

## **LAW ON TENDERING**

**National Assembly of the  
Socialist Republic of Vietnam  
Legislature XI, Session 8  
(from 18 October until 29 November 2005)**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law regulates tendering.

### CHAPTER I

#### **General Provisions**

**Article 1** *Governing scope*

**Article 2** *Applicable entities*

1. Domestic and foreign organizations and individuals participating in tendering activities for tender packages belonging to the projects stipulated in article 1 of this Law.
2. Organizations and individuals involved in tendering activities for tender packages belonging to the projects stipulated in article 1 of this Law.
3. Organizations and individuals with projects not within the governing scope of this Law may choose to apply this Law.

**Article 3** *Application of the Law on Tendering, related laws, international treaties and international agreements*

1. Tendering activities must comply with the provisions of this Law and other related laws.
2. If there are any special matters on tendering stipulated in any other Law, then such Law shall apply.
3. Tendering for projects using official development aid (abbreviated as *ODA*) shall be implemented on the basis of provisions in international treaties of which the Socialist Republic of Vietnam is a member or international agreements signed by authorized bodies or organizations on behalf of the Socialist Republic of Vietnam.

**Article 4** *Interpretation of terms*

In this Law, the following terms shall be construed as follows:

1. *Financed by the State* means the use of State Budget funds, credit facilities guaranteed by the State, credit facilities for investment and development of the State, investment and development funds of State owned enterprises, and other capital funds managed by the State.
2. *Tendering* means the process of selecting a contractor who satisfies the requirements set by the party calling for tenders in order to implement a te  
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8. *Authorized person* means the person with the right pursuant to law to make project decisions. In the case of projects financed by the State as to thirty (30) per cent or more, excluding projects financed by the State as to hundred (100) per cent, the authorized person is the board of management or authorized representative of the capital contributing parties.
9. *Investor* means the entity owning the financing capital or the entity assigned responsibility to represent such owner, or the borrower directly managing and implementing any project as defined in clause 7 of this article.
10. *Party calling for tenders* means the investor or a professional organization with sufficient capability and experience in accordance with the law on tendering for the investor to hire in order to hold tendering.
11. *Tenderer* means any eligible organization or individual as stipulated in articles 7 and 8 of this Law.
12. *Head contractor* means a tenderer liable for its participation in tendering which gives its name to a tender, and which signs and implements a contract if selected (hereinafter referred to as a *participating tenderer*). A tenderer participating in tendering independently is referred to as an *independent tenderer*. A tenderer participating in tendering jointly with one or more other tenderers to submit the one tender is referred to as a *partnership tenderer*.
13. *Consultancy tenderer* means a tenderer participating in tendering for the supply of products, who satisfies the requirements on knowledge and professional experience stipulated in clause 34 of this article.
14. *Supply tenderer* means a tenderer participating in tendering for tender packages for the supply of goods as defined in clause 35 of this article.
15. *Construction tenderer* means a tenderer participating in tendering for tender packages for construction and installation as defined in clause 36 of this article.
16. *EPC tenderer* means a tenderer participating in tendering for the performance of an EPC tender package as defined in clause 21 of this article.
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23. *Pre-qualification application* means all of the documents prepared by a tenderer in accordance with the requirements of the pre-qualification invitation documents.
24. *Tender invitation documents* means all of the documents used for open or limited tendering stipulating the requirements for any one tender package and providing the legal basis for tenderers to prepare their tenders and for the party calling for tenders to assess tenders aimed at selection of a winning tenderer; and also providing the basis for negotiation, finalization and signing of a contract.
25. *Tender* means all of the documents prepared by a tenderer in accordance with the requirements of the tender invitation documents and submitted to the party calling for tenders in accordance with the provisions in the tender invitation documents.
26. *Tender package price* means the value of a tender package specified in the tendering plan based on the approved total invested capital, total estimated budget or estimated budget and current regulations.
27. *Tender price* means the price stated by a tenderer in its tender. If a tenderer provides a discount letter, then the price shall be the price stated in the discount letter.
28. *Proposed contract sum* means the sum of the tender price and the amount of the discount, if any, for negotiation, finalization and signing of a contract.

30. *Equal footing price* means the price submitted by a tenderer after errors have been rectified and discrepancies have been adjusted, and after the tenderer has agreed to the equal footing price.



**Article 6** *Tendering plans*

1. The authorized person must provide written approval of a tendering plan after approval of the investment decision, or the tendering plan may be approved at the same time as the investment

**Article 8** *Eligibility of tenderers being individuals*

A tenderer being an individual shall be deemed to be eligible when he or she satisfies the following conditions:

**Article 10** *Conditions for participation in tendering for any one tender package*

Tenderers participating in tendering for any one tender package must satisfy all the following conditions:

1. Be eligible pursuant to articles 7 and 8 of this Law.
2. Submit only one tender, either as an independent tenderer or in partnership, for each tender package. In the case of a partnership there must be a written agreement between the partners specifying the person heading the partnership and the general and specific responsibilities of each partner with respect to the tender package works.
3. Satisfy the requirements set out in the notice inviting tenders or in the letter inviting tenders from the party calling for tenders;
4. Ensure competitiveness in tendering pursuant to the provisions in article 11 of this Law.

**Article 11** *Ensuring competitiveness in tendering*

1. Any tenderer who participates in tendering for a tender package belonging to the projects stipulated in article 1 of this Law must satisfy the following requirements on competitiveness:
  - (a) A consultancy tenderer who prepared a feasibility study report shall not be permitted to



3. Collaboration or collusion between the party calling for tenders and tenderers, or between the State administrative body and the party calling for tenders and/or tenderers in order to change tenders; collusion with the evaluating organization or an inspectorate in order to affect the collective or national interest.
4. Participation by an organization or individual in both assessment of tenders and in evaluation of the

11. Conduct contrary to the regulations on management of capital funds, or causing difficulties during the procedures for capital drawdown or for accounting finalization under any contract signed between an investor and a contractor.
12. An arrangement or collusion between two or more tenderers participating in tendering for the one tender package so that one of the tenderers will be awarded the contract; between the contractor implementing a tender package and the consultant supervising implementation; or between a

1. Tenderers being enterprises established and operating in Vietnam pursuant to the *Law on Enterprises* and the *Law on Investment*.
2. Partnership tenderers where one of the partners being an entity prescribed in clause 1 of this article undertakes work valued at over fifty (50) per cent of a tender package for consultancy services or for construction and installation, or of an EPC tender package.
3. Tenderers participating in tendering for tender packages for procurement of goods where the ratio of

1. The form of open tendering must be held for the selection of a contractor to implement a tender package belonging to the projects stipulated in article 1 of this Law, except in the circumstances stipulated in articles 19 to 24 inclusive of this Law.
2. In open tendering, the number of participating tenders shall be unrestricted. Prior to issuing the tender invitation documents, the party calling for tenders must publish a notice inviting tenders in accordance with article 5 of this Law so that tenderers will have information about participation. The party calling for tenders must supply tender invitation documents to any tenderer who wishes to participate in the tendering. The tender invitation documents must not include any term or condition aimed at restricting the participation of tenderers or favouring one or more tenderers thereby causing unfair competition.

**Article 19** *Limited tendering*

1. Limited tendering shall apply in the following cases:

- (dd) Tender packages for consultancy services with a tender package price of less than five hundred million dong, tender packages for the procurement of goods or for construction and installation with a tender package price of less than one billion dong belonging to projects for investment and development; tender packages for the procurement of goods with a tender package price of less than one hundred million dong belonging to a project or estimated budget for recurrent procurement; however tendering shall still be held when deemed necessary.
2. When conducting direct appointment of a contractor, the selection must be of a contractor who is determined as having sufficient capability and experience to satisfy the requirements of the tender package and there must be compliance with the procedures stipulated by the Government for carrying out direct appointment of a contractor.



- (b) In the second phase, in accordance with the phase two tender invitation documents, the tenderers who participated in the first phase shall be invited to submit stage two tenders comprising technical proposals, financial proposals with a tender price, and a method for securing their tender.

**Article 27** *Tender guarantee*

1. Tenderers participating in tendering for tender packages for the procurement of goods, for construction and installation and for EPC tender packages must provide a tender guarantee prior to the deadline for tender closing. In cases of two phase tendering, tenderers must provide a tender guarantee during phase two.
2. The specific amount of the tender guarantee shall be stipulated in the tender invitation documents depending on the particular nature of each tender package, but shall not exceed three per cent of the approved tender package price.
3. The term of validity of a tender guarantee shall be equal to the term of validity of the tender plus thirty (30) days.
4. Where it is necessary to extend the period of validity of tenders, the party calling for tenders shall require tenderers to extend the period of validity of their tender guarantees for an equivalent term; in such a case, tenderers shall not be permitted to change the contents of their submitted tenders

3. The sequence of assessment of tenders shall be implemented in accordance with the provisions in article 35 of this Law.

**Article 29** *Method of assessment of tenders*

1. The method of assessment of tenders must be conducted in accordance with the assessment criteria stipulated in the tender invitation documents. Criteria of assessment of tenders shall comprise assessment criteria of capability and experience when pre-qualification does not apply, assessment criteria of technical aspects, and overall assessment criteria in the case of a tender package for consultancy services or of items in order to convert prices regarding technical, financial and





submission and approval of pre-qualification results; and notification of results of pre-qualification;

- (c) The criteria for evaluation of pre-qualification applications must be set out in the pre-qualification invitation documents in accordance with the sample pre-qualification invitation documents regulated by the Government and shall include criteria on technical capability, and standards on financial capability and experience.

2. Preparation of pre-qualification invitation documents:

Pre-qualification invitation documents shall be formulated in accordance with the sample form regulated by the Government and shall comprise the following contents:

- (a) Technical requirements:

In the case of tender packages for consultancy services, the technical requirements shall include requirements on the knowledge and professional experience of experts (terms of reference);

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1. The party calling for tenders shall prepare a report on the results of tendering in order for the investor to submit it to the person authorized to consider and make a decision thereon, and also send it to the body or organization responsible to make the evaluation.
2. The body or organization assigned the task of making the evaluation shall be responsible to prepare a report on evaluation of the results of tendering on the basis of the report from the investor, in order to submit it to the authorized person to consider and make a decision thereon.

**Article 40** *Approval of the results of tendering*

1. The authorized person shall be responsible to consider and approve the results of tendering on the

- (dd) Contractual items which require to be negotiated and finalized as between the party calling for tenders and the winning tenderer.
- 2. The results of negotiation and finalization of the contract shall be the basis on which the investor and the tenderer shall conduct signing of the contract.
- 3. If negotiation and finalization of the contract is unsuccessful, the investor must provide a report to the authorized person for his consideration to select the next-ranking tenderer. If the next-ranking tenderer also fails to satisfy the requirements, the investor shall report to the authorized person for his consideration and decision.

#### Section 4

### **Cancellation of Tendering and Rejection of Tenders**

#### **Article 43** *Cancellation of tendering*

- 1. Cancellation of tendering shall apply in any one of the following cases:
  - (a) Alteration of the objectives or scope of the investment stated in the tender invitation documents;
  - (b) There is evidence showing that the party calling for tenders colluded with tenderers;
  - (c) All tenders failed to satisfy the basic requirements of the tender invitation documents;
  - (d) There is evidence to show that all tenderers colluded to adversely effect the interests of the party calling for tenders.
- 2. Based on the decision of the authorized person, the party calling for tenders shall be responsible for notifying all tenderers who participated in the tendering of the cancellation of the tendering.

#### **Article 44** *Financial liabilities when tendering is cancelled*

- 1. In a case of cancellation of tendering not due to the fault of tenderers, the party calling for tenders shall be responsible to compensate tenderers for their costs of participation in the tendering on the basis of the current State regime and cost levels, except in a case where the tendering was cancelled.

1. A tender fails to satisfy the important requirements set out in the tender invitation documents.
2. A tender fails to satisfy the technical requirements based on the assessment criteria.
3. A tender contains arithmetical errors with a total absolute value of more than ten (10) per cent of the tender price, except for tender packages for consultancy services or except where a tenderer does not accept the arithmetical error identified by the party calling for tenders.
4. A tender contains discrepancies with a total absolute value of more than ten (10) per cent of the tender price, except for tender packages for consultancy services.

## CHAPTER III

### Contracts

#### **Article 46** *Principles for formulation of contracts*

1. Contracts must comply with the provisions of this Law and other relevant laws.
2. In the case of a partnership tender, the contract signed with the investor must contain the signatures of all partners.
3. The contract sum shall not exceed the winning tender price, except for the case stipulated in clause 4 of this article.
4. In cases where a volume of works or a quantity of goods arises which exceeds the scope of the tender invitation documents leading to the contract sum exceeding the winning tender price, then the authorized person shall consider and make a decision thereon.

#### **Article 47** *Contents of contracts*

1. Subject of the contract.

12. Term of validity of the contract.
13. Other items depending on each form of contract.

**Article 48** *Forms of contract*

1. Lump-sum contract.
2. Unit price contract.
3. Time based contract.
4. Percentage based contract.

**Article 49** *Lump-sum contract*

1. The form of lump-sum contract shall apply to items of works which are clearly definable in terms of quantity or volume.
2. The contract sum shall not be altered throughout the entire duration for implementation of the contract. The investor shall pay the contractor the correct amount being the sum stated in the contract, after the contractor has discharged all his contractual obligations.

**Article 50** *Form of unit price contract*

1. The form of unit price contract shall apply to those items of works which cannot yet be clearly defined in terms of quantity or volume.
2. The investor shall pay the contractor in accordance with the actual quantity or volume of work completed on the basis of the unit price stipulated in the contract or on the basis of the unit price adjusted and approved in accordance with article 57 of this Law.

**Article 51** *Form of time based contract*

1. The form of time based contract shall apply to those items of works being complex research, design consultancy, supervision of execution of building, training and capacity building.
2. The investor shall pay the contractor in accordance with the actual time worked calculated in months, weeks, days and hours on the basis of the expert remuneration rates stipulated in the contract or on the basis of remuneration rates adjusted and approved in accordance with article 57 of this Law.

**Article 52** *Form of percentage based contract*

1. The form of percentage based contract shall apply to common and simple consultancy work.
2. The contract sum shall not be altered throughout the entire duration for implementation of the contract. The contract sum shall be calculated as a percentage of the value of the works or of the volume of works. The investor shall pay the contractor the correct amount being the sum stated in the contract, after the contractor has discharged all his contractual obligations.

**Article 53** *Multiple contractual forms within the one contract*





1. Adjustment to contracts shall only apply to unit price contracts and time based contracts, and shall be carried out as follows:
  - (a) When there is a change in State policy in relation to tax or wages which directly impacts on the contract sum, the contract shall be adjusted in accordance with such policy as from the date the policy take effect;



4. To approve the list of tenderers who have satisfied the technical requirements, and the list ranking the tenderers.

2. In a case where the party calling for tenders is concurrently the investor, then in addition to the rights and obligations stipulated in clause 1 of this arti

6. To exercise other rights and to discharge other obligations in accordance with law.

## CHAPTER V

### Administration of Tendering Activities

#### **Article 66** *Contents of State administration of tendering*

1. Promulgating, disseminating, guiding and organizing implementation of legal instruments and policies on tendering.
2. Training and capacity building for senior personnel engaged in tendering work.
3. Summarizing, assessing and reporting on the status of implementation of tendering activities.
4. Administering on a nationwide basis the tendering information system comprising the Tendering Newsletter, the tendering website and the national tendering network.
5. Conducting international co-operation regarding tendering.
6. Conducting checks and inspections; resolving protests, complaints and denunciations regarding tendering, and dealing with breaches of the law on tendering in accordance with this Law and other relevant laws.

#### **Article 67** *Responsibilities and powers of the Government and of the Prime Minister of the Government*

1. The Government shall exercise unified administration of tendering throughout the country.
2. The Prime Minister of the Government shall discharge the following responsibilities and exercise the following powers:
  - (a) Direct the work of conducting inspections and of resolving protests about tendering in accordance with this Law and the law on inspections;
  - (b) Regulate which evaluating body and/or organization shall assist the authorized person throughout the process of consideration and approval of tendering issues;
  - (c) In the case of investment projects formulated pursuant to resolutions of the National Assembly, make decisions on the tendering issues stipulated in article 60 of this Law.
  - (d) Discharge other responsibilities and exercise other powers in accordance with this Law and other relevant laws.

#### **Article 68** *Responsibilities and powers of the Ministry of Planning and Investment*

1. To be responsible before the Government for the exercise of State administration of tendering activities.
2. To evaluate tendering plans and results of selection of contractor in tender packages belonging to projects within the decision-making power of the Prime Minister of the Government and stipulated in sub-clause (c) of clause 2 of article 67 of this Law.

3. To establish and administer the Tendering Newsletter, the tendering website and the national tendering network.
4. To act as the co-ordinator assisting the Government and the Prime Minister of the Government in conducting international co-operation in the tendering sector.
5. To organize training and capacity building for senior personnel engaged in tendering work.

2. Categories of exceptional situations shall comprise:
- (a) Regarding preparation for and organization of tendering: items adjusting a tendering plan, a tender package price or other contents of a tender package; amendments to tender invitation documents; submission of tenders if tenders are submitted out of time or if too few tenders have been submitted; and amendments to the number of participating tenderers;
  - (b) Regarding assessment of tenders: situations in which tender prices exceed the tender package price, and tender prices made up of unusual unit prices;
  - (c) Regarding recommendation of winning tenderer and signing of the contract: situations in which the winning tender price is below fifty (50) per cent of the tender package price or the



- (a) The party calling for tenders shall be responsible to resolve a protest regarding tendering made by a tenderer within a time-limit of a maximum five (5) working days from the date of receipt of the written protest of the tenderer. If the party calling for tenders is unable to resolve the protest or if the tenderer disagrees with the resolution as made by the party calling for



