.

2. To conduct assessments of EOI responses, Applications, Bids, Proposals correctly in accordance with the requirements.

3. To report the Procuring Entity about result of assessing EOI responses, Applications, Bids, Proposals and list of the ranked bidders/investors.

4. To maintain confidentiality of relevant documents during selection of bidders/investors.

5. To reserve their own opinions.

6. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the expert group's fault.

7. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of competent person, the Procuring Entity, inspection agencies, regulatory bodies on bidding activities.

8. To perform other tasks as prescribed in this Law.

Article 77. Responsibilities of the bidders and investors

1. To request the Procuring Entity to clarify dossier of invitation for expression of interest, Prequalification Document, Bid, Request for Proposals.

2. To fulfill the contractual undertakings provided to the Subcontractors (if any).

3. To lodge protests, to make complaints and whistleblowing regarding bidding.

4. To comply with the provisions of the law on procurement.

5. To be honest and accurate during the process of participation in bidding and while lodging protests or making complaints and whistleblowing.

6. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by the expert group's fault.

7. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of competent person, the Procuring Entity, inspection agencies, regulatory bodies on bidding activities.

8. To perform other duties in accordance with this Law and other relevant laws.

Article 78. Responsibilities of the evaluating organizations

1. To act independently and to comply with the provisions of this Law and other relevant laws when conducting evaluations.

2. To request the investor and the Procuring Entity to provide all relevant documents and data.

3. To maintain confidentiality of documents and data throughout the process of evaluation.
4. To be honest, objective and impartial throughout the process of evaluation.
5. To reserve their own opinion and to bear liability for their evaluation report.
6. To pay compensation for loss and damage to relevant parties pursuant to this Law if such loss and damage was caused by their fault.
7. To provide information, relevant documents and make explanations on observance with provisions in this Article at the request of competent person, the investor, the Procuring Entity for recurrent procurement, centralized procurement, inspection agencies, regulatory bodies on bidding activities.
8. To perform other tasks as prescribed in this Law.

Article 79. Responsibilities of the Procuring Entity in participation in National E-procurement System

In addition to responsibilities defined in Article 75 of this Law, the Procuring Entity participating in National E-procurement System shall have the following responsibilities:

1. To equip an information technology infrastructure which meets requirements of bidding online;
2. To manage and not disclose secret key of the granted digital certificate. In case where a Procuring Entity lost digital certificate or detect the illegal use of digital certificate, it must notify immediately to the provider of digital signature certification service for cancelation and grant of new digital certificate; to expand the validity period of digital certificate to ensure the digital certificate to be valid during the process of bidding;
3. To be legally liable before law for accuracy and honesty of information registered or published on National E-procurement System when sign in by their digital signature;
4. To check and certify the publishing of their information entered in National E-procurement System;
5. To comply with provisions of this Law and other provisions of relevant legislation.

Article 80. Responsibilities of the bidders and investors participating in National E-procurement System

In addition to responsibilities defined in Article 77 of this Law, the bidders and investors participating in National E-procurement System also have the following responsibilities:

1. To equip an information technology infrastructure when participating in bidding online;
2. To manage and not disclose secret key of the granted digital certificate. If users of bidders or investors lost or detect the third party's use of their digital certificate, they must change the secret key of digital certificate, cancel digital certificate under guide of the provider of digital signature certification service; extend the validity term of the digital certificate to ensure the digital certificate to be invalid during the process of participation in bidding;
3. To be legally liable before law for accuracy and honesty of information registered or published on National E-procurement System when sign in by their digital certificate;

4. To be responsible for result when participating in bidding online in case of having incident due to the network system at the side of bidders or investors which make documents to be not able to be open or not readable;

5. To comply with provisions of this Law and other provisions of relevant legislation.

Chapter 10.

STATE MANAGEMENT OF BIDDING ACTIVITIES

Article 81. Content of state management of bidding activities

1. Promulgating, disseminating, propagating, guiding and organizing implementation of legal documents and policies on bidding.

2. Granting certificates of practicing in bidding operation.

3. Managing the work of training and capacity building on bidding.

4. Summarizing, assessing and reporting on the status of implementation of bidding activities.

5. Administering on a nationwide basis the bidding information system.

6. Monitoring, supervising, checking, inspecting, resolving protests, complaints and whistleblowing regarding bidding, and dealing with breaches of the law on procurement in accordance with this Law and other relevant laws.

7. Conducting international cooperation on bidding.

Article 82. Responsibilities of Government and the Prime Minister

1. The Government shall exercise unified administration of bidding throughout the country.

2. The Prime Minister shall discharge the following responsibilities:

a) Make decisions on the bidding issues stipulated in article 73 of this Law for projects under his competence;

b) Approve plan on selection of bidders/investors in special cases;

c) Direct the work of conducting inspections and of resolving complaints, whistleblowing and dealing with breaches of the law in accordance with this Law and the other relevant law;

d) Discharge other responsibilities in accordance with this Law and other relevant laws.

Article 83. Responsibilities of the Ministry of Planning and Investment

1. To be responsible before the Government for the exercise of unified state administration of bidding activities nationwide as prescribed in Article 81 of this Law.

2. In addition to provision at Clause 1 this Article, the Ministry of Planning and Investment shall have the following responsibilities:

a) To evaluate plans on selection of bidder/ investor in projects under the consideration and decision competence of the Prime Minister;

b) To build up, manage, guide use of the national bidding website and bidding newspaper;

c) To perform other tasks on bidding as assigned by Government and the Prime Minister.

Article 84. Responsibilities of ministries, ministerial equivalent bodies, and all level people's committees

Ministries, ministerial equivalent bodies, and all level people's committees shall, within their tasks and powers, have the following responsibilities:

1. To exercise administration of bidding work;
2. To summarize, assess and report on the status of implementation of bidding activities;
3. To resolve protests regarding bidding;
4. To conduct checks and inspections, resolve complaints, whistleblowing, and with breaches of the law on procurement;
5. To organize the capacity building of bidding knowledge for cadres, civil servants and public employees engaged in bidding work;
6. In cases where a minister, head of a ministerial equivalent body or chairman of a people's committee at any level is concurrently the authorized person, then such minister, head or chairman must also discharge the responsibilities stipulated in article 73 of this Law; if being investor, he must also discharge the responsibilities stipulated in article 74 of this Law.

Article 85. Responsibilities of the organization operating National E-procurement System

1. To manage and operate National E-procurement System.
2. To maintain confidentiality of documents and data throughout the process of bidding through net work in accordance with regulations.
3. To supply services to guide investors, the Procuring Entity, bidders/investors in bidding online, and registering, publishing information on National E-procurement System.
4. To save information in serve of searching, monitoring, supervising, checking, inspecting and auditing.
5. To publish conditions on information technology infrastructure of users when participating in bidding online.

Article 86. Dealing with exceptional situations

1. Dealing with exceptional situations means settlement of cases arising in bidding which have not yet been stipulated specifically clearly in law on procurement. The person making a decision on dealing with any exceptional situation in bidding shall be responsible before the law for his decision on the basis of ensuring the following principles:

- a) Ensuring competitiveness, fairness, transparency and economic efficiency;
 - b) Acting on the basis of the approved plan on selection of bidder/ investor, EOI requests, Prequalification Documents, Bidding Documents, Request for Proposals, EOI responses, Applications, Bids, Proposals; result of selection of bidder/ investor; the contract signed with selected bidder/investor; practical situation of performance of packages and projects.
2. Competencies for dealing with exceptional situations in bidding:

- a) For contractor selection to perform packages of project, the person making decision to deal with exceptional situations is investor. In complex cases, the investor may make decision on dealing with exceptional situations after consulting the competent person;
 - b) For selection of tenders in recurrent procurement, centralized procurement, the person making decision to deal with exceptional situations is the Procuring Entity;
 - c) For investor selection, the person making decision to deal with exceptional situations is competent person.
3. The Government shall elaborate this Article.

Article 87. Inspection, examination and supervision of bidding activities

1. Inspection of bidding activities:

- a) Bidding inspections shall be carried out and applied to organizations and individuals who are involved in bidding activities specified in this Law;
- b) The bidding Inspectorate shall be the specialized inspectorate for the bidding sector. The organization and operations of the bidding Inspectorate shall be performed in accordance with the law on inspections.

2. Checks of bidding activities:

a) Checks of bidding activities include:

checks of promulgation of documents guiding on bidding of Ministries, sectors, localities and enterprises; checks of training on bidding, checks of formulation and approval of plan on selection of bidder/ investor; checks of selection of bidder/ investor; conclusion in contracts and other activities involving bidding;

b) Checks of bidding shall be conducted regularly or irregularly under decisions on the heads of agencies competent to check.

3. Supervision of bidding activities:

Supervision of bidding activities is regular work of the competent person aiming to ensure the observance of process of selection of bidder and investor with this Law.

4. The Government shall elaborate this Article.

Article 88. Complaints and whistleblowing

The making of complaints and whistleblowing and the resolution of such complaints and whistleblowing on bidding shall be performed in accordance with the law on complaints and whistleblowing.

Chapter 11.

FRAUD AND CORRUPTION AND ACTIONS TAKEN

Article 89. Fraud and Corruption

1. Corrupt practice.
2. Take advantage of positions, powers aiming to interfere illegally in a bidding process.
3. Collusive practice, including the following acts:

a) Agreeing on bidding withdrawal or withdrawal of Letter of Bid already been submitted so that one party or parties in agreement win bid;

b) Agreeing to let one or many parties to prepare Bid for parties of bidding so that one party may win bid;

c) Agreeing on refusal for goods provision, refusal for signing contract of Subcontractor, or forms which cause other difficulties to parties which refuse to participate in agreement.

4. Fraudulent practice, including the following acts:

a) Providing a wrong presentation intentionally or falsifying information, dossier or documents of a party in bidding with the aim to obtain financial benefits or other benefits or with the aim to avoid any obligation;

b) Individuals who personally assess EOI responses, Applications, Bids, Proposals, evaluate result of selection of short list, result of selection of investor, bidder, intentionally providing wrong report or untrue information falsifying the result of selection of bidders/investors.

c) Bidders/investors intentionally provide dishonest information in EOI responses, Prequalification Application, Bids, Proposals falsifying the result of selection of bidders/investors.

5. Interference practice, including the following acts:

a) Destroying, cheating, changing, hiding proof or reporting contrary to the truth; threatening, disturbing or suggesting with any party with the aim to prevent the clarification of acts of handing, taking, brokerage of bribes, fraudulence or conclusion with functional agencies, authorized agencies in conducting supervisions, checks, inspections and audit;

b) Impeding bidder/investors, authorities in charge of supervision, inspection and audit.

6. Inequality and intransparency, including the following acts:

a) Making a bid as a bidder/investor in a procurement, project for which it is also the Procuring Entity, investor or person performing tasks of the Procuring Entity, investor;

b) Formulating and engaging in evaluation of dossier of invitation for expression of interest, Prequalification Document, Bid, Request for Proposals for a same procurement, project;

c) Engaging in evaluation of Bids, Proposals, concurrently evaluate result of selection of bidder/investor for a same package, project;

d) Any individual of the Procuring Entity, investor directly participates in the process of selection of bidder/ investor or participate in expert groups, evaluation groups for result of selection of bidder/ investor, or a head of competent regulatory body, investor, the Procuring Entity for packages, projects in which his or her natural parent, parent-in-law, spouse, natural child, adopted child, son or daughter-in-law or sibling participates give their name in bidding or are representatives in law of bidders/investors making the bid;

dd) Participation by a bidder in bidding for goods procurement, works in a procurement for which such participant previously has provided consulting services;

e) Provision of one's name as the bidder for a procurement belonging to a project of an organization or body for which such person worked, within a period of 12 months from the date on which such person ceased to work for such body or organization;

- g) Being consulting bidder for supervision concurrently provide the verification consulting for the procurement which is under supervision of bidder;
- h) Application of a form of selection of bidder/ investor other than competitive bidding when the conditions stipulated in this Law have not been satisfied;
- i) Imposition of specific requirements regarding brand names and country of origin of goods in Bid Documents applicable to procurement for procurement of goods, for works and mixed packages when applying forms of competitive bidding, limited bidding;
- k) Division of a project, estimate for procurement into packages contrary to the provisions in this Law with the aim to apply Direct Contracting or limit participation of bidders.

7. Disclosure, receipt of the following data and information regarding selection of bidder/ investor, except for cases defined at point b clause 7 and point e clause 8 article 73, clause 12 Article 74, point i Clause 1 Article 75, Clause 7 Article 76, Clause 7 Article 78, point d Clause 2 and point d clause 4 Article 92 of this Law:

- a) Contents of EOI requests, Prequalification Documents, Bid Documents prior to the stipulated date for issuance of such documents;
- b) Contents of EOI responses, Applications, Bids, Proposals, notebooks and minutes of bid consideration meetings, comments and assessments regarding each dossier of expression of interest, dossier of prequalification participation, Proposals prior to the announcement of the short list, results of selection of bidder/ investor;
- c) Requests for clarification of Bids, Proposals made by the Procuring Entity and responses of bidders/investors during the process of assessment of Bids, Proposals prior to announcement of the results of selection of bidder/ investor;
- d) Reports by the Procuring Entity, by the expert group, evaluation report, report of consulting bidder, report of relevant specialized agencies during the process of selection of bidder/ investor prior to announcement of the results of selection of bidder/ investor;
- dd) Result of selection of bidder/ investor prior to the stipulated time for announcement;
- e) Other documents during the process of selection of bidder/ investor which are stamped "confidential" as prescribed by law.

8. Bid transfer including the following acts:

- a) Contractor transfer to other contractor a part of work under procurement at value of 10% or more (after deducting part of work under responsibilities of Subcontractors) calculated on the signed Contract Price;
- b) The investor or supervision consulting accepts for contractor to transfer work under duty of contractor, deducted part of work under duty of Subcontractors as stated in contract.

9. Holding selection of bidder when the financing source for the package has not yet been determined, resulting in insolvency of the contractor.

Article 90. Actions against violations

1. Any organization or individual who breaches the law on procurement and other relevant law shall, depending on the nature and seriousness of violation, be disciplined, sanctioned administratively or liable to criminal prosecution; in case where violation of law on procurement

causes damages to benefits of state, the lawful rights and benefits of organizations and individuals, the offender must pay compensation as prescribed by law.

2. In addition to being dealt with pursuant to the provisions in clause 1 of this article, depending on the nature and seriousness of violation, organizations and individuals breaching law on procurement shall be also banned participation in bidding activities and put into list of infringing contractors on National E-procurement System.

3. Competence of banning participation in bidding activities is prescribed as follows:

a) The competent persons shall issue decisions on banning participation in bidding activities for projects, estimate of procurement under their management; case of serious violation, they may suggest the Ministers, Heads of ministerial-level agencies, chairpersons of the People's Committees of provinces or central-affiliated cities to issue decision on banning participation in bidding activities within management of Ministries, sectors and localities or suggest the Minister of Planning and Investment to issue decisions on banning participation in bidding activities nationwide;

b) The Ministers, Heads of ministerial-level agencies, chairpersons of the People's Committees of provinces or central-affiliated cities shall issue decisions on banning participation in bidding activities within management of their Ministries, sectors and localities for cases suggested by the competent persons as prescribed at point a this Clause;

c) The Minister of Planning and Investment shall issue decisions on banning participation in bidding activities nationwide for cases suggested by the competent persons as prescribed at point a this Clause.

4. Disclosure of actions against violations:

a) Decisions on actions against violations must be sent to the dealt organizations and individuals, the relevant agencies and organizations, concurrently be sent to the Ministry of Planning and Investment for monitoring and summing up;

b) Decisions on actions against violations must be published on bidding newspaper, National E-procurement System.

5. The Government shall elaborate this Article.

Chapter 12.

RESOLUTION OF PROTESTS AND DISPUTES IN BIDDING

Section 1. RESOLUTION OF PROTESTS REGARDING BIDDING

Article 91. Resolution of protests regarding bidding

1. When consider that lawful rights and benefits are severely affected, the contractors and investors have rights:

a) To make protests to the Procuring Entity, investor, competent person about matters during selection of bidder/ investor; result of selection of bidder/ investor according to the process of resolution of protests specified in Article 92 of this Law;

b) To institute court proceedings at any time, including time of resolution of protests or after having result of resolution of protests.

2. In case where bidders/investors instituted court proceedings, they are not entitled to send protest to the Procuring Entity, investor, or the competent person. If in the process of resolution of protests, bidders/investors instituted court proceedings, the resolution of protests shall be terminated immediately.

Article 92. The process of resolution of protests

1. The process of resolution of protests regarding matters during selection of bidders shall be performed as follows:

- a) A contractor may send a written protest to the investor for project; the Procuring Entity for recurrent procurement, centralized procurement since happening matters and prior to having notice of result of bidder selection;
- b) The investor, the Procuring Entity shall be responsible to have a document to resolve a protest made by a bidder within a time limit of 07 working days from the date of receipt of the written protest of the bidder;
- c) If the investor, the Procuring Entity has no document to resolve the protest or if the bidder disagrees with the result of resolution of protest, the bidder shall have the right to lodge the protest with the authorized person within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by investor, the Procuring Entity;
- d) The authorized person shall be responsible to resolve a protest made by a bidder within a time limit of 15 working days from the date of receipt of the written protest of the bidder.

2. The process of resolution of protests regarding result of selection of bidders shall be performed as follows:

- a) A bidder may send a written protest to the investor for project; the Procuring Entity for recurrent procurement, centralized procurement in period of 10 days after having notice of result of bidder selection;
- b) The investor, the Procuring Entity shall be responsible to have a document to resolve a protest made by a bidder within a time limit of 07 working days from the date of receipt of the written protest of the bidder;
- c) If the investor, the Procuring Entity has no document to resolve the protest or if the bidder disagrees with the result of resolution of protest, the bidder shall have the right to lodge the protest with the authorized person and the Consulting Council for resolution of protests within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by investor, the Procuring Entity. The Minister of Planning and Investment shall establish a Consulting Council for Resolution of Protests at central level; the Ministers, Deputy Ministers of Ministerial agencies shall establish the Councils at ministerial level; the heads of regulatory bodies on bidding at localities shall establish the Councils at local level;
- d) When receiving written protest, the Consulting Councils for Resolution of Protests shall be entitled to request the bidders, investors, the Procuring Entity and relevant agencies for information provision in order to consider and have written report to the competent person about the plan and content or replying protest within 20 days, after receiving the written protest made by the bidder;

dd) In necessary case, the Consulting Councils for Resolution of Protests shall, based on the written protest made by the bidder, suggest the competent person to consider for temporary suspension of the bid. If accepting, within 05 working days, after receiving the document of the Consulting Council for Resolution of Protests, the competent person shall issue a written notice about temporary suspension of the bid. The document of temporary suspension of the bid must be sent to the investor, the Procuring Entity, bidder within 03 working days after issuing the written notice about temporary suspension of the bid. Duration of temporary suspension of the bid shall be calculated from the date the investor, the Procuring Entity receive the notice of temporary suspension until the competent person issues a document to resolve protest;

e) The competent person shall issue decision on resolution of protest regarding result of selection of bidder within 05 working days, after receiving the written opinion of the Consulting Council for Resolution of Protests.

3. The process of resolution of protests regarding matters during selection of investors shall be performed as follows:

a) The investor may send a written protest to the Procuring Entity as from happening events and prior to having notice of result of selection of investor;

b) The Procuring Entity shall be responsible to have a document to resolve a protest made by an investor within a time limit of 15 days from the date of receipt of the written protest of the investor;

c) If the Procuring Entity has no document to resolve the protest or if the investor disagrees with the result of resolution of protest, the investor shall have the right to lodge the protest with the authorized person within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by the Procuring Entity;

d) The authorized person shall be responsible to resolve a protest made by an investor within a time limit of 05 working days from the date of receipt of the written protest of the investor.

4. The process of resolution of protests regarding result of selection of investor shall be performed as follows:

a) An investor may send a written protest to the Procuring Entity in period of 10 days after having notice of result of investor selection;

b) The Procuring Entity shall be responsible to have a document to resolve a protest made by an investor within a time limit of 15 days from the date of receipt of the written protest of the investor;

c) If the Procuring Entity has no document to resolve the protest or if the investor disagrees with the result of resolution of protest, the investor shall have the right to lodge the protest with the authorized person and the Consulting Council for resolution of protests within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by the Procuring Entity;

d) When receiving written protest, the Consulting Councils for Resolution of Protests shall be entitled to request the investors, the Procuring Entity and relevant agencies for information provision in order to consider and have written report to the competent person about the plan and content or replying protest within 30 days, after receiving the written protest made by the investor;

dd) In necessary case, the Consulting Councils for Resolution of Protests shall, based on the written protest made by the investor, suggest the competent person to consider for temporary suspension of the bid. If accepting, within 10 days, after receiving the document of the Consulting Council for Resolution of Protests, the competent person shall issue a written notice about temporary suspension of the bid. The document of temporary suspension of the bid must be sent to the Procuring Entity, investor within 05 working days after issuing the written notice about temporary suspension of the bid. Duration of temporary suspension of the bid shall be calculated from the date the Procuring Entity receives the notice of temporary suspension until the competent person issues a document to resolve protest;

e) The competent person shall issue decision on resolution of protest regarding result of selection of investor within 10 days, after receiving the written opinion of the Consulting Council for Resolution of Protests.

5. If a bidder or investor sends a written protest directly to the competent person without observance with the processes of resolution of protests specified in this Article, such written protest shall not be considered for settlement.

6. The Government shall elaborate this Article.

Section 2. RESOLUTION OF DISPUTES IN BIDDING BY COURTS

Article 93. The principles of resolution

Resolution of disputes in bidding by courts shall comply with law on civil procedures.

Article 94. The right to request Court for application of temporary emergency measures

When instituting, parties have the right to request the Court for immediate temporary suspension of bid disclosure; approval of short list; approval of result of selection of bidder/ investor; conclusion in a contract; performance of contract, and other temporary emergency measures as prescribed by law.

Chapter 13.

IMPLEMENTATION PROVISIONS

Article 95. Entry in force

1. This Law comes into forces as of July 01, 2014.
2. The Law on Procurement No. 61/2005/QH11 shall cease to be effective on the effective date of this Law.
3. To annul section 1 Chapter VI of the Construction Law No. 16/2003/QH11 and Article 2 of the Law amending and supplementing a number of articles of the laws concerning capital construction investment No. 38/2009/QH12.

Article 96. Elaboration

The Government shall elaborate Articles, Clauses as assigned in this Law.

This Law was passed by Legislature XIII of the National Assembly of the Socialist Republic of Vietnam at its 6th Session on 26 November 2013.

**THE CHAIRMAN OF THE NATIONAL
ASSEMBLY**

Nguyen Sinh Hung

*This translation is made by **LawSoft** and for reference purposes only. Its copyright is owned by **LawSoft** and protected under Clause 2, Article 14 of the Law on Intellectual Property. Your comments are always welcomed*