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### Activities that must apply Law on Public Procurement



#### Activities requiring to apply Law on Public Procurement are:

01 The selection of contractors of regulatory authorities and public sector entities using the state budget (as prescribed by the Law on State Budget) or lawful revenues to execute:

- Investment projects or procurement cost estimates of regulatory authorities, political organizations, socio-political organizations, socio-political-professional organizations, socio-professional organizations, social organizations, affiliated units of people's armed forces, public sector entities and other organizations and individuals;
- Supply of public goods/services; purchase of drugs, chemicals, test equipment and medical devices; purchase of national reserve goods or provision of storage services for national reserve goods, except direct purchase of goods/services from all sellers/suppliers as prescribed by the Law on national reserve;
- Performance of other tasks which require bidding as prescribed by relevant laws.

# Contents

# LAW ON PUBLIC PROCUREMENT

## 2023



- 03 The selection of investors for investment projects involving land use which require bidding as prescribed by the Law on land and investment projects which require bidding as prescribed by specialized laws

### Other activities

Other than those aforementioned activities, organizations and individuals involved in bidding activities may apply all provisions or some specific Articles, Clauses and/or Points of this Law of their own free will.

### Compared to the 2013 law, the 2023 law has some new points:



- Eliminating a number of subjects requiring to conduct bidding in accordance with Law on Bidding, such as: "Procurement financed by state aiming to maintain regular activities of State bodies, 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";
- Adding investment projects of enterprises with 100% charter capital held by state-owned enterprises as a subject of Law on Bidding. The law 2013 regulates only the projects on development investment of state-owned enterprises, not those of enterprises with 100% charter capital held by state-owned enterprises.



- In addition, law 2023 also extends the "packages of supply of material - technical facilities, machines and equipment for science and technology development funded by science and technology development funds of state-owned enterprises" as an activity in which the selection of contractors according to the Law on Bidding must be carried out.
- Additional provisions on the case of selecting investors for an investment project which require bidding as prescribed by specialized laws. And refer to the cases of investor selection for investment projects involving land use which require bidding as prescribed by the Law on land.

### Activities requiring to apply Law on Bidding are:

- 02 The selection of contractors of state-owned enterprises and enterprises with 100% charter capital held by state-owned enterprises for executing its packages of investment projects; or the selection of contractors for executing the packages for supply of material - technical facilities, machines and equipment for science and technology development funded by science and technology development funds of state-owned enterprises;

## Eligibility of bidders or investors

### Requirements on eligibility of a bidder or investor that is an organization:

- Legally established, under Vietnamese law for domestic organizations, under foreign law for foreign bidder;
- It must keep independent accounting records;
- It is not undergoing dissolution process or subject to revocation of enterprise registration certificate, cooperative/cooperative union/ artel registration certificate; is not facing insolvency as prescribed by the law on bankruptcy;
- Its name is registered on Vietnam National E-Procurement System (VNEPS) before the grant of approval for contractor or investor selection result;
- It must ensure competitiveness in bidding;
- It is not being prohibited from participating in bidding according to a decision issued by a competent person;
- It is not liable to criminal prosecution;
- Its name is included in the shortlist in case the shortlist has been made available;
- A foreign bidder is requested to enter into a consortium with a domestic bidder or will subcontract domestic bidders, unless domestic bidders are incapable of performing any tasks of the package.

- A bidder that is a household business shall be deemed to be eligible if meeting the following requirements:

#### Legality:

- Legally established
- It is not in the legal status of: The process of operation termination; revocation of certificate of household business registration; the owner of the household business is not liable to criminal prosecution;
- Its name is registered on Vietnam National E-Procurement System (VNEPS), in the shortlist (in case the shortlist has been made available)

- A bidder or investor that is an individual shall be deemed to be eligible if meeting the following requirements:

- Full capacity for civil acts
- Professional certificate(s)
- He/She is not in the legal status of: Being liable to criminal prosecution; Being prohibited from participating in bidding

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# Bidding information

Bidding information published on the VNEPS includes:

## Information on **contractor** selection

- Information on the contractor selection plan or project;
- Invitation for EOIs or invitation for prequalification applications;
- Invitation for bid;
- Shortlist;
- EOI request, prequalification document, bidding documents, and any addenda or responses to requests for clarification thereof;
- Bid opening results in case of online bidding;
- Contractor selection result;
- Main contents of the contract;
- Actions against violations of the bidding law;
- Information on the contractor's performance;
- Other relevant information.

## Compared to the law 2013:

Adding a number of information that must be published, such as: main contents of the contract; information on the contractor's performance; information on the contractor selection plan or project

## Information on **investor** selection

- Information on the investment project as prescribed in Clause 2 Article 47 of this Law;
- Invitation for EOIs, EOI request; EOI selection results;
- Invitation for bid, bidding documents and any addenda or responses to requests for clarification thereof;
- Investor selection results;
- Main contents of the contract;
- Actions against violations of the bidding law;
- Other relevant information.



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## Incentives in contractor and investor selection

### Subjects eligible for incentives in contractor selection:

- Originating goods of Vietnam;
- Eco-friendly products and services as prescribed by the Law on environmental protection;
- Domestic bidders that produce originating goods of Vietnam meeting the requirements laid down in bidding documents;
- Foreign bidders and domestic bidders coming together under a consortium agreement in which the domestic bidders take charge of at least 25% of total value of tasks of the package;
- A domestic bidder that submits a bid as an independent bidder or forms a consortium with other domestic bidders to participate in an international bidding;
- Bidders that are microenterprises or small enterprises as prescribed in the Law on assistance for small and medium-sized enterprises;
- Bidders that are startups as prescribed by laws;
- A bidder that employs the number of female workers, wounded soldiers and people with disabilities, or ethnics, each accounting for at least 25% of their total employees.

### The bidder will get the following incentives:

- In case where bidders are equally evaluated, the bidder eligible for incentives (eligible bidder) shall be ranked higher than those ineligible for incentives (ineligible bidder);
- Extra points shall be given to the eligible bidder in case bidders are evaluated and ranked adopting the fixed-price method, technical-based evaluation method, or combined technical and price method;
- An amount of money shall be added to the bid price or evaluated price of the ineligible bidder in case bidders are evaluated and ranked adopting the lowest-price method or lowest-evaluated price method;
- Evaluation of capacity, experience and other criteria of eligible bidders shall be given priority during the evaluation of bids;
- Bidders that are microenterprises or small enterprises shall be given priority in bidding for construction packages whose price does not exceed VND 05 billion. Upon completion of the bidding process, if none of microenterprises and small enterprises meets the requirements of the package, a new bidding process shall be organized with the participation of other enterprises.

## Application of incentives in contractor selection

### → In packages for procurement of goods or mixed packages:

Originating goods of Vietnam; eco-friendly products and services; domestic bidders that produce originating goods of Vietnam; bidders that are startups will get the incentives of "Extra points shall be given to the eligible bidder in case bidders are evaluated and ranked adopting the fixed-price method, technical-based evaluation method, or combined technical and price method" or "An amount of money shall be added to the bid price or evaluated price of the ineligible bidder in case bidders are evaluated and ranked adopting the lowest-price method or lowest-evaluated price method".

### → In international bidding for packages for consulting services, non-consulting services, construction or mixed packages:

Foreign bidders and domestic bidders coming together under a consortium agreement in which the domestic bidders take charge of at least 25% of total value of tasks of the package; A domestic bidder that submits a bid as an independent bidder or forms a consortium with other domestic bidders to participate in an international bidding will get the incentives of "Extra points shall be given to the eligible bidder in case bidders are evaluated and ranked adopting the fixed-price method, technical-based evaluation method, or combined technical and price method" or "An amount of money shall be added to the bid price or evaluated price of the ineligible bidder in case bidders are evaluated and ranked adopting the lowest-price method or lowest-evaluated price method".

### → In domestic bidding for packages for consulting services, non-consulting services, construction or mixed packages:

A bidder that employs the number of female workers, wounded soldiers and people with disabilities, or ethnics, each accounting for at least 25% of their total employees will get the incentive of "In case where bidders are equally evaluated, the bidder eligible for incentives (eligible bidder) shall be ranked higher than those ineligible for incentives (ineligible bidder)".

### → For domestic bidding for construction packages:

Bidders that are microenterprises or small enterprises as prescribed in the Law on assistance for small and medium-sized enterprises will get the incentives of "In case where bidders are equally evaluated, the bidder eligible for incentives (eligible bidder) shall be ranked higher than those ineligible for incentives (ineligible bidder)" or "Bidders that are microenterprises or small enterprises shall be given priority in bidding for construction packages whose price does not exceed VND 05 billion. Upon completion of the bidding process, if none of microenterprises and small enterprises meets the requirements of the package, a new bidding process shall be organized with the participation of other enterprises."

### → In domestic bidding for packages for consulting services, non-consulting services, procurement of goods, construction or mixed packages:

Domestic bidders that produce originating goods of Vietnam meeting the requirements laid down in bidding documents; Bidders that are startups as prescribed by laws will get those following incentives: "Extra points shall be given to the eligible bidder in case bidders are evaluated and ranked adopting the fixed-price method, technical-based evaluation method, or combined technical and price method", "An amount of money shall be added to the bid price or evaluated price of the ineligible bidder in case bidders are evaluated and ranked adopting the lowest-price method or lowest-evaluated price method", "Evaluation of capacity, experience and other criteria of eligible bidders shall be given priority during the evaluation of bids"

## Incentives in investor selection



### ■ Investors eligible for incentives

- Investors that apply technological solutions for reducing environmental pollution to their projects which pose high risk of adverse environmental impacts as prescribed by the Law on environmental protection;
- Investors that commit to make transfer of technologies included in the List of priority high technologies as prescribed by the Law on high technologies or the List of technologies of which the transfer is encouraged as prescribed by the Law on technology transfer.

→ In case of domestic bidding for a procurement package, the employer may decide whether to require inclusion of a domestic good in bids if such good can be manufactured by at least 03 domestic manufacturers satisfying technical, quality and price requirements.

### ■ Incentives in investor selection

- In case where investors are equally evaluated, the investor eligible for incentives shall be ranked higher than those ineligible for incentives;
- Extra points shall be given to eligible investors during evaluation and ranking of their bids.

## Comparison with the 2013 law:

- Adding methods of incentives that are applied during the evaluation of bids. The Law on Bidding 2013 only includes two methods of incentives (Extra points and adding an amount of money to the bid price or evaluated price of the ineligible bidder)
- Extend contractors and investors eligible for incentives



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## International bidding

### Conditions for organizing international bidding:

- The international bidding is requested by the donor that finances the project or package under an international convention or loan agreement;
- In case of a package for consulting services, non-consulting services, construction or mixed package, none of the domestic bidders meets the requirements of the package, or the domestic prequalification or EOI procedure or competitive bidding for the package has been held but none of prequalification applications, EOIs or bids is received;
- In case of a consulting service package in which the competent person believes that the participation of foreign bidders is necessary for improving the quality of the package or project, the competent person decides to organize international bidding and assumes responsibility for his/her decision;
- In case of a procurement package, the good to be procured cannot be domestically manufactured or none of domestic manufacturers of such a good satisfies all technical, quality and price requirements. If the good to be procured is a common good which has been imported and sold in Vietnam, the organization of international bidding is not allowed.

### Comparison with the 2013 law:

- Expanding cases that international bidding shall be organized
- Identify cases that international bidding for selecting qualified investors shall not be organized



### In the following cases, international bidding for selecting qualified investors shall not be organized:

- Projects involving business lines from which foreign investors are prohibited as prescribed by the Law on investment;
- Projects for which the domestic bidding is compulsory for the purposes of national defense and security, social order and security;
- Projects located in land areas or sea areas the use of which is restricted to foreign investors and foreign-invested business organizations as prescribed by the Law on land and relevant laws;
- Projects with a total investment of less than VND 800 billion;
- Projects for which the invitation for EOI under international bidding has been sent but no EOIs are received from foreign bidders.



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## Bid security

→ **Bidders or investors shall furnish bid securities in one of the following forms in order to ensure their fulfillment of responsibilities:**

- Pay a deposit
- Submit a letter of guarantee issued by a credit institution
- Submit a certificate of surety bond insurance issued by an insurer

→ **Cases that submission of bid security is required:**

- Competitive bidding, limited bidding or shopping for a consulting service, procurement, construction or mixed package;
- Competitive bidding or limited bidding for investor selection.

→ **Timing of furnishing bid securities:**

- Prior to the deadline for submission of bids specified in the bidding documents
- In the second stage in case of two-stage bidding procedure

→ **The validity period of bid security:**

Equals the bid validity period plus 30 days (including the extension period)

→ **The amount of bid security shall be:**

- 1% - 1,5% of the price of a construction or mixed package whose price does not exceed VND 20 billion or of a procurement or non-consulting service package whose price does not exceed VND 10 billion;
- 1,5% - 3% of the price of a package other than that specified in Point a of this Clause;
- 0,5% - 1,5% of total investment of the investment project for which the bidding is conducted for investor selection.



In case of a consortium, each consortium member may furnish a separate bid security or reach an agreement to appoint a member to provide bid securities for that member and all other members of the consortium. Total value of bid securities shall not be lower than the amount of bid security specified in the bidding documents.



## The bid security may be **forfeited in the following cases:**

### → The bid security may be returned in the following cases:

- For the unsuccessful bidders or investors: Within the time limit specified in the bidding documents which shall not exceed 14 days from the date of approval of the contractor or investor selection result.
  - For the successful bidder or investor: After the contract becomes effective
- After the deadline for submission of bids and during the validity period of the bid, the bidder or investor withdraws their bid or gives a written refusal to perform one or some tasks proposed in their bid in accordance with the requirements laid down in the bidding documents;
  - The bidder or investor performs any of the prohibited acts in bidding activities or commits violations of law on bidding, resulting in bid cancellation because of prohibited acts in bidding.
  - The successful bidder or investor fails to furnish the required performance security;
  - The successful bidder fails or refuses to negotiate the contract (if any) within 05 working days in case of domestic bidding, or within 10 working days in case of international bidding, from the receipt of the invitation for contract negotiation, or, after the contract negotiation has been carried out, refuses to complete the contract and sign the contract negotiation record, except force majeure events;
- The successful bidder fails or refuses to carry out the completion of contract or framework agreement within 10 days, in case of domestic bidding, or within 20 days in case of international bidding, from the receipt of the notice of acceptance from the procuring entity, except force majeure events;
  - The successful bidder fails or refuses to sign the contract or framework agreement within 10 days, in case of domestic bidding, or within 20 days in case of international bidding, from the date of completion of that contract or framework agreement, except force majeure events;
  - The successful investor fails or refuses to carry out the completion of contract within 15 days, in case of domestic bidding, or within 30 days in case of international bidding, from the receipt of the notice of acceptance from the procuring entity, except force majeure events;
  - The successful investor fails or refuses to sign the contract within 15 days, in case of domestic bidding, or within 30 days in case of international bidding, from the date of completion of that contract, except force majeure events.

## Prohibited acts in bidding

- Offering, giving, receiving or taking a bribe
- Abusing positions or entrusted power to influence or illegally intervene in bidding process in any form
- Collusive practice, including:
  - Reaching, with or without undue influence, an arrangement or agreement which is designed to let one or more parties to prepare bids for all bidders or to withdraw submitted bids so that one of them will win the bid;
  - Reaching an arrangement or agreement on refusal to supply goods or services, or subcontract, or reaching other agreements to limit competition so that one party will win the bid;
  - A bidder or investor with appropriate qualifications and experience has submitted a bid and meets the requirements laid down in the bidding documents but deliberately refuses to provide additional documents proving their capacity and experience at the procuring entity's request for clarification of the bid or verification of their submitted documents with the aim of facilitating one party's winning of the bid.
- Fraudulent practice, including:
  - Forging or falsifying information and/or documents used in bidding;
  - Deliberately providing information and documents which are not accurate or objective in EOIs, prequalification applications, applications for project execution, bids or proposals with the aim of falsifying the contractor/investor selection result.

### ■ Obstructive practice, including:


- Destroying, deceiving, altering or concealing of evidence or making false statements; threatening, harassing or intimidating any party to prevent the verification or investigation into a corrupt, fraudulent or collusive practice made with a supervision, inspection or audit authority;
- Obstructing the competent person, employer, procuring entity, bidders (or investors) in the course of contractor (or investor) selection;
- Impeding competent authorities' rights of supervision, inspection or audit of bidding activities;
- Deliberately making false complaints, denunciations or petitions with the aim of impeding bidding process;
- Acts of violation against laws and regulations on cybersecurity and safety intended to intervene or impede the online bidding process.



- **Inequality and non-transparency, including:**

- A bidder or investor of a package or investment project is also the procuring entity or employer or takes charge of performing tasks of the procuring entity or employer of that package or investment project;
- A bidder or investor of a package or investment project is also the procuring entity or employer or takes charge of performing tasks of the procuring entity or employer of that package or investment project;
- A person or entity concurrently engages in the evaluation of bids or proposals and the appraisal of the contractor or investor selection result of the same package or investment project;

- A person who is working for the procuring entity/employer directly engages in the contractor/investor selection, or acts as a member of the expert team or appraising team in charge of appraising the contractor/investor selection result, or is a competent person or head of the procuring entity/employer, for a package or investment project for which his/her family relative, as defined in the Law on enterprises, directly submits a bid or acts as the legal representative of a bidder or investor;
- A bidder submits a bid for a procurement, construction or non-consulting service package for which the bidder is also acting as a consultant on preparation, verification and appraisal of cost estimate, technical design, building drawings and designs, front-end engineering design (FEED); preparation and appraisal of prequalification document or bidding documents; evaluation of prequalification applications or bids; inspection of goods; appraisal of contractor selection result; supervision of contract execution;
- A person acts as a bidder for a package of a project or investment project of the procuring entity or employer for which he/she worked and held the executive or managerial position within 12 months from the date of his/her resignation therefrom;
- A supervision consultant also acts as the inspection consultant of the same package;
- Failure to meet relevant requirements laid down in this Law when adopting a method other than the competitive bidding to the contractor/investor selection;

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- Inclusion of specific brand and/or origin requirements in the bidding documents for a procurement or construction or mixed package under the competitive bidding, limited bidding or shopping method, except for: In case of domestic bidding for a procurement package, the employer may decide whether to require inclusion of a domestic good in bids if such good can be manufactured by at least 03 domestic manufacturers satisfying technical, quality and price requirements; bidding documents may impose requirements regarding countries or territories of origin. In the case of a package that needs to be executed to protect state secrets and satisfy all direct contracting requirements laid down but the competent person decides to apply the competitive bidding, limited bidding, or shopping method to the contractor selection, bidding documents may impose requirements regarding origin and brands of goods; incentives in drug procurement;
  - Bidding documents impose conditions that limit the participation of bidder(s) or investor(s) or give advantage for one or some bidders or investors resulting in unfair competition;
  - Slitting a project or procurement cost estimate into a series of packages for the purpose of direct contracting or with the aim of limiting the participation of bidders.

Unauthorized disclosure of the following information and documents on the contractor/investor selection, except: Request the employer or the procuring entity to provide documents used in inspection, supervision, settlement of petitions, handling of violations in bidding sector and fulfillment of the tasks; Request the procuring entity to provide documents used in inspection, supervision, settlement of petitions, handling of violations in bidding sector and fulfillment of the tasks specified in Clauses 4, 5 of this Article; Provide relevant information and documents and explanations about the fulfillment of responsibilities specified in this Article at the request of the competent person, inspecting authorities and bidding authorities; Publish information on VNEPS; provide relevant information and documents and explanations about the fulfillment of responsibilities specified in this Clause at the request of the competent person, employer, inspecting authorities and bidding authorities; Provide relevant information and documents and explanations about the fulfillment of responsibilities specified in this Article at the request of the competent person, employer, procuring entity, inspecting authorities and bidding authorities; Provide relevant information and documents and explanations about the fulfillment of responsibilities specified in this Article at the request of the competent person, employer, procuring entity, inspecting authorities and bidding authorities; The advisory board shall have the right to request the bidder, investor, employer, procuring entity and relevant authorities to provide information concerning the package, project or investment project and other information necessary for performing its tasks; including:

- Contents of EOI request, prequalification document, bidding documents or RFP before they are issued as prescribed;
- Contents of EOIs, prequalification applications, applications for project execution, bids or proposals; the procuring entity's clarification requests and responses from bidders or investors during the evaluation of EOIs, prequalification applications, applications for project execution, bids or proposals; reports of the procuring entity or expert team, appraisal reports, reports of consultants and other relevant specialized agencies during the contractor/investor selection; records or minutes of bid evaluation meetings, opinions or comments on each EOI, prequalification application, application for project execution, bid or proposal before they are disclosed as prescribed;
- The contractor/investor selection result before it is disclosed as prescribed;
- Other documents issued or obtained during the contractor/investor selection and certified to contain state secrets as prescribed by law.

### → **Illegal transfer of awarded contract, including the following cases:**

- The contractor transfers a volume of tasks of the package worth more than the maximum value of tasks to be subcontracted and those tasks to be undertaken by specialist subcontractor(s) under the signed contract;
- The contractor transfers a volume of tasks of the package whose value does not exceed the maximum value of tasks to be subcontracted under the signed contract but beyond the scope of tasks to be subcontracted specified in the bid or proposal without obtaining a prior consent from the employer or supervision consultant;
- The employer/supervision consultant gives consent to the contractor's transfer of tasks as prescribed in Point a of this Clause;
- The employer/supervision consultant gives consent to the contractor's transfer a volume of tasks as prescribed in Point b of this Clause which is worth more than the maximum value of tasks to be subcontracted under the signed contract.

The contractor selection is conducted before determining funding sources as prescribed in Clause 3 Article 39 of this Law. (Determined or approved sources of funding for each package must be specified. If a package is funded by ODA or concessional loan of a foreign donor, name of the donor and capital structure, including funding allocated by the donor and reciprocal capital from Vietnamese party, shall be specified. In case a package is to be executed within duration of exceeding 01 year under a procurement cost estimate, the funding sources may be determined on the basis of the procurement cost estimate of the current budget year and expected procurement cost estimates of the following budget years.)

## Cases of bid cancellation

### In case of contractor selection, bid cancellation shall occur when:

- All EOIs, prequalification applications, bids or proposals are considered substantially nonresponsive to the EOI request, prequalification document, bidding documents or RFP;
- There are changes in the objectives and scope of investment specified in the investment decision resulting in changes in volume of tasks and evaluation criteria specified in the EOI request, prequalification document, bidding documents or RFP;
- The EOI request, prequalification document, bidding documents or RFP does not comply with regulations laid down in this Law or other relevant laws to the extent that the selected bidder fails to meet the requirements of the package;
- The successful bidder commits any of the prohibited acts;
- Another organization or individual that is not the successful bidder commits any of the prohibited acts resulting in inaccurate contractor selection result.

### ■ The duration of bid cancellation:

Within the period from the issuance of the EOI request, prequalification document, bidding documents or RFP to the signing date of the contract or framework agreement in case of centralized procurement.

### ■ In case of investor selection, bid cancellation shall occur when:

- All EOIs, prequalification applications, bids or proposals are considered substantially nonresponsive to the EOI request, prequalification document, bidding documents or RFP;
- There are changes in the objectives, scale, location, investment capital or duration of investment project execution due to force majeure events resulting in changes in evaluation criteria specified in the issued bidding documents;
- There are changes in the objectives, scale, location, investment capital or duration of investment project execution due to force majeure events resulting in changes in evaluation criteria specified in the issued bidding documents;
- The successful investor commits any of the prohibited acts in Article 16 of this Law;
- Another organization or individual that is not the successful investor commits any of the prohibited acts resulting in inaccurate investor selection result.

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## **Bid suspension, refutation of contractor/investor selection result**

If there is evidence that an organization or individual participating in the bidding commits any of the prohibited acts or violations against relevant laws which adversely affect the achievement of competitiveness, fairness, transparency, and economic efficiency or falsify the contractor/investor selection result, the competent person shall adopt one or some of the following measures:



- Suspend the bidding process in order to suspend all contractor/investor selection activities and take remedial actions against violations immediately. Bid suspension shall be made during the contractor/investor selection and before the contractor/investor selection result is approved;
- Refuse to recognize the contractor/investor selection result during the contractor/investor selection and the contract execution;
- Impose penalties for violations as prescribed.

## Methods and procedures for investor selection

### → Investor selection methods

There are 2 methods:

- Competitive bidding: investment projects that have no limit on the number of participating investors.
- Limited bidding: investment projects that have high technical or technological requirements or involve special techniques or technologies, as prescribed by specialized laws, which can only be satisfied by some investors.

### → Investor selection procedures

#### Single-stage one-envelope procedure:

- Applicable case: competitive bidding, limited bidding;
- Submit their bid, including both the technical proposal and the financial proposal contained in one envelope, in accordance with the requirements laid down in the bidding documents;
- All bids shall be opened at the same bid opening.

#### Two-stage one-envelope procedure:

Applicable case: competitive bidding for investment projects which have specific sectoral, regional or local socio-economic development requirements but of which specific technical, social, economic and environmental standards are not yet determined.

#### Single-stage two-envelope procedure:

- Applicable case: competitive bidding for investment projects involving valuable architectural structures as prescribed by the Law on architecture;
- Submission: simultaneously submit the technical proposal and the financial proposal in two separate envelopes in accordance with the requirements laid down in the bidding documents;
- There are two bid opening sessions to be conducted. Technical proposals shall be opened immediately after the deadline for submission of bids. Only financial proposals of investors whose technical proposals were considered responsive shall be opened for further evaluation.





# Investor selection process

## 01 Public disclosure of the investment project

### Place of publication:

- VNEPS

### Project details to be publicly disclosed include:

- Decision on approval of investment guidelines (if any);
- Project's name; investment objectives and scale; total investment;
- Location of the project; current use of land, land area used for executing the project; land use purposes; approved planning indicators;
- Project execution duration and schedule; preliminary plan for investment phasing or division of component projects (if any); execution schedule of each stage of the project (if any);
- Name of the procuring entity; investor selection method and procedure;
- Other related contents.

## 02 Preparation for bidding

Preparation, appraisal and approval of bidding documents

## 03 Organization of bidding activities

Invitation for bid; issuance, amendment and clarification of bidding documents; preparation, submission, receipt, management, modification, withdrawal and substitution of bids;

### Invitation for bid

Bidding documents include:

- Bidding documents include:
- Bidding Data Sheet (BDS);
- Examination and evaluation of validity of bids;
- Methods and criteria for evaluation of capacity and experience of investors; investment plan; efficiency in land use or investment efficiency, sectoral development;
- Invitation for bid and bidding forms;
- Investment project-related information and execution requirements;
- Draft contract and contract form;
- Other related contents.

**Bidding documents shall not impose any conditions that limit the participation of an investor or give advantage for one or some investors resulting in unfair competition**

## 04 Bid evaluation

Bid opening; examination and evaluation of validity of bids; detailed evaluation of bids.

### Bid evaluation methods

- The investor's capacity and experience, and efficiency of the investment plan proposed by the investor, including efficiency in land use and investments in sectoral or local development, shall be evaluated adopting the social and state benefits-based evaluation method.

### Investor selection duration

- In case of domestic bidding, the minimum period between the first date on which the bidding documents are issued and the deadline for submission of bids which is given for investors to prepare their bids shall be 45 days;
- In case of international bidding, the minimum period between the first date on which the bidding documents are issued and the deadline for submission of bids which is given for investors to prepare their bids shall be 60 days;


Procuring entity shall decide the specific period

### Criteria for evaluation of the investor's bid:

- Criteria for evaluation of the investor's capacity, including financial and funding arrangement capacity, and experience in executing similar investment projects;
- Criteria for evaluation of the investor's investment plan, including technical, social and environmental criteria;
- Criteria for evaluation of efficiency in land use and investments in sectoral or local development.

**Bid evaluation criteria** shall be scored on a scale of 100 or 1,000 points. The combined score shall be determined on the basis of capacity and experience score, investment plan score and score of efficiency in land use and investments in sectoral/local development. The investor that has achieved the minimum qualifying score for each of the criteria specified in Clauses 2 and 3 of this Article and the highest combined score shall be ranked first.





## 05 Submission, appraisal, approval and disclosure of investor selection result

An investor shall be considered successful and awarded the contract if the investor:

- Has a substantially responsive bid;
- Has a substantially responsive bid;
- Meets requirements regarding the investment plan;
- Meets the requirements regarding the efficiency in land use and investments in sectoral or local development;
- Has the highest combined score of capacity and experience, investment plan, and efficiency in land use and investments in sectoral/local development criteria.

## 06 Negotiation, completion and signing of contract

### → Conditions for signing of contract

- The bid or proposal of the successful bidder must still remain valid at the time of signing the contract;
- At the time of signing the contract, the successful bidder must meet all technical and financial requirements for executing the package in accordance with the requirements laid down in the bidding documents.

### → Contracting entity


- A competent authority or the procuring entity (if authorized)
- The selected investor. In case of a consortium, the contract agreement must bear signatures and seals (if any) of all members of the consortium

### → Contents of contract

- Be conformable with contents of the bidding documents, the investor's bid, decision on approval of investor selection result, and contract negotiation and completion record.

### Primary contents of contract:

- Particulars of the contracting parties, effective date and duration of the contract;
- Details of the investment project, including: objectives, location, and execution schedule; scale and total investment; conditions for use of land and other resources (if any); compensation and relocation measures and requirements, and construction of auxiliary works (if any); safety and environmental protection requirements; force majeure events and actions taken;
- Responsibility to follow compensation and relocation procedures and organize construction of auxiliary works (if any); allocation or lease of land (if any);
- The investor's obligations to fulfill commitments proposed in their bid; establishment of enterprise in charge of managing the investment project (if any);
- Performance security; rules and conditions for modification and termination of contract; transfer of rights and obligations by the parties;
- Governing law and dispute settlement mechanism



## → Security for performance of contract

### ■ Options

The investor is required to adopt one of the following performance security options for ensuring their fulfillment of responsibility to execute the investment project before or when the contract becomes effective:

- Submit a letter of guarantee issued by a domestic credit institution or foreign bank branch lawfully established under the law of Vietnam;
- Submit a letter of guarantee issued by a domestic credit institution or foreign bank branch lawfully established under the law of Vietnam.

## → Contract duration

- Duration of an investment project contract begins on the effective date of the contract until the investor fulfills their commitments specified in their bid and other obligations as agreed upon by the parties in the contract.
- When the contract expires, the investor shall execute the investment project in accordance with regulations of the Law on investment and relevant laws.


### ■ Value of performance security

Depending on the scale and nature of the investment project, the value of the performance security equaling 1% - 3% of the total investment shall be specified in the bidding documents.

### ■ Validity period of performance security

The validity period of the performance security begins on the official signing date of the contract until the contract is terminated. If the duration of the contract needs to be extended for a specified period, the investor shall be requested to extend the validity of their furnished performance security for a corresponding additional period.

### ■ The performance security shall be forfeited if the investor:

- Refuses to perform the contract that is still effective;
  - Violates terms and conditions of the contract;
  - Refuses to extend the validity period of the performance security, in case failure to meet the contract execution schedule is at the investor's fault.
- 

# Contract modification



## Cases of contract modification

- The investment project which is subject to approval of investment guidelines is modified in accordance with regulations of the Law on investment resulting in changes in contents of the project contract;

Modifications to the contract shall only be made after the modified investment guidelines have been approved by a competent authority. The investor must meet technical and financial requirements for executing the modified investment project

- The investment project is transferred in accordance with regulations of the Law on investment and relevant laws;

### **The transfer of an investment project must meet the following conditions:**

- The transfer is approved by the competent person;
- The investor that receives the transfer (transferee) meets technical and financial requirements for executing the investment project;
- The transferee commits to inherit all rights and obligations of the transferor as defined in the signed investment project contract.

- In other cases as agreed upon by the parties in the contract in conformity with regulations of law.

## Online bidding

### ■ Timing of online bidding

- From the effective date of this Law to December 31, 2024 inclusively, the Government shall decide whether to adopt online bidding method or not;
- From January 01, 2025, the online bidding method shall apply to all packages, except cases where the bidding is not conducted on VNEPS.

### ■ Costs incurred in online bidding include

- Costs of publishing of bidding information of procuring entities, employers
- Participation in bidding,
- Signing of contract
- Other costs associated with the bidding process on VNEPS

### ■ Contractor/investor selection contents to be conducted on VNEPS:

- Publishing of information on contractor/investor selection;
- Preparation, appraisal and approval of prequalification document, EOI request, bidding documents or RFP;
- Preparation and submission of prequalification applications, EOIs, applications for project execution, bids or proposals;
- Bid opening;
- Evaluation of prequalification applications, EOIs, bids or proposals, invitation for contract negotiation, appraisal and approval of contractor selection result;
- Consortium agreement, electronic bid security, electronic contract performance;
- Clarification of bidding-related contents;
- Submission and receipt of petitions;
- Electronic contract;
- Electronic payment.

## Settlement of petitions in bidding

### → Subjects entitled to submit petitions


- Bidders, investors, authorities, and organizations presuming that their legitimate rights and interests are affected

### → Conditions for consideration and resolution of petitions

- Have not yet filed any other complaints, denunciations or lawsuits

### Before the publishing of contractor/investor selection result:

- Petitions for review of bidding documents may be submitted by authorities or organizations having interest in the package or investment project; petitions for review of other issues concerning the contractor/investor selection process shall only be filed by bidders or investors participating in the bidding;
- The petition must bear signature and seal (if any) of the petitioner's lawful representative or be digitally signed and submitted through VNEPS;
- The petition must be submitted to the entity in charge of settling the petition before the contractor/investor selection result is published.



In order to be put into consideration, petitions for review of the contractor/investor selection result must meet the following conditions:

- The petition must be filed by the bidder or investor participating in the bidding (petitioner);
- The petition must bear signature and seal (if any) of the petitioner's lawful representative or be digitally signed and submitted through VNEPS;
- The issue in the petition has not been included in any other lawsuit, complaint or denunciation filed by the petitioner;
- The issue in the petition has not been included in any other lawsuit, complaint or denunciation filed by the petitioner;
- The petition settlement fee is paid by the petitioner to the standing assistance section of the chairperson of the petition settlement advisory board (hereinafter referred to as "standing section") before or at the same time when the petition is submitted;
- The bidder and the investor must submit their petitions to the employer/competent person and the procuring entity/competent person respectively within the specified time limit.

## → Procedures for settlement of petitions arising from contractor selection

### Before the notice of contractor selection result is published

- The bidder, authority or organization (petitioner) shall send their petition to the employer before the contractor selection result is published on VNEPS;
- The employer shall send a written response to the petitioner within 07 working days from the receipt of the petition;
- In case the petitioner disagrees with the petition settlement result or does not receive any response from the employer upon the expiration of the time limit specified in Point b of this Clause, the petitioner shall be entitled to send their petition to the competent person within 05 working days from the prescribed deadline for petition settlement or from the day on which the employer's response is received;
- The competent person shall send a written response to the petitioner within 05 working days from the receipt of the petition.

## → After the notice of contractor selection result is published

### Process 1:

- The bidder (petitioner) shall send their petition to the employer.
- In case the petitioner disagrees with the petition settlement result or does not receive any response from the employer upon the expiration of the specified time limit, the petitioner shall be entitled to send their petition to the competent person.
- The competent person shall issue a decision on settlement of the petition for review of the contractor selection result after receiving the opinion from the petition settlement advisory board.

### Process 2:

- The bidder (petitioner) shall send their petition to the competent person.
- The competent person shall issue a decision on settlement of the petition for review of the contractor selection result after receiving the opinion from the petition settlement advisory board.

## Some notes for settlement of petitions:

- Where necessary, the petition settlement advisory board shall, based on the received petition, request the competent person to consider suspending the signing or execution of the contract. If the request of the petition settlement advisory board is accepted, within 05 working days from its receipt, the competent person shall provide the employer with a written notice of suspension of contract signing or execution in which the suspension duration must be clearly stated.
- A written response shall contain conclusions on the issue in the petition. If the petition is found to be true, remedial measures and implementation time limit (if any) must also be specified in the written response. The petitioner shall have their paid petition settlement fee reimbursed. If the petition is found to be false, the written response shall contain detailed explanations. In this case, the paid petition settlement fee shall not be reimbursed.
- If the petitioner disagrees with the decision on petition settlement issued by the competent person or employer, they shall be entitled to initiate Court proceedings.





## → Procedures for settlement of petitions arising from investor selection

### Before the investor selection result is published

- The investor, authority or organization (petitioner) shall send their petition to the procuring entity
- The procuring entity shall issue a written response within 15 days
- In case the petitioner disagrees with the petition settlement result or does not receive any response from the procuring entity upon the expiration of the specified time limit, the petitioner shall be entitled to send their petition to the competent person within 05 days
- The competent person shall have an issue petition settlement within 05 working day.

### After the investor selection result is published

- The investor (petitioner) shall send their petition to the procuring entity within 10 days from the day on which the investor selection result is published.
- The procuring entity shall issue a written response within 15 days
- In case the petitioner disagrees with the petition settlement result or does not receive any response from the procuring entity upon the expiration of the specified time limit, the petitioner shall be entitled to send their petition to the competent person within 05 days from the prescribed deadline for petition settlement or from the day on which the procuring entity's response is received.
- The competent person shall settle the petition within 10 days from the receipt of the written opinion from the petition settlement advisory board.

## → Right to file a lawsuit and request the Court to grant interim injunctions

- Initiating Court proceedings shall comply with regulations of the Code of Civil Procedures.
- When filing a lawsuit or while the Court proceedings are running, concerned parties shall have the right to request the Court to suspend the bid closing; approval of the shortlist; approval of the contractor/investor selection result; signing of the contract; execution of the contract and issue other interim injunctions in accordance with regulations of law.



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DP

## Contact:

Legal Department - VCCI



024.6683.6545/ 024.3577.0632



xdphapluat.vcci@gmail.com/  
xdphapluat@vcci.com.vn



<https://vibonline.com.vn/>