



agreement between the partners on both general and individual responsibilities for work associated with a tender package and there must be a person heading the partnership.

30. *Contract signing price* means the price agreed by the party calling for tenders and the successful tenderer after negotiations for finalization of the contract, and must be consistent with the successful tender price, the tender invitation documents and the tender. The contract signing price together with the specific clauses on payment recorded in the contract shall be the basis for making capital payments for the tender package.
35. *Project investor* means the organization to which responsibility is assigned to directly manage and

- (c) Projects having a value of less than one billion Vietnamese dong in respect of procurement of goods or construction and installation; of less than five hundred (500) million Vietnamese dong in respect of consultancy.

In the case of tender packages entitled to appointment of a tenderer specified in this clause of important national projects for which the National Assembly makes the investment policy decision and the Prime Minister of the Government makes the investment decision, the Prime Minister of the Government shall delegate responsibility to the investor to make a decision, but ensuring it is correct in accordance with the *Regulations on Tendering*.

When appointing a tenderer for the tender packages specified in this clause<sup>3</sup>, the authorized person making the decision to appoint the tenderer shall be responsible before the law for his or her decision.

Where it is unnecessary to appoint a tenderer, tendering shall be conducted in accordance with regulations. The arbitrary division of a project into a number of small tender packages in order to appoint tenderers shall be strictly prohibited.

The Ministry of Finance shall provide detailed regulations on appointment of tenderers for regular procurement of furniture, supplies, equipment and working facilities for State bodies; and for normal furniture, supplies, equipment and working facilities for the armed forces.

- (d) For other tender packages of a special nature due to the requirements of the funding agency, due to

**6. To amend and add to article 7.2 (a) of D88-CP as follows:**

“(a) Where a quantity or volume arises due to a change in design: If the changes are within the scope of the approved tender invitation documents, then the value of such quantity or volume which arose shall be calculated using the unit price of the original contract. If the changes are not within the scope of work in the tender invitation documents, they shall be calculated using the unit price under State regulations”.

**7. To amend and add to article 9.2 of D88-CP as follows:**

“2. A tenderer participating in tendering or in the other forms of selecting tenderers prescribed in article 4 of D88-CP must satisfy the following conditions:

- (a) Be financially independent, and have legal civil capacity and in the case of an individual also have legal capacity for civil acts in order to enter into and perform a contract. In the case of procurement of complex goods, the tenderer must have a licence to sell goods from the manufacturer.
- (b) A tenderer may submit only one tender in respect or each tender package, either in the form of participating as an independent tenderer or in partnership.
- (c) Be named on the list of tenderers on the data-information system”.

**8. To amend and add to article 10.2 and 10.8 of D88-CP as follows:**

“2. A foreign tenderer participating in international tendering for construction and installation or for procurement of goods held in Vietnam must either enter into a partnership with a Vietnamese contractor or undertake to use Vietnamese sub-contractors and must clearly specify the scope of work, volume and relevant unit price shared between the parties. With respect to tender packages for consultancy belonging to projects funded by the State Budget, funded by credit facilities guaranteed by the State, and funded by credit facilities for investment and development of the State, when there is a need to use a foreign consultant, then foreign organizations and experts participating in the process of selecting tenderers must enter into a partnership with a domestic consultant to implement [the tender] (except where the Prime Minister of the Government provides permission for there not to be a partnership).

8. Domestic tenderers and goods manufactured domestically shall be entitled to the following preferential treatment in international tendering held in Vietnam for projects listed in article 2.2 of D88-CP:

(a) Entities entitled to preference:

- Domestic tenderers satisfying the conditions for participating in tendering comprising:
  - + Enterprises operating under the *Law on Enterprises*, the *Law on State Owned Enterprises*, or the *Law on Co-Operatives*;
  - + Joint venture enterprises operating under the *Law on Foreign Investment in Vietnam* in which legal capital contributed by the Vietnamese party is above 50%.
- Tender packages for construction and installation or for consultancy in which the work that the domestic contractor undertakes is more than 50% of the value.
- Tender packages for procurement of goods where the ratio of domestic manufacturing costs exceeds 30% of ex-factory cost.

(b) Items of preference:

When assessing a tender which includes a domestic tenderer or goods manufactured domestically, consideration of preference shall be conducted as follows:

- With respect to a tender package for selection of a consultant, when assessing tenders, a domestic tenderer entitled to preferences who has already achieved the minimum points or more for technical matters shall be given an extra 7.5% of the total points in the overall assessment;
- With respect to a tender package for construction and installation, when determining the assessment price, preference shall be given by adding an extra 7.5% of the tender price (after rectifying arithmetical errors and after making the discrepancy adjustment) to the assessment prices of tenderers not entitled to preferences in order to provide the basis for comparing and classifying tenders;
- With respect to a tender package for procurement of goods, when determining the assessment prices of tenders which include goods not entitled to preferences, such prices shall have a sum of money added to them namely a sum equivalent to all types of taxes and import fees pursuant to State regulations which an importer who is not duty exempt must pay for the goods in the tender, or 15% of the price of the goods including transport charges and fees and insurance to the sea-port or river-port of Vietnam (CIF price) or of the price of the goods including transport costs and insurance to a stipulated place (CIP price) of such goods if the above-mentioned types of taxes and importing fees exceed 15% (excluding goods subject to import duty).
- In the case of a tender package for consultancy where the overall points are identical, or in the case of a tender package for construction and installation or for procurement of goods where assessment prices are identical, the domestic tenderer shall be preferred and classified ahead of an international tenderer”.

**9. To amend and add to article 13.1 and 13.2(d) of D88-CP as follows:**

“1. Tender opening:

After receipt of all tenders (sealed and submitted correctly as required by the tender invitation documents and kept in accordance with the regulations on archiving of confidential documents), the tenders shall be publicly opened immediately after tender closing, on the date and at the location stated in the tender invitation documents. The main information set out in the tender of each tenderer

After the tender opening, the party calling for tenders must sign and certify each page of the original copy of the tenders in order to retain their status quo, prior to conducting the assessment and shall

- Lists of tenderers taking part in a tender for the selection of consultants;
- Lists of tenderers who have satisfied the technical requirements and lists of tenderers classified on the basis of overall assessment points for technical and financial matters applicable to a consultancy tender package;
- Lists of tenderers who have satisfied technical requirements and list of tenderers classified on the basis of assessment price applicable to tender packages for the procurement of goods or for construction and installation;
- Negotiations with an appointed contractor and responsibility for the contents of appointment of contractor;
- Making decisions on appointment of a contractor for the tender packages prescribed in article 4.3 (c) and (e) of D88-CP;<sup>4</sup>
- Contents of contracts.

Where the investor is also the person authorized to make project decisions or is also the party calling for tenders, the investor must also undertake all the tasks prescribed in clause 1 or clause 3 of this article.

3. The party calling for tenders shall be responsible for:

- (a) Organizing and implementing selection of a tenderer, and shall be responsible before the law for the process of selecting tenderers in accordance with the laws on tendering.
- (b) Preparing tendering plans and submitting them for approval in the case of projects prescribed in article 8 of D88-CP.
- (c) Organizing the implementation of approved tendering plans following the order for holding tendering stipulated in articles 20, 22, 33, 45 and 47 of D88-CP, comprising:
  - Establishing an expert group or employing consultants to assist in tendering on the basis of the investor's decision;
  - Preparing an overall report on the process of selecting tenderers and reporting the result of selection of a tenderer to the investor;
  - Announcing the successful tenderer and negotiating contract finalization;
  - Submitting to the investor the decision on the contents of the contract so that the investor may sign the contract".

**11. To amend and add to article 16.1 and 16.2 of D88-CP as follows:**

"1. Composition of an expert group:

Depending on the nature and complexity of a tender package, the composition of an expert group shall include experts in the following fields:

- (a) Technical issues and technology;

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**14. To amend and add to article 35.6 of D88-CP as follows:**

“6. Technical designs accompanied by the estimated amount of materials and technical instructions.

Technical designs must contain all items required by the regulations. Estimated amounts of materials extractable from the designs must be complete and accurate in order to provide the legal basis for a tenderer to prepare its tender price. Requirements on quantity and quality of materials for construction, and for assembly and installation must be specified in the tender invitation documents in order to provide a basis for preparing budgets, the unit tender price, and analysis of the unit tender price of a number of main items of work as required by the tender invitation documents. It is prohibited for tender invitation documents to provide requirements on commercial firm names or on specific origins of goods”.

- (g) Other issues on construction schedule, partnership or association percentages, and any other matters required by the tender invitation documents.

The items set out in this clause shall be assessed either by using a points scale (of 100 or 1000) or by the “pass” and “fail” criterion. The criteria for assessment must stipulate the minimum points required for technical aspects but it may not be less than 70% of the total points for technical aspects (and for tender packages with high technical requirements not less than 90% of the total points for technical aspects) when using the points scale to assess a tender. If there is a stipulation that the assessment will be on the basis of “pass” and “fail”, then the minimum level required for technical aspects must still be specified.

A tender which achieves minimum points or more on the basis of the points marking method, or which satisfies the requirements when using the “pass” and “fail” criterion, shall be deemed to have satisfied the

Assessment of financial and commercial aspects for the purpose of determining assessment prices shall include the following:

- Error rectification;
- Discrepancy adjustment;
- Conversion of tender prices to the same currency;
- Conversion to a comparable basis;
- Determination of assessment prices of all tenders.

During the assessment process the party calling for tenders shall have the right to request a tenderer to clarify any illogical unit prices in a tender, and if there are unclear explanatory

- (i) Information on dealing with breaches of the *Regulations on Tendering*;
  - (k) Newly issued legal instruments on tendering;
  - (l) Overall reports on tendering work;
  - (m) Tendering activities at grass-roots levels;
  - (n) System of data-information on tenderers.
3. Administration of tendering newsletters and web pages on tenders:

**“Article 52** *Delegation of responsibility for tendering*

1. The Prime Minister of the Government shall:
  - (a) Approve tendering plans for important national projects for which the National Assembly makes the investment policy decision and which are within the Prime Minister's authority to make the investment decision (irrespective of funding source);
  - (b) Approve tendering results of tender packages with a tender package price of 100 billion dong or more in the case of procurement of goods or construction and installation, and of 20 billion dong or more in the case of consultancy for projects in which the Prime Minister makes the investment decision. For remaining tender packages the Prime Minister may delegate approval of tendering results to ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people's committees of provinces and cities under central authority, who shall be responsible for the results of tendering;
  - (c) Approve proposals for appointment of a tenderer, direct procurement and self-implementation for tender packages prescribed in clauses 3, 5 and 6 of article 4 of D88-CP for projects in which the Prime Minister makes the investment decision, except for tender packages valued at less than 1 billion dong in the case of procurement of goods or construction and installation, and tender packages valued at less than 500 million dong in the case of consultancy where the investor is responsible to make a decision;

With respect to the items prescribed in sub-clauses (a) and (b) above, the Prime Minister shall provide approval on the basis of the evaluation report of the Ministry of Planning and Investment and written opinions from the relevant authorized agencies. With respect to the items prescribed in this sub-clause (c), the Prime Minister shall provide approval on the basis of the evaluation report of the Ministry of Planning and Investment and written opinions from the funding body and from relevant authorized agencies.

- (d) Make decisions on inspections and dealing with breaches of the laws on tendering.
2. The Minister of Planning and Investment shall be responsible for:
  - (a) Evaluating and submitting the following to the Prime Minister of the Government for approval:
    - Tendering plans for projects for which the Prime Minister makes the investment decision;
    - Tendering results of tender packages within the Prime Minister's authority to approve;
    - Proposals for appointment of a tenderer, direct procurement and self-implementation in respect of

- (a) To provide written opinions on tendering plans and on the result of selection of a tenderer for tender packages for relevant projects which investors submit, within the Prime Minister's authority to approve.
  - (b) To approve tender invitation documents for tender packages within the Prime Minister's authority to approve the tendering results, and to approve tender invitation documents and the tendering results for tender packages where authority is delegated by the Prime Minister as stipulated in clause 1 (b) of this article.
  - (c) To approve tendering plans, tender invitation documents and the result of selection of a tenderer for all tender packages for projects using State budget funds within their authority to make the investment decision. With respect to projects for which authority to make the investment decision may be delegated to a lower level, then authority to approve tendering plans, tender invitation documents and the result of selection of a tenderer for all tender packages for such projects may also be delegated, but they [i.e. this higher level] shall remain responsible for the work of making such delegation.
  - (d) To reach agreement in writing with investors on plans for project tendering and the result of selection of a tenderer for tender packages valued at 1 billion dong or more in the case of consultancy and at 5 billion dong or more in the case of procurement of goods or construction and installation (pursuant to an approved tendering plan) for joint venture projects, business co-operation contracts, or shareholding [projects] pursuant to article 2.2 (b) of D88-CP where they act as the legal representative of the owner in the case of a State owned enterprise participating in project investment, on the basis of the evaluation report of the body assisting tendering.
4. Chairmen of people's committees of provincial cities, districts, towns, townships, communes and wards shall be responsible:
- (a) To approve tendering plans for projects using St

**20. To amend and add to article 53 of D88-CP as follows:**

**“Article 53** *Delegation of authority for approval and evaluation of tender invitation documents and the result of selection of a tenderer*

Based on the tender package price approved in the tendering plan for projects referred to in sub-clauses (a) and (c) of article 2.2 of D88-CP, the evaluation and approval of the result of selection of a tenderer shall be implemented as follows:

1. With respect to important national projects for which the National Assembly makes the investment policy decision and the Prime Minister of the Government makes the investment decision:
  - (a) The Prime Minister of the Government shall approve the result of selection of a tenderer on the basis of the evaluation report of the Ministry of Planning and Investment for a tender package within the Prime Minister’s authority to approve pursuant to the regulations.
  - (b) Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people’s committees of provinces and cities under central authority shall approve tender invitation



(a) Tendering shall be cancelled in any one of the following circumstances:

- The objectives stated in the tender invitation documents are changed;
- There is evidence that the party calling for tenders has colluded with a tenderer to avoid competition in tendering;
- All tenders fail to satisfy the basic requirements set out in the tender invitation documents;
- There is evidence that tenderers have colluded to avoid competition in tendering, affecting the interests of the party calling for tenders.

Based on the decision of the authorized person, the party calling for tenders shall be responsible for notifying all tenderers of the cancellation or re-organization of the tendering.

(b) Financial liability for a cancellation:

- If cancellation was not the fault of the tenderers, the party calling for tenders shall be responsible for compensating the tenderers for their costs of participating in the tendering.

The amount of compensation shall be calculated on the principles of correct and complete calculation, and in accordance with fixed levels promulgated by the State, comprising the following items:

- + Expenses of purchase of tender invitation documents;
- + Travelling expenses (to purchase the tender invitation documents, to submit a tender, to survey sites and so forth);
- + Expenses of drawing up the tender;
- + Other expenses (stationery, depreciation of equipment and so forth).

1. Contents of the system of data-information on tenderers:

The system of data-information on tenderers shall include lists of tenderers who participate in tendering for projects in Vietnam with the following specific information on each tenderer:

- (a) Name of the tenderer;
- (b) Year of establishment;
- (c) Sector of participation in tendering such as consultancy, supply of goods, or construction and installation;
- (d) Current total assets and working capital;
- (dd) Other relevant matters”.

2. Agency in charge of the system of data-information on tenderers:

The Ministry of Planning and Investment will manage nationwide the system of data-information on tenderers, and shall be responsible to publish such data-information in the State’s tendering newsletter and web page on tenderers.

3. Responsibility of tenderers to provide data-information:

Tenderers shall be responsible to provide the information set out in clause 1 of this a06 Tc0.0281S o 6C2Mo.8(f)- Tcc thO71u

organize such inspection in accordance with the *Regulations on Tendering* of all entities which they manage and of all entities with projects for which they issued the investment licence pursuant to article 2.2 (b) of D88-CP.

(b) Periodical inspections:

Depending on the status of implementation of tendering work at grass-roots levels, the authorized person shall make a decision on periodical inspections every quarter, 6 months or annually. Periodical inspections shall concentrate on the following items:

- General status of implementation of tendering work of an entity;
- Status of implementation of tendering work for a number of specific projects: approved tendering plans; order of implementing tendering, the legal bases and reasons for implementing limited tendering, reasons for appointment of a tenderer and results of a successful tender, the value of signed contracts, and the status of implementation of contracts.

(c) One-off inspections:

3. Holding inspections:

An inspection may be held whenever signs of a breach of the laws on tendering are detected, on request by

- (c) If tenderers collude with each other to effect the interests of the party calling for tenders, their tender guarantees shall not be refunded and their names shall be published in the State's tendering newsletter and web page.
- (d) If a consultant's design for execution of works is inaccurate and results in construction works having to be changed or supplemented, or if the design causes a waste of expenses then the consultant must compensate for the loss and its name shall be published in the State's tendering newsletter and web page.
- (dd) If a consultant supervising the execution of works is irresponsible, or colludes with the construction

information on tendering as required by the regulations, then depending on the type and seriousness of the offence, the authorized person may issue a decision changing the composition of the party calling for tenders or of the expert group, may impose a disciplinary penalty on an individual State