
Hanoi, 4 September 1999

DECREE OF THE GOVERNMENT
promulgating the Regulations on Tender

THE GOVERNMENT

- Pursuant to the Law on the Organisation of the Government dated 30 September 1992;
- On the proposal of the Ministers of Planning and Investment, Finance, Trade, and Construction,

DECREES:

Article 1.

To issue in conjunction with this Decree the Regulations on Tender as replacement for the Regulations on Tenders issued under Decree No. 43/CP dated 16 July 1996 and Decree No. 93/CP dated 23 August 1997 of the Government.

Article 2.

This Decree shall be of full force and effect 15 days after the date of its signing.

Article 3.

The Minister of Planning and Investment shall be responsible for co-ordinating with the Minister of Construction, the Minister of Finance, the Minister of Trade, the Governor of the State Bank of Vietnam, and heads of other relevant ministries and branches in order to provide guidelines and supervise the implementation of the Regulations on Tender issued in conjunction herewith.

Article 4. Ministers, Heads of Ministerial-level agencies, Heads of Governmental agencies, Chairmen of People's Committees of provinces and cities under central

authority, BOMs of national State Corporations and relevant organisations shall be responsible to implement this Decree.

On behalf of the Government

Prime Minister

(signed and sealed)

PHAN VAN KHAI

REGULATIONS ON TENDER

(issued in conjunction with Decree No. 88/1999/ND-CP of the
Government dated 4 September 1999)

These Regulations on Tender are issued for an uniform administration of tender activities in relation to selection of consultants, purchase of materials and equipment, construction and installation and the selection of partners for the implementation of investment projects or the parts thereof within the territory of the Socialist Republic of Vietnam.

Chapter I

GENERAL PROVISIONS

Article 1. Objectives, basis and the process for implementing a tender

1. A tender is aimed at ensuring the competitiveness, fairness, objectiveness, and equality during a tender in order to select out the suitable contractor for the purpose of securing the economic efficiency of the project.
2. A tender is carried out on the basis of each tender package.
3. The tender process shall include: tender preparation, tender organisation, bid consideration, evaluation and approval, announcement of the bid winner, negotiations for completing the contract and signing of the contract.

Article 2. Scope and objects of the application

1. These Regulations shall apply to tenders organised and implemented in Vietnam.
2. Objects of applications
 - a. Investment projects which are, in accordance with the provisions of the Regulations on Investment Construction Management, subject to the Regulations on Tender;
 - b. Projects on joint ventures, business co-operation contracts or equity projects participated by State economic organisations (State-owned

enterprises) with the capital contribution of 30% or more of the legal capital, the business capital or the equity capital.

- c. Projects funded by aid from international or foreign organisations on the basis of the treaties entered into by the parties (the sponsor and the Vietnamese party). Where a provision of a draft treaty is different from the relevant provisions of these Regulations, then the State body which is authorised to negotiate and execute the relevant treaty must submit the issue to the Prime Minister for his consideration and approval prior to the execution.
- d. Projects subject to the need of selecting the investment partner for implementation:
 - With respect to projects of domestic investments: the tender for the selection of the investment partner shall only be carried out when two or more investors are wishing to participate in a project;
 - With respect to foreign-invested projects, the tender for the selection of the investment partner shall only be carried out when two or more investors are wishing to participate in a project or when a tender for selecting the investment partner for the implementation of the project is required by the Prime Minister.
- dd. For the investments in the purchase of equipment, devices, materials, means for working by State agencies, mass organisations and SOEs, the purchase of normal devices and means for working by armed force units, the Ministry of Finance shall provide detailed guidance on the scope, value, responsibilities and the authority of the purchase of such units in accordance with the Law on the State Budget.

Those objects subject to clause 2 of this Article shall be compulsorily subject to the Regulations on Tender, while other objects shall only be encouraged to abide.

Article 3. Interpretation of terms

For the purpose of these Regulations, the following terms shall have the meanings ascribed to them hereunder:

1. **"Tender"** means the process of selecting the contractor who meets the requirements set forth by the tender organiser.
2. **"Domestic tender"** means a tender which is only participated by domestic bidders.
3. **"International tender"** means a tender which is participated by both domestic and foreign bidders.

4. **"Bid consideration"** means the process of considering, analysing and evaluating bidding documents for the selection of the bid winner.
5. **"Projects"** means a set of proposals for the implementation of a part or the whole of work, objectives or a requests. A project may be either an investment project or a non-investment project.
6. **"Projects of Groups A, B, and C"** means the projects as defined and classified in the Regulations on Investment and Construction Management.
7. **"Tender organisers"** means the project owner, the investor, or its authorised legal person in charge of organising the tender.
8. **"Authorised person"** means the head or the authorised person in accordance with the laws, of State agencies, and State bodies or SOEs, as follows:
 - a. with respect to an investment project, the investment deciding authority as provided for in the Regulations on Investment and Construction Management.
 - b. with respect to the purchase of equipment, devices, materials, means for working by State agencies, mass organisations and SOEs; the purchase of normal devices and means for working by armed force units, the person deciding on the purchase in accordance with the provisions of the laws.
 - c. with respect to projects involving capital under the ownership of companies or other forms of ownership, the BOMs or the competent leaders in accordance with the provisions of the laws.
9. **"Authorised agencies"** means the organisations or bodies empowered or authorised in accordance with the provisions of the laws.
10. **"Bidders"** means an economic entity having juridical person status to participate in a tender. Contractor may be an individual in case of a tender for the selection of a consultant. In cases of a tender for construction and installation, the Contractor shall be a constructor. In cases of a tender for the supply of goods, the contract shall be a supplier. In cases of a tender for the selection of a consultant, the contractor shall be a consultant. In cases of a tender for the selection of an investment partner, the contractor shall be an investor. A domestic contractor means a contractor having Vietnamese legal person status and operating in accordance with the laws of Vietnam.
11. **"Tender package"** means a part of the investment project divided according to technical requirements or the order of the progress of the project implementation, being on a reasonable scale and ensuring the

project synchronism. In cases of the purchase, a tender package may be one or one type of device, equipment or mean. A tender package may be carried out under one or more contracts (and a tender package can also be divided into a number of smaller parts).

12. **"Small-scale tender package"** means tender packages with a value of less than VND2 billion with respect to the purchase of goods or construction and installation.
13. **"Consultancy"** means the activities aimed at meeting various requirements on professional knowledge and experience set out by the tender organiser for the consideration, decision and inspection of the investment preparatory and implementing process.
14. **"Construction and installation"** means those jobs in connection with the construction and installation of equipment of works or parts of works.
15. **"Goods"** means machinery, means of transportation, equipment (complete, synchronous or single equipment), industrial property copyright, ownership over a technology¹, raw materials, materials, fuels, consumer goods (finished products or semi-finished products).
16. **"Bid invitation"** means the whole of documents and papers prepared by the tender organiser, including the requirements for a particular tender package used as the basis for the contractors to prepare their bid documents and for the tender to evaluate the bid documents.

A bid invitation must be approved by the authorised person or the authorised agency before it is given out.
17. **"Bid document"** means the whole of the documents and papers prepared by the contractor in accordance with the requirements set out in the bid invitation.
18. **"Group of experts"** means a team of experts and consultants set up or hired by the tender which is responsible to help the tender organiser to carry out the work required in the process of the tender organiser.
19. **"Tender closing"** means the point of time for finishing the receipt of bid documents as provided for in the bid invitation.
20. **"Bid opening"** means the time for opening bid documents as set out in the bid invitation.
21. **"Short list"** means a list of contractors shortened by steps of consideration. In cases of the tender for selecting a consultant, the short

¹ Literal translation

list shall include the consultants selected on the basis of the long list or the list of consultants registering for bid participation.

22. **"Assessment"** means the inspection and evaluation by the agencies with the function of assessing tender plans of projects, the bid results of tender packages, as well as the relevant bid documents prior to the approval by the authorised person or the authorised agency.
23. **"Price of a tender package"** means the price determined for each tender package in the tender plan of the project on the basis of the total investment capital or the total estimates of costs or the estimate of costs which have been approved. In cases of a tender for selecting a consultant for the preparation of the project, the price of the tender package must be approved by the authorised person prior to the organisation of the tender.
24. **"Bidding price"** means the price set out by the contractor in the bid document after the deduction of the discounts (if any) including all expenses necessary for the implementation of the tender package.
25. **"Price for appreciation"** means the bidding price after mistake corrections and adjustment of faults (if any), which is translated into the same aggregate (technical, financial, commercial and other categories) [with other partners] as the basis for comparison of bid documents.
26. **"Mistake correction"** means the corrections of the mistakes in order to made the bid documents accurate, including mistakes with the numbers, typing and spelling mistakes, mistakes of the units, by the tender organiser to form the basis for appreciation.
27. **"Fault adjustment"** means the addition or adjustment of the contents of the bid documents omitted or in excess in accordance with the provisions of the bid invitation as well as additions to or adjustment of differences between parts of the same bid document by the tender organiser.
28. **"Proposed price for bid winning"** means the price proposed by the tender organiser on the basis of the bidding price of the contractor proposed to win the bid after mistake corrections and fault adjustment in accordance with the requirements of the bid invitation.
29. **"Bid winning price"** means the price approved by the authorised person or the authorised agency as the bid results to form the basis for the tender organiser to negotiate, complete and execute the contract with the bid winner.

Bid winning price shall not exceed the price of a tender package in the approved tender plan.

30. "Contract signing price" means the price agreed upon by the tender organiser and the bid winner after the negotiation for completing the contract and in accordance with the bid winning results.

31. "Bid results" means the approval of the authorised person or the authorised agency on the name of the bid winner, the price of the bid and the type of the contract.

32. "Contract negotiation" means the negotiation to complete the contents of the contract in details with the bid winner for the signing of the contract.

33. "Bid attending guarantee" means the bidder's depositation of an amount of money (in cash, cheque, bank guarantee or similar forms) at an address for a certain period of time in accordance with the provisions of the bid invitation in order to secure the responsibilities of the bidder in relation to its bid document.

34. "Performance guarantee" means the bid winner's depositation of an amount of money (in cash, cheque, bank guarantee or similar forms) at an address for a certain period of time in accordance with the provisions of the bid invitation and the bid results in order to secure the responsibilities of implementing the signed contract.

Article 4. Forms for selecting contractors

1. Public tender
Public tender is a manner of tender of which the number of participant bidders is not limited. The tender organiser must make public on mass media the conditions and the time for participating in the bid at least 10 days prior to the date the bid is organised. This is the most common form of tender.

2. Limited tender
Limited tender is a manner of tender in which the tender organiser invites only a certain number of eligible bidders (no less than 5 bidders). The list of the participant bidders must be approved by the authorised person or the authorised agency. This form shall only be considered for use if one of the following conditions is met:

- a. only certain contractors may satisfy the requirements of the relevant tender packages;
- b. the form of limited tender is required by the capital source used
- c. the form of limited tender is preferred for its advantages in accordance with the specific conditions of the tender package.

3. Appointment of contractors

Appointment of contractor means directly selecting the contractor satisfying the requirements of the tender package for negotiating the contract.

This form of tender shall only be applied in one of the special cases below:

a. in the event of force majeure such as natural calamities or wars, it is permitted to appoint the unit eligible for implementing the work in a timely manner. Then, a report on the contractor appointment must be submitted to the Prime Minister for consideration and approval.

b. where the tender package is of an experimental nature, a national secret, security or national defence secret in accordance with the decision of the Prime Minister.

c. in the event of a special tender package subject to the decision of the Prime Minister on the basis of the assessment report of the Ministry of Planning and Investment, the written opinions of the financing organisations and other relevant authorities.

A proposal for contractor appointment must specify the following 3 contents:

- the grounds for application of contractor appointment;

- experience and capacity of the proposed contractor to be appointed in terms of technical and financial capacity.

- the value and the volume approved by the authorised person or the authorised agency as the grounds for the application of contractor appointment.

4. Competitive offers

This form is applied to tender packages for the purchase of goods with a value of less than 2 billions. Each tender package must have at least 3 offers from 3 different contractors on the basis of the requirements on offering of the tender. The offer may be sent directly by hand, by fax, by port or other means.

5. Direct purchase

On the basis of compliance with the provisions of clause 3 Article 4 hereof, the form of direct purchase is applicable to the amendment to a finished contract (finished for less than 1 year) or a contract currently in

- a tender package for the purchase of goods subject to the selection of the technology and technically synchronous and complicated equipment and technology or a tender package of especially complicated construction and installation;

- a tender package for the purchase of goods and for construction and installation with the value of VND500 billion upwards;

This form shall be applicable to the following cases:

3. Two-phase tender
2. Two-envelope tender: That is the contract shall submit the technical proposals and price proposals in 2 separate envelopes at the same time. The envelop of technical proposals shall be considered in advance for evaluation. Only the envelops of price proposals of those contracts with the technical proposals rated 70% or above shall be opened for further assessment. This method shall only applicable to the tender for selection of the consultant.
1. One-envelope tender: That is the contractor shall submit the whole of the bid document in one envelope. This shall be applicable to the tenders for the purchase of goods and for construction and installation.

Article 5. Modes of tendering

This form is applicable to the exclusively special industries for which, had there been no particular provisions, no tender would be organised. The body in charge of the industry must develop the process for implementation satisfying the targets of the Regulations on Tender and reach agreement with the Ministry of Planning and Investment for submission to the Prime Minister for decision.

7. Special purchase
 6. Self-implementation
- This form shall only be applicable to tender packages the investor of which is capable of implementation on the basis of compliance with the provisions of clause 3 Article 4 hereof (this case is not governed by Article 63 of the Regulations on Investment and Construction Management).
- implementation where the investor wishes to increase the amount of goods or the volume of work for which a tender has been organised, provided that the price or the price unit provided for in the signed contract shall not be exceeded. Prior to entering into the contract, the contractor must prove his/her eligible financial and technical capacity to implement the tender package.

This form of tender may be processed as follows:

- a. First phase: Contractors shall submit a preliminary bid document including technical proposals and a financial plan (without bidding quotations) to the tender organiser for its examination and discussions in details with each contractor in order to obtain uniform technical requirements and standards the contractor's preparation for official submission of their technical proposals.
- b. Second phase: The tender organiser requests the contractors participating in the first phase to submit the official bid document with the technical proposals having been properly amended on the same technical aggregate and detailed financial proposals in respect of the implementation schedule, contractual conditions and bidding price.

Article 6. Contracts

1. The tender organiser and the bid winner must enter into a written contract.
Such contract shall strictly comply with following principles:
 - a. It must comply with the current laws of the Socialist Republic of Vietnam on contracts. Where an issue is not governed by the laws of Vietnam, then permission from the Prime Minister must be obtained prior to the signing of the contract.
 - b. The contents of the contract must be approved by the authorised person or the authorised agency (which shall only be applicable to contracts to be entered into with foreign contractors or domestic contractors if the bid results are subject to the approval of the Prime Minister).

2. The contract may, depending on the duration and the nature of the tender package provided for in the tender plan, be in one of the following forms:
 - a. Package contract means a contract for the whole of work, applicable to tender packages which are expressly determined in terms of the quantity, requirements on quality and the times. Where events not covered in the contract arise which are not the faults of the contractor, then such events shall be considered and decided by the authorised person or the authorised agency.
 - b. Turn key contract means a contract covering all jobs such as design, supply of materials and construction and installation of a tender package to be performed by a contractor. The investor shall be liable to supervise the implementation, acceptance and then delivery

1. The tender plan of a project shall be prepared by the tender organiser in accordance with the provisions hereof and approved by the authorised person. In cases where there are not enough grounds to make the tender plan for the whole project, the tender organiser may prepare a tender plan for each part of the project in accordance with the implementation phases subject to approval of the authorised person.

Article 8. Tender plan of a project

3. The value of the contract after adjustment shall not exceed the total estimate of costs, the estimate or the price of the tender package determined in the approved tender plan. The total value for adjustment and the value of a contract under the project shall not exceed the approved total investment capital.

a. where there are changes in the volumes and the quantity (either an increase or a decrease) not due to the contractor;
 b. where there are changes in prices due to changes in the State policies in respect of labour elements, raw materials and materials and equipment of a contract subject to potential price adjustment with an implementation period of over 12 months. Price devaluation shall only be calculated as of the 13th month after the date of commencing the implementation of the contract.

2. Where agreed by the relevant parties or permitted by the authorised person or the authorised body, for application in the following cases:
 agency.

1. The conditions and the limits of the work or part of the work subject to potential adjustment and the adjustment formula are expressly provided for in the bid invitation approved by the authorised person or the authorised

The value of a contract shall only be adjusted in the following cases:

Article 7. Adjusting the values of a contract

c. Contract subject to potential price adjustment means a contract applicable to tender packages at the time of signing the contract for which, there have not yet been enough grounds to define exactly the quality and the volume or due to bid changes in prices as a result of the changes in State policies, and the term of such contract shall be over 12 months. The implementation of a contract subject to potential price changes shall comply with provisions of Article 7 hereof.

when the contractor has completed the whole of the construction under the signed contract.

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2. A tender plan of a project shall include:
- a. Separating the project into tender packages;
 - b. determining the price for each tender package and the sources of capital;
 - c. Form of selection of the contractor and the mode of tender of application to each tender package;
 - d. Time for organising the tender for each tender package;
 - dd². Type of the contract for each tender package; and
 - e. Duration of the implementation of the contract.
- Article 9. Conditions for the organisation of a tender**
1. Conditions to be satisfied for a tender to be organised:
- a. an investment decision or investment licence issued by the authorised person or the authorised agency;
 - b. the tender plan approved by the authorised person; and
 - c. the bid invitation approved by the authorised person or the authorised agency.
- In cases of a tender for selecting the consultant for the implementation of investment preparation of a project or a tender for selecting a partner for the implementation of a project, the conditions to be met for the organisation of a tender shall be the availability of the written approval of the authorised person or the authorised agency and the bid invitation being approved.
2. Conditions for participating as a bidder:
- a. having obtained a business registration certificate. In respect of a tender for the purchase of complicated equipment as provided for in the bid invitation, in addition to the business registration certificate, a permit for the sales of goods subject to the copyright of the producer must be obtained;
 - b. being technically and financially capable of meeting such requirements of the tender package.

Article 10. Conditions applicable to an international tender and preferential treatment to bidders

3. The tender organiser is not allowed to participate in a tender organised by itself as a bidder.
 - c. Submitting only one bid document for a single tender package, either as an independent or an associating bidder. Where a national corporation participates in a tender, then any its member units shall not participate in such tender package as an independent bidder for such tender package.

1. International tenders shall only be held in the following cases:
 - a. where there are no domestic bidders who may meet requirements of the tender package.
 - b. where, in respect of a project funded by aids from international or foreign organisations, the relevant Treaty requires an international tender.

2. Foreign contractors participating in international tenders in Vietnam must be in association with a Vietnamese contractor or undertakes to use Vietnamese subcontractors, and the distribution amongst the parties with respect to scope of work, the volume of work and the relevant price units must be set out.

3. A foreign contractor who wins the bid must follow the undertaking on the percentage of the work volume and the unit prices offered to the Vietnamese party as a party of an association or a sub-contractor as provided for in the bid document. During the negotiation of to complete the contract, if the foreign bid winner fails to comply with its undertaking in the bid document, then the bid results shall be cancelled.

4. A contractor participating in an [international] tender in Vietnam must undertake to purchase and use materials and equipment of suitable quality and prices which are produced, processed or otherwise currently available in the market of Vietnam.

5. Where two bid documents of 2 foreign contractors are rated equal, then the one with a more work given to the Vietnamese party (as an association party or a sub-contractor) shall be selected.

6. A domestic contractor participating in international tenders (either independently or in an association) shall be given priority in cases where its bid document is rated equal to those of foreign contractors.

7. Where two bid documents [of 2 domestic contractors] are rated equal, priority shall be given to the one with more labour consumption.
8. Domestic contractors participating international tenders shall be given preferential treatment in accordance with the provisions of the laws.

Article 11. Clarification of bid documents

Bidders shall not, after the tender closing, be allowed to make any changes to their bid documents. The tender organiser may, during bid consideration, require a bidder to clarify certain issues of the relevant bid document, either by direct or indirect dialogue, provided that such clarification shall secure the equality among the bidders and it shall not cause any substantial changes to the bid document nor changes to the bidding prices. All requests for clarification by the tender organiser as well as the responses from the bidders must be made in writing and filed by the tender organiser in accordance with the provisions of the laws.

Article 12. Duration for preparing the bid documents and effective period of a bid document.

1. The tender organiser shall, in its tender invitation, specify the time for tender closing and the effective period of bid documents. The time for preparing bid documents shall, depending on the scale and the complexity of each tender package, be at least 15 days with respect to a domestic tender (7 days with respect to a small-scale tender package) and 30 days with respect to an international tender, as of the date of issuance of the tender invitation.

In special cases where amendments are necessary to be made to some certain contents of the bid invitation while the time for tender closing is not yet up, then the tender organiser may extend the period for preparing the tender document.

Any amendment to the tender invitation shall be made in writing and sent to all participating bidders at least 10 days prior to the provided tender closing so that the bidders may have sufficient time for completing their bid documents.

2. The validity period of a bid document shall not exceed 180 days as of the tender closing. In cases where an extension of the validity period of bid documents is required, the tender organiser must so inform the bidders after the obtaining of permission from the authorised person or the authorised agency. If a bidder does not accept the extension, s/he shall be refunded the bid attending guarantee.

Article 13. Bid opening, bid consideration, submission for approval and announcement of bid results

1. Bid opening:

After bid documents which are submitted within the provided period have been received for filing as "confidential documents", the bid opening shall be publicly held at the time, on the date and at the location stated in the tender invitations, which shall not be later than 48 hours after the tender closing (excluding the public holidays as provided for by laws).

The minute on the bid opening shall specify:

- a. the name of tender package
- b. the hour, date and location of the bid opening
- c. bidders' names and addresses
- d. bidding prices, bid attending guarantee, and implementation schedule
- dd. other relevant issues.

The representatives of the tender organiser and the bidders invited to the bid opening must sign on the minute on bid opening.

The originals of bid documents after the bid opening must be signed by the tender organiser on each page before the phases of rating and consideration.

2 Bid consideration

The tender organiser shall study, consider and rate bid documents which have been opened on the basis of the requirements set out in the bid invitation and evaluation standards approved by the authorised person or the authorised agency before the bid opening. The rating of bid documents shall be based on the following principles:

- a. using the method of marks rating with respect to the consideration of bid documents for consultancy tender packages, tender packages for selecting partners, the consideration of preliminary, technical consideration of tender packages for the purchase of goods or construction and installation.
- b. using the method of rating with respect to tender packages for the purchase of goods or construction and installation in accordance with the following 2 steps:

Step 1: to use the mark range to rate the technical aspect in order to work out the short list (of bidders satisfying basis

requirements of the bid invitation on the basis of the standards for rating)

Step 2: to determine the price for appreciation with respect to bid documents falling under the short-list for grading.

c. not using the prices for bid consideration or the floor prices, but the price of a tender package in the approved tender plan.

3. Approving and announcing bid results

Bid result must be approved by the authorised person or the authorised agency. The tender organiser is only allowed to announce bid results which have been approved by the authorised person or the authorised agency.

Article 14. The currency and language for a tender

1. The currency used for a tender is provided for in the bid invitation by the tender organiser on the principle of one currency for one volume of work.

During the period of consideration of the bid documents, the exchange rates between Vietnamese Dong (VND) and a foreign currency shall be determined by the relevant rate quoted by the State Bank of Vietnam at the time of the bid opening.

2. The bid invitation must expressly provide for the taxes impossible in accordance with the provisions of the laws so that the bidders may have the grounds to determine their bidding prices.

3. The language used in a tender shall be Vietnamese in respect of domestic tenders, and Vietnamese and English in respect of international tenders.

Article 15. Responsibilities of the tender organiser

In addition to the task of preparing and submitting for approval the tender plan of the project in accordance with Article 8 hereof, the tender organiser shall be liable to implement the tender in accordance with the approved tender plan or the written approval of the authorised person or the authorised agency and the process for organising a tender provided for in Articles 20, 22, 33, 45 and 47 hereof, including:

1. organising a group of experts or hire consultants for the tender subject to approval of the authorised person or the authorised agency;

2. summing up the process of the tender and submitting the bid results to the authorised person or the authorised agency for consideration and approval;

3. announcing the bid winner, negotiating to complete the contract;

4. submitting the contract for approval (in accordance with point b clause 1 Article 6 hereof) and signing the contract.

Article 16. The members, qualifications, responsibilities and powers of the group of experts

1. Members:
Depending on the nature and the complexity of each tender package, the members of a group of experts may include those in:

- a. technique and technology
- b. finance and economics
- c. laws and other fields (as may be necessary)

The head of a group of experts shall be appointed by the tender organiser subject to the approval of the authorised person or the authorised agency, who shall carry out the work, sum up the implementation, and prepare reports on rating and such other relevant documents.

2. Qualifications of the members:

- a. having professional skills relevant for the tender package;
- b. being knowledgeable in the contents of the tender package;
- c. having experience in actual management or researches.
- d. being knowledgeable in the process of the tender

3. The group of experts shall have the following powers and responsibilities:

- a. preparing legal documents and drafting the bid invitation;
- b. receiving and managing bid documents;
- c. analysing, rating, comparing and grading bid documents in accordance with the standards for rating set out in the bid invitation and the approved rating standards prior to the bid opening.

d. summing up the documents on the process of the consideration and selection of the contractor and preparing the report on bid consideration;

dd. making sincere and objective opinions in writing to the tender organiser during the analysis, rating and grading bid documents and

- e. being responsible before the laws for their opinions. Having the right to reserve such opinions for the superior body to consider.
- e. being responsible to keep the information confidential, not co-operating with any bidders in any form; and
- g. not being allowed to participate in the assessment of the bid results.

Chapter II

TENDERS FOR SELECTING CONSULTANTS

Article 17. Contents of consultancy

1. Consultancy on project preparation
 - a. preparing the planning and the overall plan for development;
 - b. preparing the pre-feasibility study;
 - c. preparing the feasibility study.
 - d. evaluating the reports on the preparation of the planning, the overall plan for development, the pre-feasibility study and the feasibility study.
2. Consultancy on project implementation.
 - a. conducting the survey
 - b. Preparing the design, the total estimates and the estimates of costs and expenses
 - c. evaluating and examining the design and total estimates and the estimates of costs and expenses (if any)
 - d. preparing the bid invitation;
 - dd. Analysing and evaluating bid documents.
 - e. Supervising the construction and instalment of equipment.
3. Consultancy on other matters.
 - a. managing the project, performing financial arrangement;
 - b. managing the implementation of the project

2. announcing the registration for bid participation
 - e. attached annexes
 - dd. preferential treatments (if any)
 - d. standards for rating
 - c. other basis information as relevant
 - b. the references (the objectives, scope of work, progress, duties and responsibilities of the consultant, responsibilities of the tender organiser and such other relevant issues)
 - a. a letter of bid invitation
1. preparing the bid invitation, including:
 - A tender for selecting a consultancy shall be proceeded as follows:

Article 20. Progress for organising a tender

- 2 A consultant shall be responsible before the tender organiser for the truthfulness, accuracy and objectiveness of his/her profession and shall duly perform the tasks under the signed contract.
- 1 A consultant must have proper professional qualifications suitable to the requirements of the bid invitation. An expert consultant must have decrees and certificates supporting his/her professional qualifications.

Article 19. Requirements applicable to consultants

- 2 Consultants providing consultancy services independently or under an organisation operating in accordance with the laws.
 - 1 Governments or non-government consultancy organisations operating in accordance with the laws;
- Consultants are in the following forms:

Article 18. Status of consultants

- c. training, carrying out technology transfer and other jobs.
- A consultant is not allowed to participate in the assessment of the results of the work performed by himself, nor participate in the tender for the implementation of the tender packages for the purchase of goods or construction and installation he has consulted (with an exception for tender packages in the form of turn key projects).

The announcement of registration for bid participation shall be made on suitable mass media or sent directly to bidders recommended by relevant organisations or entities providing information.

3. Determining the short list

a. The short list shall be worked out in accordance with the standards for selection approved by the authorised person or the authorised agency;

b. The short list must be approved by the authorised person or the authorised agency.

4. Bid invitation:

The tender organiser shall send invitations to the short-listed contractors.

5. Receipt and management of bid documents:

The tender organiser shall only receive those bid documents submitted within the provided period in accordance with the bid invitation which shall be kept in accordance with the regulations on management of confidential documents.

6. Opening the envelop of technical proposals

For this purpose, clause 1 Article 13 hereof shall be complied with.

7. Appreciating technical proposals:

Complying with the standards for appreciation set out in the bid invitation and the specific appreciation standards approved by the authorised person or the authorised agency prior to the opening of the envelop of technical proposals.

8. Opening the envelop of financial proposals

The envelops of financial proposals of bid documents obtaining 70% of the total marks for technical proposals in accordance with clause 1 Article 13 hereof.

9. General appreciation

The use of marks to grade must be based on the structure of technical and price marks on the same aggregate set out in the bid invitation; of which the price marks shall not exceed 30% of the total marks.

10. Submission of the list of bidders grading for approval

Article 22. Process for organising tenders.

TENDERS FOR PURCHASING MATERIALS AND EQUIPMENT

Chapter III

- 2. Domestic consultancy cost: in accordance with current provisions of the laws.
Reserve cost shall only be used upon the approval of the authorised person or the authorised agency.
Reserve cost shall determined in accordance with current provisions and it shall only be used upon the approval of the authorised person or the authorised agency.

 - d. Reserve cost
 - c. Taxes impossible in accordance with the laws.
 - b. Other costs other than salary (airfare, allowances for working tips, stationary, communication, working equipment, training, and others).
 - a. Consultant's fee (including basis salary, social welfare cost, management fee, corporate profit and other allowances).

- 1. Foreign consultancy cost shall include:

Article 21: Consultancy cost

- 14. Submitting of the contract for approval (in accordance with provisions of point b clause 1 Article 6 hereof) and signing the contract.
- 13. The tender organiser shall announcement the approved bid results to the participating bidders, and negotiating the contract with the bid winner.
- 12. Announcing the bid winner and negotiating the contract:
Submission of bid results for approval.
- 11. The tender organiser may implement or have the work provided for in clauses 1 to 11 inclusive of this Articles implemented by experts.
The tender organiser shall invite the first-ranked bidder to negotiate the contract. In cases of failure, the tender organiser may invite the second-ranked bidder but such invitation must be approved by the authorised person or the authorised agency.
Negotiating the contract:

A tender for the purchase of goods shall be in accordance with the following process:

1. carrying out pre-qualification of the bidders (if applicable)
2. Preparing the tender invitation:
3. Sending the letter of bid invitation or the notice of bid invitation.
4. Receiving and managing bid documents.
5. Bid opening.
6. Rating and grading the bidders.

The organisation of a tender provided for in clauses 1 to 6 inclusive of this Article shall be implemented by the tender organiser or the hired experts.

7. Submitting the bid results for approval.
8. Announcing the bid winner and negotiating the contract.
9. submitting the contents of the contract for approval (in accordance with item b clause 1 Article 6 hereof) and signing the contract.

Article 23. Pre-qualification of bidders

1. Bidders must be pre-qualified with respect to tender packages of VND300 billion or more in order to select the bidders with eligible capacity and experience in accordance with the requirements of the bid invitation.
2. The pre-qualification shall be proceeded as follows:
 - a. preparation of the dossier for pre-qualification, including:
 - letter for pre-qualification
 - instructions for pre-qualification
 - standards for rating
 - annexes attached
 - b. issue of pre-qualification invitation notices
 - c. receipt and management of dossiers for pre-qualification participation
 - d. rating of the dossiers for pre-qualification participation

- dd. submission of the pre-qualification results
- e. announcement of pre-qualification results.

Article 24. Bid invitations

A bid invitation shall include:

1. a letter of bid invitation
2. form of bid participation application
3. instructions for bidders
4. preferential treatments (if any)
5. taxes impossible in accordance with the laws
6. requirements on technologies, materials, equipment, goods, technical specifications and origins
7. the tariff
8. standards for rating (including the methods and formula for conversion into the same aggregate in order to determine the price for appreciation)
9. general conditions and specific conditions of the contract
10. form of bid attending guarantee
11. form of the contract
12. form of performance guarantee

Article 25. Letters or notices for bid invitations

Such letters or notices for bid invitations shall include:

1. name and address of the tender organiser
2. outlines of the project, the time and place for goods delivery
3. instructions for studying the bid invitation
4. conditions for participating as a bidder
5. time and place for the receipt of bid documents

Article 26. Instructions to bidders

The instructions to bidders shall mainly cover:

1. outlines of the project
2. the capital sources for the implementation of the project
3. requirements on the capacity, experience and legitimate status of the bidders, the evidence and other relevant information relating to the bidders during a reasonable period of time prior to the time the tender is organised
4. visiting the site (if any) and responses to the enquiries of the bidders.

Article 27. Bid documents

The contents of a bid document for the supply of goods shall cover:

1. administrative and legal issues:

- a. a legitimate bid participation application (signed by the authorised person)
- b. copy of the business registration certificate. With respect to the purchase of complicated equipment set out in the bid invitation, in addition to a copy of the business registration certificate, a copy of the licence for the sale of goods under the copyright of the producer shall also be required.
- c. a document introducing the capacity and experience of the bidder including its sub-contractors (if any)
- d. bid attending guarantee

2. technical contents:

- a. technical specifications of the goods
- b. technical and technological solutions
- c. origins of goods and certificates of the producer
- d. organisation of construction and installation, training and technology transfer

dd. progress of implementing the contract.

3. financial and commercial issues:

- a. bidding price with interpretations and the detailed tariff;
- b. conditions for goods delivery

- 2. Technical issues
 - c experience in implementing similar contracts in Vietnam and foreign countries.
 - b financial capacity (turnover, profits, and other figures)
 - a production and business capacity, the technical facilities, qualification of professional staff
- 1. Capacity and experience of the bidders:
 - the following contents:
 - Bid documents shall be evaluated in accordance with the standards applicable to

Article 29. Standards for evaluation of bid documents

- 5. After the depositation of the performance guarantee, the bid winner shall be refunded the bid attending guarantee.
- 4. A bid attending guarantee shall only applicable to public and limited tenders.
- c. breaching the Regulations on Tender provided for in Article 60 hereof.
- b. withdrawing the bid documents after tender closing
- a. winning the bid but refusing to implement the contract
- 3. A bidder shall not be refunded the bid attending guarantee in the following cases:
 - 2. The value of the bid attending guarantee shall range from 1% to 3% of the bidding price. The tender organiser may provide for the uniform guarantee in order to keep confidential the bidding prices for the bidders. The tender organiser shall provide for the form and conditions for bid attending guarantee. The guarantee shall be refunded to the bidders who fail at the tender within 30 days after the date the bid results are announced.
 - 1. The bidder must deposit a bid attending guarantee together with the bid document. Where the form of two-phase tender is applied, the bid attending guarantee shall be paid in the second phase.

Article 28. Bid attending guarantees

- d. payment conditions.
- c. financial conditions (if any)

a capacity to meet the requirements on quantity, quality and technical specifications of the goods set out in the bid invitation;

b. economic and technical features, codes of the equipment, place of production and production qualifications and other issues.

c reasonability and the economic effectiveness of the technical solutions and the measures to organise the supply of goods.

d capability to install equipment and ability of the technicians.

dd the adaptability to the geography.

e the environmental impact and solutions.

3. Finance and price: financing capacity (if required), commercial and financial conditions, prices for appreciation.

4. Other standards: the time for implementing the contract, technology transfer, training and other issues

Article 30. Evaluation of bid documents

The evaluation of bid documents shall be proceeded as follows:

1. Pre-qualification

Pre-qualification aims at excluding bid documents that do not satisfy the requirements and is carried out as follows:

a. inspection of the eligibility of the bid documents

b. inspection of the satisfaction of general requirements of the bid invitations by the bid documents.

c. clarification of the bid documents (where necessary)

2. Detailed evaluation:

Detailed evaluation of a bid document shall be carried out on the basis of the price for appreciation, including 2 steps as follows:

a. Step 1: Technical evaluation to short-list the bid documents:

The evaluation is based on the requirements and standards for evaluation set out in the bid invitation and the detailed standards for evaluation which are not inconsistent with the evaluation standards provided for in the bid invitation approved by the authorised person or the authorised agency prior to the time for bid opening. Bidders

given at least 70% of the total technical marks shall be included in the short-list.

b. Step 2: Financial and commercial evaluation

To carry out financial and commercial evaluation of bid documents of contractors included in the short-list on the same aggregate in accordance with the evaluation standards which have been approved.

The commercial and financial evaluation is aimed at determining the price for appreciation including:

- mistake correction

- fault adjustment

- conversion of the bidding price into a common currency

- conversion into the same aggregate for comparison

- determination of the price for evaluation of the bid documents

3. Grading bid documents in accordance with the price for appreciation and making proposal on the bid winner with the relevant bid winning price.

Article 31. Bid results

1. The bidder with eligible bid documents satisfying all general requirements of the bid invitations, having the lowest price for appreciation and the proposed price for bid winning is lower than the price of the tender packages shall be considered to win the bid.

2. Bid results must be approved by the authorised person or the authorised agency.

3. The tender organiser shall invite the bid winner to negotiate the contract. Where it is unsuccessful, for the above purpose, the tender organiser may invite the up-runners but such invitation must be approved by the authorised person or the authorised agency.

Article 32. Performance guarantee

1. The bid winner must deposit a performance guarantee to the tender organiser to secure the responsibility of implementing the signed contract.

2. The amount of performance guarantee of the contract shall not exceed 10% of the total value of the contract depending on the form and scale of the contract. In special cases where the sum is required to be higher than

10%, then it must be approved by the authorised person or the authorised agency. A performance guarantee shall be effective until the contractor takes over the obligation of warranty or maintenance.

3. Performance guarantee shall cover the following main issues:

a. the time for depositation: The bid winner must deposit a performance guarantee prior to the signing of the contract.

b. The guarantee is provided in the forms of cash, cheques, bank guarantees or similar forms.

c. Validity period of the guarantee

d. Currency for the guarantee.

4. A performance guarantee must be applicable to all forms of selecting the contractors set out in Article 4 hereof, except only for the form of self-implementation.

Chapter IV

TENDERS OF CONSTRUCTION

Article 33. Process of the organisation of a tender

A tender for construction and installation shall be proceeded as follows:

1. Pre-qualification of bidders (if any).
 2. Preparation of tender invitations.
 3. Sending the letter or notice for bid participating invitation.
 4. Receipt and administration of bid documents.
 5. Bid opening.
 6. Evaluation and grading of bidders.
- Those work set out in clauses 1 to 6 inclusive of this Article shall be implemented by the tender organiser or the experts hired by the tender organiser.
7. Submission of the bid results for approval.
 8. Announcing of the bid winner and negotiation of the contract.

9. Submission of the contents of the contract (in accordance with point b clause 1 Article 6 hereof) and signing the contract.

Article 34. Pre-qualification of bidders

1. The pre-qualification of bidders shall only be carried out in respect of tender packages with a value of VND200 billion or more, which is aimed at selecting a contractor with suitable ability and experience for the implementation of the project in accordance with the requirements of the bid invitations.

2. The pre-qualification shall be carried out in accordance with the following steps:

a. Preparing document for pre-qualification, including

- an invitation letter participating in the pre-qualification

- pre-qualification instructions

- evaluation standards of the pre-qualification.

- annexes attached.

b. Giving announcement invitations for pre-qualification.

c. Receiving and managing pre-qualification participation documents

d. Evaluating the pre-qualification participating documents.

dd. Submitting pre-qualification results for approval

e. Announcing pre-qualification results

Article 35. Bid invitations

A bid invitation shall include:

1 Letter of invitation to the bid

2 Form of bid participation application

3 Instructions to the bidders

4 Preferential treatments (if any)

5. Taxes impossible in accordance with the laws

6. Technical design documents attached with projected quantity table and technical directions

7. Construction progress
8. Standards for evaluation (including the method and the formula for conversion into the same aggregate to determine the price for appreciation)
9. General and specific conditions of the contract.
10. Guarantee for bid participation.
11. Form of the contract.
12. Performance guarantee

Article 36. Bid invitation letter or notice

A bid invitation letter or notice shall include:

1. Name and address of the tender organiser.
2. Brief description of the project, location and duration of the construction and other issues
3. Instructions for studying the bid invitations.
4. Conditions for participating as bidders.
5. Duration and location of receiving bid documents.

Article 37. Instructions given to contractors.

The main contents of the instructions shall include:

1. Brief description of the project
2. Capital sources for implementing the project
3. Technical standards to be applied.
4. Requirements on the capacity, experience and legal status of the contractor, the evidence and information relating to the contractor during a reasonable time period prior to the organisation of the tender.
5. Visiting the site (if any) and answering enquiries by contractors.

Article 38: Bid documents

A bid document for the construction and installation shall include:

1. Administrative and legal issues:

a. a legitimate bid participation application (signed by the authorised person)

b. copy of the business registration certificate.

c. a document introducing the capacity and experience of the bidder including its sub-contractors (if any)

d. association agreement (in cases of an association for the participation in the bid)

dd. bid attending guarantee

2. Technical contents:

a. measure and the organisation of construction and installation under the tender package;

b. progress of implementing the contract

c. technical specifications, sources of supply of materials and construction materials

d. measures to secure the quality

3. Financial and commercial issues:

a. bidding price with interpretations and the detailed tariff;

b. financial conditions (if any)

c. payment conditions.

Article 39. Guarantee for bid participation

The bid attending guarantee for a tender package on construction and installation shall be similar to the one for a tender for the purchase of goods set out in Article 28 hereof.

Article 40. Standards for evaluating bid documents

Bid documents shall be evaluated in accordance with the following standards:

1. Technical and quality requirements:

a. Ability to meet technical and quality requirements of the materials and equipment stated in the design document.

b. Reasonableness and feasibility of technical solutions and methods, organisation of construction activities

c Ensuring hygiene and environmental conditions and other safety conditions such as fire prevention, labour safety, etc.

d Eligibility of construction equipment (quantity, types, quality and schedule of mobilisation...)

dd Measures to secure quality standards

2. Standards of Contractor's capacity and experience

a Experience drawn from undertaking projects having similar technical requirements in sites with similar geographic conditions.

b Number and qualification of technical experts and workers directly involving in the project.

c financial capacity (turnover, profits and others)

3. Financial and price standards: Financing capacity (if required), commercial and financial conditions, price for appreciation.

4. The progress of implementation:

a Ability to ensure the overall progress of implementation stated in the bid invitation

b Reasonableness of the progress of the completion of relevant items

Article 41. Evaluation of bid documents

The evaluation of bid documents shall be proceeded as follows:

1. Pre-qualification

Pre-qualification aims at excluding bid documents that do not satisfy the requirements and is carried out as follows:

a. inspection of the eligibility of the bid documents

b. inspection of the satisfaction of general requirements of the bid invitations by the bid documents.

c. clarification of the bid documents (where necessary)

2. Detailed evaluation:

Detailed evaluation of a bid document shall be carried out on the basis of the price for appreciation, including 2 steps as follows:

a. Step 1: Technical evaluation to short-list the bid documents:

The evaluation is based on the requirements and standards for evaluation set out in the bid invitation and the detailed standards for evaluation approved by the authorised person or the authorised agency prior to the time for bid opening. Bidders given at least 70% of the total technical marks shall be included in the short-list.

b. Step 2: Financial and commercial evaluation

To carry out financial and commercial evaluation of bid documents of contractors included in the short-list on the same aggregate in accordance with the evaluation standards which have been approved.

The commercial and financial evaluation is aimed at determining the price for appreciation including:

- mistake correction

- fault adjustment

- conversion of the bidding price into a common currency

- conversion into the same aggregate for comparison

- determination of the price for evaluation of the bid documents

3. Grading bid documents in accordance with the price for appreciation and making proposal on the bid winner with the relevant bid winning price.

Article 42. Bid results

1. The bidder with eligible bid documents satisfying all general requirements of the bid invitations, having the lowest price for appreciation and the proposed price for bid winning being lower than the price of the tender package, or the approved cost estimate or total cost estimates (where the approved cost estimate or total cost estimate is lower than the approved price of the tender package) shall be considered to win the bid.

2. Bid results must be approved by the authorised person or the authorised agency.

3. The tender organiser shall invite the bid winner to negotiate the contract. Where it is unsuccessful, for the above purpose, the tender organiser may invite the up-runners but such invitation must be approved by the authorised person or the authorised agency.

Article 43. Performance guarantee

Performance guarantee is similar to the one provided for in Article 32 hereof with respect to a tender package for the purchase of goods.

Chapter V

TENDERS IN RESPECT OF SMALL-SCALE TENDER PACKAGES

Article 44. Principles of the organisation of small-scale tender packages

1. This form of tender is applicable to tender packages set out in clause 12 Article 3 hereof on the basis of compliance with the targets of tenders set out in Article 1 and such specific provisions of Article 45 hereof.
2. The organisation of small-scale tender packages shall be proceeded on the basis of compliance with the following principles:
 - a. only permitting businesses of all economic sectors (excluding businesses being national corporations or their member-companies) located in the provinces and cities under central authority to take part in. Where the number of local contractors which are likely to participate is less than 3, then the tender organiser must invite outside participants. Where the tender package is subject to complicated technical requirements, then the tender organiser may invite businesses which are national corporations or their member-companies to participate.

Article 45. Organisation of a tender

1. A tender is proceeded in the following steps:
 - a Preparation of tender invitations
 - b Sending of the letter or notice for bid participating invitation.
 - c Receipt of bid documents, bid opening, gradation and rating of bidders.

The organisation of tenders set out in points a, b and c of this clause shall be implemented by the tender organiser or the experts it hires.

- d. Approval of bid results and signing of the contract.
2. Bid invitations

A bid invitation prepared by the tender organiser should be simple, clear and transparent while secure the necessary requirements on the bidders, including:

- a Letter of invitation to the bid and the model form bid participation application
 - b Requirements of the tender package:
 - for the purchase of goods: technical specifications, technical instructions and progress of implementation.
 - for construction and installation: the technical design together with the approved estimations, technical instructions and progress of implementation.
 - c technical standards for rating (acceptable or not acceptable) in accordance with the provisions of point b clause 2 of this Article.
 - d The forms of bid attending guarantee and performance guarantee.
3. Bid documents
- A bid document prepared by the bidder must secure the authenticity and feasibility, which shall include:
- a an application for participation in the bid; copy of the business registration certificate, bid attending guarantee;
 - b technical proposals and progress of implementation;
 - c bidding prices.
4. Evaluation of bid documents
- a Only bid documents which are eligible and have bidding prices after mistake correction not higher than the approved price of the tender package shall be evaluated.
 - b Evaluation is based on the standards set out in the bid invitations in order to determine the bidders satisfying the requirements of the bid invitations. The bidder satisfying the requirements of the bid invitation, satisfying the technical requirements, and having the lowest bidding price (after mistake correction and fault adjustment in accordance with the requirements of the bid invitation) shall be proposed to be the bid winner.
5. Bid results
- a Bid results must be approved by the authorised person or the authorised agency.

- b. The tender organiser shall invite the bid winner to negotiate and enter into the contract.
6. Bid attending guarantee and performance guarantee
Bid attending guarantee shall be equal to 1% of the bidding price and the performance guarantee shall be equal to 3% of the value of the contract in accordance with the provisions of Article 28 and Article 32 hereof.

Chapter VI

TENDERS FOR SELECTING PARTNERS FOR THE IMPLEMENTATION OF PROJECTS

Article 46. Principle of application

On the basis of the annual investment list issued by the Government or upon proposals of the investors, if a project is interested by 2 partners or more, then a tender shall be organised for the authorised person to select the partner to implement the project in the following forms:

1. A project which is still in the form of an idea
2. A project with an approved pre-feasibility study or feasibility study
3. Certain requirements of the work

Article 47. The process of the tender

Where there are 7 partners or more are interested in the project, then a pre-qualification shall be organised. The pre-qualification shall be implemented in accordance with the provisions of clause 2 Article 23 or clause 2 Article 34 hereof.

The tender for selecting the partner for the implementation of a project shall be proceeded in accordance with the following steps:

1. Preparing the tender invitation

On the basis of the requirements of the projects on the purpose, contents, scope of work and the progress of implementation, a bid invitation shall be prepared to include:

- a. Letter of bid invitation
- b. basic requirements of the project
- c. instructions to bidders

2. Invitation of bids
 - d. relevant information
 - dd. standards for rating
 - e. break-down annexes attached
3. The tender organiser shall choose the form of informing suitable to the form of selecting the contractors.
 3. Receipt and management of bid documents
 - The tender organiser shall receive and manage bid documents in accordance with the provisions of the laws.
 4. Bid opening.
 5. Evaluation of bid documents

Evaluation shall be in the forms of rating marks. Bidders gaining 70% of the total marks upwards shall be proposed to the authorised person for consideration to be the bid winner.

Bid documents shall be rated and evaluated in accordance with the 2 steps as follows:

 - a. Primary evaluation: To consider the bid documents in terms of the legal and administrative aspects and ability of the bid documents to meet the requirements of the bid invitation.
 - b. Specific evaluation and grading:

Specific evaluation of bid documents is based on the standards for evaluation set out in the bid invitation and the specific standards approved by the authorised person or the authorised agency prior to the bid opening in accordance with the main contents as follows:

 - mistake corrections
 - specific evaluation of technical, financial, commercial, and technology transfer issues (if any)
 - grading of bidders
6. Submission of bid results for approval
7. Announcement of the bid winner and negotiation of the contract.

On the basis of the approved bid results, the tender organiser shall invite the bid winner to negotiate the contract.

8. Submission of the contract for approval and signing of the contract.

Article 48. Bid attending guarantee and performance guarantee

On the basis of the nature of the project, the application of bid attending guarantee and performance guarantee shall be similar to the ones provided for in Articles 28 and 32 hereof.

Chapter VII

STATE MANAGEMENT OF TENDERS

Article 49. State management body for tenders

1. The Government shall carry out uniform management of tenders throughout the country.
2. The Ministry of Planning and Investment shall be the body assisting the Government to carry out State management of tender activities.
3. Ministers, Heads of Ministerial-level agencies, and Heads of Governmental agencies shall carry out State management of tender activities within their scope of responsibilities and powers, and shall appoint a Vice-Minister [in cases of Ministries] or an equivalent (in the cases of Ministerial-level agencies and Governmental agencies) to directly be in charge of tender activities.
4. Chairmen of People's Committees of provinces and cities under central authority and Chairmen People's Committees at the district and ward level shall carry out State management of tenders with respect to tender packages under their management, and shall appoint one up-runner to directly be in charge of tenders.

Article 50. Contents of State management of tenders

State management of tenders shall cover:

1. preparing, issuing or submitting for issued legal documents on tenders
2. organising the implementation
3. organising the evaluation of tender plans of the project and evaluation the bid results.

Article 51. Responsibilities of the authorised person or the authorised agency

4. approving the tender plans and bid results.
5. organising inspections of tender activities.
6. summarising, evaluating and reporting on the organisations of tenders and the compliance with the Regulations on Tenders.
7. settling difficulties and claims on tenders.

1. Approving main contents of a tender:

- a. the tender plan of the project
 - b. the short-list of bidders participating in a limited tender
 - c. the short-list of consultants participating in the tender
 - d. the invitations for pre-qualification, standards for pre-qualification and pre-qualification results
 - dd. the bid invitations
 - e. the standards for evaluating bid documents
 - g. the list of grading bidders in accordance with the technical proposals and the overall list of grading in accordance with technical and financial standards
 - h. bid results
 - i. the contents of the contract (a contract with foreign party or a contract with a domestic contractor the bid results of which are approved by the Prime Minister)
2. Instructing the tender organisers to negotiate and sign and organise the implementation of the contract with the bid winner.
 3. Inspecting the compliance with the Regulations on Tenders by the tender organisers.

Article 52. Delegation

During the process of a tender, the approval of tenders shall be delegated in accordance with the following principles:

- The person authorised to approve the projects shall be required and be responsible to approve the tender plan of such projects and the bid results of tender packages of high values.

- [The person authorised to approve the projects] may delegate or authorise the lower bodies to approve the bid results of tender packages with small values.

- Evaluating agencies and individuals participating in the evaluation shall be responsible for their evaluation conclusions.

In details, it is delegated as follows:

1. The Prime Minister shall approve or authorise the approval with respect to:

a. tender plans of Group A projects and the equivalent

b. bid results of tender packages within the levels set out in Table 1 in Article 53 hereof.

c. approve application for contractor appointment, direct purchase, self-implementation with respect to tender packages set out in clauses 3, 5 and 6 Article 4 hereof.

With respect to points a and b clause 1 of this Article, the Prime Minister shall make approval on the basis of the evaluation report of the Ministry of Planning and Investment and the written opinions of the relevant authorised bodies. With respect to clause c clause 1 of this Article, the Prime Minister shall make approval on the basis of the evaluation report of the Ministry of Planning and Investment and the written opinions of financing agencies and relevant authorised agencies.

d. decide on inspecting and dealing with breaches of the Regulation on Tender.

2. The Minister of Planning and Investment shall be responsible for:

a. evaluating for submission to the Prime Minister for approval:

- the tender plans of Group A projects and the equivalent;

- bid results of tender packages under Group A projects and the equivalent set out in Table 1 in Article 53 hereof.

- application for contractor appointment, direct purchase, and self-implementation with respect to tender packages set out in clauses 3, 5 and 6 Article 4 hereof.

- b. evaluating the bid results of other tender packages upon the request of the Prime Minister.
- c. reaching agreement (with respect to projects subject to its authority of issuing investment licences) on the tender plans and bid results of tender packages of such projects subject to its authority of issuing investment licences set out in point b clause 2 Article 2 hereof.

3. Ministers, Heads of Ministerial-level agencies, Heads of Governmental agencies, Boards of Management of national corporations set up by the Prime Minister, and Chairmen of People's Committees of provinces and cities under central authority shall be responsible for:

- a. making reports or written opinions on the tender plans of Group A projects and the equivalent as equivalent
- b. submitting the bid results for approval with respect to tender packages provided for or making written opinions on the bid results of relevant tender packages subject to the approval of the Prime Minister.
- c. approving basis contents of the process of tender:
 - with respect to Group A projects and equivalent: in accordance with points b, c, d, dd, e, and g clause 1 Article 51 hereof.
 - with respect to tender packages of Groups B and C projects or equivalent: in accordance with points a, b, c, d, dd, e, and g clause 1 Article 51 hereof.

d. approving the bid results with respect to tender packages subject to the limits set out in Table 1 in Article 53 hereof.

- dd. approving the contents of the contract (in accordance with point b clause 1 Article 6 hereof).
- e. reaching agreement (with respect to projects subject to their authority of issuing investment licences) on the tender plans and bid results of tender packages of such projects subject to their authority of issuing investment licences set out in point b clause 2 Article 2 hereof (on the basis of the evaluation of the agencies assisting the tenders).

4. Chairmen of People's Committees at the district and ward levels shall be responsible for approving the basis contents of the tender process set out in Article 51 hereof with respect to projects under their [investment] decision on the basis of the evaluation of the relevant units assisting of tender activities.

5. The Boards of management of joint venture companies, duly authorised representatives of associations shall have the following responsibilities with respect to projects falling under point b clause 2 Article 2 hereof:

a. approving tender plans of projects on the basis of the written agreement of the investment licensing agencies;

b. approving the bid results of all tender packages of projects on the basis of the agreements of the investment licensing agencies;

c. approving the basis contents of the tender process set out in points b, c, dd, e, g and i clause 1 Article 51 hereof;

d. deciding on the contractor appointment, direct purchase, and self-implementation with respect to tender packages set out in clauses 3, 5 and 6 Article 4 hereof, on the basis of the agreements of the investment licensing agencies.

Article 53. Delegation for the approval and evaluation of bid results

On the basis of the approved price of the tender package with respect to projects set out in points a, c and dd clause 2 Article 2 hereof, the evaluation and approval of bid results shall comply with Table 1 below.

TABLE 1: DELEGATION FOR THE APPROVAL AND EVALUATION OF BID RESULTS

Project Groups	Approving agencies	Evaluating agencies	Tender packages of Field I (VND billion)		Tender packages of Field II (VND billion)		Tender packages of Field III (VND billion)	
			Consultancy	Goods and Construction & Installation	Consultancy	Goods and Construction & Installation	Consultancy	Goods and Construction & Installation
Group A and Equivalent	The Prime Minister	MOPI	=20	=100	=15	=75	=10	=50
	Ministers, Heads of Governmental agencies, BOMs of national corporation set up by the PM	Relevant assisting agencies	All tender packages of <20	All tender packages of <100	All tender packages of <15	All tender packages of <75	All tender packages of <10	All tender packages of <50
	Chairmen of People's Committees of provinces and cities under central authority	Provincial Departments for Planning and Investment						
Groups B and C and Equivalent	Ministers, Heads of Governmental agencies, BOMs of national corporation set up by the PM	Relevant assisting agencies	All tender packages under the project					
	Chairmen of People's Committees of provinces and cities under central authority	Provincial Departments for Planning and Investment						
	Chairmen of People's Committees of ward level	Relevant assisting units	Deciding on their discretion and being responsible for all tender packages under projects they issue investment decisions in accordance with the laws					

Notes: **Field I** includes: electricity, oil and gas, chemicals, mechanics, cement, metallurgy, exploitation and processing of minerals, transportation (bridges, sea ports, air ports, railways, national highways)

Field II includes: light industry, water conservancy, transportation (other than those of Field I), water supply and drainage, infrastructure works, new urban areas, production of materials, electronics, computer science, post and telecommunications

Field III includes all other industries

Article 54. The stature of limitation for evaluating bid documents and appraising bid results

1. The stature of limitation for evaluating the bid documents which is calculated from the bid opening till the submission of bid results to the authorised person or the authorised agency shall not exceed 60 days with respect to domestic tenders or 90 days with respect to international tenders. Where the form of two-phase tender is applied, the time limit for evaluating the bid documents shall be calculated from the bid opening of the second phase.

2. The stature of limitation for evaluating bid results is provided for below:

- a. With respect to tender packages subject to approval of the Prime Minister: The stature of limitation is within 30 days as of the date of the receipt of the duly prepared documents.
- b. With respect to other tender packages: The stature of limitation is within 20 days as of the date of the receipt of the duly prepared documents.

Article 55. Dealing with issues arising during a tender process

1. Where there is reasonable reason to adjust the price of a tender package or the contents of a tender package, the tender organiser must carry out the procedures to adjust the tender plan in accordance with the current provisions prior to the submission of bid results for approval.

2. Where less than 3 contractors submit their bid documents, the tender organiser must report to the authorised person or the authorised agency on the process of preparing the tender, in order to obtain a decision permitting the tender organiser to prolong the period before the tender closing to receive more bid documents or a decision permitting the opening of the bid documents submitted.

3. Where the bidding prices of all bid documents after having been corrected with respect to arithmetic mistakes and supplemented or adjusted in accordance with the requirements of the bid invitations, are all higher than the price of the tender package set out in the approved tender plan, then the tender organiser must report to the authorised person or the authorised agency for decision on whether to allow the bidders with bid documents satisfying the basis requirements of the bid invitations to make another offer of prices or to permit in parallel to such offer of new prices the re-consideration of the price of the tender package in the approved tender plan and the contents of the bid invitations (where necessary).

4. Where the proposed price for the signing of the contract exceeds the bid winning price, the tender organiser must report to the authorised person (if

All agencies, organisations and individuals participating in a tender and the evaluation of tenders must keep confidential the documents, papers and information in accordance with the following provisions:

Article 56. Keeping confidential the documents, papers and information

- a. changes in the targets set out in the bid invitations due to objective reasons;
 - b. all bid documents fail to meet with basis requirements of the bid invitations;
 - c. there is evidence that the bidders are in a negative combination leading to lack of competitiveness in the tender and threatening the benefits of the tender organisers.
- On the basis of the decision of the authorised person or the authorised agency, the tender organiser shall be responsible to report to all bidders on the cancellation of the tender or the re-organisation of the tender.
6. Where 2 bid documents are rated the first together (in terms of marks or the price for appreciation), the bidder with lower bidding price after arithmetic corrections, supplement and adjustments in accordance with the requirements of the bid invitation (except for the cases set out in clauses 5, 6 and 7 Article 10 hereof) shall win the bid.
 7. A bid document shall be taken out of consideration in one of the following cases:
 - a. It fails to meet the pre-conditions set out in the bid invitation;
 - b. It fails to meet the basis requirements on technique, progress and financial and commercial conditions;
 - c. The bidders denies the arithmetic mistakes the tender organiser finds out and proposes for changes, or the bid document contains an arithmetic mistake with value of over 15% of the bidding price.
 - d. The bid document has mistakes with value of over 10% of the bidding price.
- A tender is cancelled in one of the following cases:
5. A tender is cancelled in one of the following cases:
 - a. changes in the targets set out in the bid invitations due to objective reasons;
 - b. all bid documents fail to meet with basis requirements of the bid invitations;
 - c. there is evidence that the bidders are in a negative combination leading to lack of competitiveness in the tender and threatening the benefits of the tender organisers.
- the proposed price for the entering into the contract exceeds the price of the tender package) or the authorised agency (where the proposed price for the entering into the contract is lower than the price of the tender package) for consideration and decision.

1. not to disclose any content of the bid invitations to any objects prior to the date the bid invitations are sent out.

2. not to reveal the contents of bid documents, records in books, minutes of meetings on bid evaluation, opinions and comments of experts and consultants on each bidder and such other documents sealed with "Confidential" or "Strict Confidential".

3. not to reveal the bid results prior to the announcement of the same by the tender organiser.

4. not to cooperate with any one to provide or sell information on the evaluation of bid documents during the process of tender consideration.

Any act of revealing such secrets must be promptly dealt with in accordance with Article 60 hereof.

Article 57. Expenses and fees for tenders

1. The tender organiser may sell bid invitations at a price determined by the authorised person or the authorised agency; with respect to a domestic tender, the price for a bid invitation shall not exceed VND500,000; with respect to an international tender, then the international practice shall apply; in addition to such amounts, the tender organiser is not entitled to receive any other money from the bidders. The amounts so received shall be used in accordance with the provisions of the laws.

2. The expenditures for tender organisation and tender consideration occurred by the tender organiser shall be calculated into the general expenses of the project provided for by the Ministry of Finance in co-operation with the Ministry of Construction and the Ministry of Planning and Investment.

3. The fees for evaluation of bid results shall be calculated into the general expenses of the project and shall be equal to 0.01% of the total value of the tender package, but it shall not exceed VND30 million. The Ministry of Finance shall be responsible to provide specific guidance on the management and use of the funds for evaluation of bid results.

Chapter VIII

INSPECTION AND SETTLEMENT OF BREACHES

Article 58. Inspection of tenders

1. The Prime Minister shall decide on the inspection and settlement of breaches of tender regulations where necessary.

1. A person breaching the Regulations on Tenders shall, depending on the nature and the seriousness of the breach, be subject to administrative sanctions or put under criminal prosecution in accordance with the laws.
2. A bidder breaching the Regulations on Tenders shall, depending on the nature and the seriousness of the breach, be removed from the list of bid participants, deprived of the right to receive bid attending guarantee or the right to participate in any tender for 1 or 3 years or be dealt with in accordance with the provisions of the laws.
3. A person who take advantages of his/her position or authority to breach the Regulations on Tenders such as revealing the contents of documents,

Article 60. Dealing with breaches

1. The inspection of tenders shall be carried out as follows:
 - a. regular inspections in accordance with the schedule and irregular inspections during the tender process;
 - b. inspection upon the confrontation of difficulties and the lodge of claims by organisations and individuals;
 2. During such inspection, the inspecting agencies shall have the following authorities:
 - a. requesting relevant organisations and individuals to provide all necessary documents and give answers relating to the matter on question.
 - b. inspecting and gathering evidence, documents relating to the contents and the objects of the inspection and preparing reports to the authorised person or the authorised agency for consideration and decision.
 - c. making proposals to the authorised person on how to deal with the breaches of tender implementation in accordance with the provisions of Article 60 hereof.

Article 59. Contents and powers of agencies inspecting the implementation of tenders

2. The Ministry of Planning and Investment shall co-ordinate with other relevant Ministries, branches and localities to inspect the implementation of tenders throughout the country.
3. Relevant agencies under Ministries, branches and localities which are in charge of management of tenders shall carry out inspections on the tender within the branches or localities.

4. A person breaching the Regulations on Tenders to cause any damage must compensate such damage in accordance with the provisions of the laws.
 depending on the nature and the seriousness of the breaches, be deal with information, or committing bribery, frauds and other violations shall, papers and information, getting into a combination to illegally provide such prosecution in accordance with the laws.

Chapter IX
IMPLEMENTATION PROVISIONS
Article 61. Organisation of implementation

1. The Ministry of Planning and Investment shall co-ordinate with the Ministry of Finance, the Ministry of Trade, the Ministry of Construction and other Ministries, branches and localities to provide guidance for the implementation of these Regulations.
2. The Ministry of Finance shall co-ordinate with the relevant Ministries and branches to provide guidance on the implementation of tenders for the purchase of utilities, materials, equipment and means for working with respect to State agencies, armed forces, mass organisations and SOEs using State budget capital.
3. The Ministry of Labour, War Invalids and Social Affairs shall co-ordinate with the Ministry of Finance, the Ministry of Construction and other relevant Ministries and branches to provide guidance on the contents of domestic consultancy fees, the salaries for domestic experts working under contracts with foreign contractors winning bids in Vietnam.
4. The Ministry of Justice shall co-ordinate with relevant Ministries and branches to deal with breaches of the Regulations on Tenders.
5. The Ministry of Construction shall co-ordinate with relevant Ministries and branches to study for submission to the Prime Minister the provisions on preferential treatment to domestic contracts while participating in tenders.
6. Ministers, Heads of Ministerial-level agencies, Heads of Governmental agencies, Chairmen of People's Committees of provinces and cities under central authority shall be responsible to implement these Regulations, and in every December, send a report on the implementation of tender activities to the Ministry of Finance for summarisation for submission to the Prime Minister.

7. Any issues not governed by these Regulations should be promptly reported to the authorised person or the authorised agency upon their occurrence for consideration and decision.

For the Government

Prime Minister

(signed and sealed)

PHAN VAN KHAI