

**THE GOVERNMENT**

-----

No. 30/2015/NĐ-CP

**SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

-----

*Hanoi, March 17, 2015*

## **DECREE**

### **GUIDELINES FOR SOME ARTICLES ON INVESTOR SELECTION OF THE LAW ON BIDDING**

*Pursuant to the Law on Government organization dated December 25, 2001 dated December 25, 2001;*

*Pursuant to the Law on Bidding dated November 26, 2013;*

*Pursuant to the Law on Public investment dated June 18, 2014;*

*Pursuant to the Law on Investment dated November 26, 2014;*

*At the request of the Minister of Planning and Investment;*

*The Government promulgates a Decree that provides guidelines for some Articles on investor selection of the Law on Bidding.*

## **Chapter I**

### **GENERAL PROVISIONS**

#### **Article 1. Scope and regulated entities**

##### **1. Scope**

This Decree provides guidelines for some articles on investor selection of the Law on Bidding according to Clause 3 Article 1 of the Law on Bidding, including:

- a) Projects of investment in the form of Public – Private Partnership (PPP projects) as prescribed by the Government on PPP projects;
- b) Projects of investment using land with high commercial value that require investor selection on the list of approved projects prescribed in Point b Clause 1 Article 10 of Decree to develop constructions in urban areas, new urban areas; commercial housing, commercial and service works; multi-purpose complexes that are not the cases mentioned in Point a of this Clause.

##### **2. Regulated entities**

- a) Any organization or individual (hereinafter referred to as entity) involved in selection of investors in projects of investment prescribed Clause 1 of this Article;

b) Any entity involved in investor selection that is not regulated by this Decree but still applies this Decree. In this case, such entity must comply with relevant regulations of the Law on Bidding and this Decree to ensure fairness, transparency, and economic efficiency.

## **Article 2. Assurance of competition in bidding**

1. An investor participating in bidding (hereinafter referred to as bidder) is considered legally and financially independent from the consultancy contractor that makes and evaluates the feasibility study report (for PPP projects of group C, the bidder must be independent from the contractor that makes and evaluate the project proposal), from the consultancy contractor that makes, evaluates the pre-qualification documents bidding documents, evaluates, pre-qualification applications, bid-envelopes, appraises results of investor selection, from competent authorities, and from the soliciting entity prescribed in Clause 4 Article 6 of the Law on Bidding when the following conditions are satisfied:

- a) The bidder does not belong to the same organization (for administrative services);
- b) The bidder, the competent authority, and the soliciting entity do not have more than 30% of each other's shares or stake;
- c) The bidder and the contractor that makes and evaluates the feasibility study report (for PPP projects of group C, the bidder must be independent from the contractor that makes and evaluate the project proposal), the contractor that makes, evaluates the pre-qualification documents, bidding documents, evaluates pre-qualification applications, bid-envelopes, appraises results of investor selection do not have shares of stake of each other; do not have 20% of shares or stake of the same organization or individual.

2. The investor is permitted to bid for the project that they make the feasibility study report (or the project proposal for PPP projects of Group C) and must be legally and financially independent from other parties as prescribed in Clause 1 of this Article, except for the consultancy contractor that makes the feasibility study report (or project proposal for PPP projects of Group C).

## **Article 3. Incentives in selection of investors in PPP projects**

If the investor has a feasibility study report or project proposal (for projects of group c) that is approved, such investor shall have incentives during the financial – commercial evaluation, particularly:

1. If the service-price-based method is applied, the investor that is not eligible for incentives must add an amount of 5% of the service price to the initial service price of such investor for comparison and ranking.
2. If the state contribution method is applied, the investor that is not eligible for incentives must add an amount of 5% of the proposed state contribution to the initial state contribution proposed by the investor for comparison and ranking.
3. If the public-interest-based method is applied, the investor that is eligible for incentives may add an amount of 5% of the amount payable to state budget to the initial amount payable to state budget proposed by the investor for comparison and ranking.

4. If mixed method is applied, the investor shall have incentives according to the proportions of the mixed method. Nevertheless, the total value of incentives must not exceed 5%.

#### **Article 4. Provision and publishing of information about bidding**

##### 1. Responsibility to provide information:

a) Ministries, ministerial agencies, Governmental agencies, other central agencies, the People's Committees of provinces, and competent persons are responsible for providing information prescribed in Point g Clause 1 Article 8 of the Law on Bidding on the national bidding network or Vietnam Public Procurement Review Journal;

b) Ministries, ministerial agencies, Governmental agencies, other central agencies, the People's Committees of provinces shall, within the area of their competence, provide the information prescribed in Point h Clause 1 Article 8 of the Law on Bidding on the national bidding network;

c) Provincial Departments of Planning and Investment and regulatory bodies in charge of PPP investment are responsible for providing information about PPP projects, list of projects using land, and relevant information prescribed in Point i and Point l Clause 1 Article 8 of the Law on Bidding on the national bidding network.

d) The soliciting entity is responsible for providing the information prescribed in Point a Clause 1 Article 8 of the Law on Bidding on the national bidding network;

dd) The soliciting entity is responsible for providing the information prescribed Points b, d, d, dd Clause 1 Article 8 of the Law on Bidding and information about changes of bid closing time (if any) on the national bidding network or Vietnam Public Procurement Review Journal;

e) Investors are responsible for providing and updating information about their capacity and experience on the investor database of national bidding network as prescribed in Point d Clause 1 Article 5 and Point k Clause 1 Article 8 of the Law on Bidding;

g) Training institutions, bidding lecturers, experts having bidding practice certificates are responsible for providing information about their training, teaching, and bidding practice for the Ministry of Planning and Investment for posting on the national bidding network as prescribed in Point k Clause 1 Article 8 of the Law on Bidding.

##### 2. Responsibility to publish information:

a) The Ministry of Planning and Investment is responsible for publishing information about bidding;

b) Valid information shall be posted on national bidding network and Vietnam Public Procurement Review Journal. If a piece of information is found invalid, the Ministry of Planning and Investment shall post a notice on national bidding network and Vietnam Public Procurement Review Journal for the information provider to adjust it.

3. Apart from the responsibility to provide information prescribed in Point dd Clause 1 of this Article, the soliciting entity must publish the pre-qualification documents on the website of an international journal (in English) that is published in Vietnam.

## **Article 5. Time limit and procedures for provision and publishing of bidding information**

1. Publishing of information on national bidding network:

a) The entities responsible for providing information mentioned in Clause 1 Article 4 of this Article shall register for participation in national bidding network and publish information on the national bidding network themselves as instructed by the Ministry of Planning and Investment;

b) With regard to information prescribed in Point b and Point c Clause 1 Article 8 of the Law on Bidding, the soliciting entity shall publish the pre-qualification documents and bidding documents within the time limit written in the notice, which does not exceed 03 working days from the first day on which such information are posted on the national bidding network;

c) With regard to the information prescribed in Points a, d, dd, g, h, I Clause 1 Article 8 of the Law on Bidding, the entities responsible for publishing information must ensure that information is published within 07 working days from the day on which the document is issued.

2. Provision of information for Vietnam Public Procurement Review Journal:

a) With regard to the information prescribed in Point b and Point c Clause 1 Article 8 of the Law on Bidding, Vietnam Public Procurement Review Journal must receive the information at least 05 working days before the intended issuance date of the pre-qualification documents or bidding documents. Such information shall be published on one issue of Vietnam Public Procurement Review Journal;

b) With regard to the information prescribed in Points d, dd, g Clause 1 Article 8 of the Law on Bidding, the entities responsible for publishing information must ensure that information is published within 07 working days from the day on which the document is issued. Such information shall be published on one issue of Vietnam Public Procurement Review Journal.

3. Within 02 working days from the day on which the information is published on the national bidding network by the provider as prescribed in Points b, c, d, dd, g Clause 1 Article 8 of the Law on Bidding, it must be published on one issue of Vietnam Public Procurement Review Journal.

4. Within 02 working days from the day on which the information is published on the national bidding network by the provider as prescribed in Points b, c, d, dd, g Clause 1 Article 8 of the Law on Bidding, it must be published on one issue of Vietnam Public Procurement Review Journal. With regard to the information prescribed in Point b and Point c Clause 1 Article 8 of the Law on Bidding, the soliciting entity shall publish the pre-qualification documents and bidding documents within the time limit written in the notice, which does not exceed 03 working days from the first day on which such information are posted on the national bidding network or Vietnam Public Procurement Review Journal.

5. Within 02 working days from the date of information publishing prescribed in Point b Clause 1 or Point a Clause 2 of this Article, the soliciting entity shall post the notice of international pre-qualification in accordance with Clause 3 Article 4 of this Decree.

#### **Article 6. Time limits for selection of investors**

1. Information about the PPP project, the list of projects of investment using land must be published within 07 working days from the day on which the PPP project proposal or the list of projects of investment using land is approved.

2. The time limit for approving the investor selection plan is 10 days from the day on which the evaluation report is received

3. The pre-qualification documents, bidding documents, and request for proposals must be published within 03 working days from the first day on which the notice of pre-qualification or notice of bidding is posted on the national bidding network or Vietnam Public Procurement Review Journal; invitations for bids must be sent before the bid closing time.

4. The time for preparing the pre-qualification application is at least 30 days from the first day on which the pre-qualification documents is published to the bid closing date. Investors must submit pre-qualification applications before the bid closing time.

5. The time for preparing proposals is at least 30 days from the first day on which the request for proposals is published to the bid closing date. Investors must submit proposals before the bid closing time.

6. The time for preparing bid-envelopes is at least 60 days for domestic bidding and 90 days for international bidding from the first day on which the bidding documents is published to the bid closing date. Investors must submit bid-envelopes before the bid closing time.

7. The time limit for evaluating pre-qualification applications is 30 days from the bid closing date to the day on which the soliciting entity submits the pre-qualification result to a competent person for approval.

8. With regard to domestic bidding, the time limit for evaluating proposals is 45 days, bid-envelopes 90 days; With regard to international bidding, the time limit for evaluating proposals is 60 days, bid-envelopes 120 days from the bid closing date to the day on which the soliciting entity submits the investor selection result to a competent person for approval. If necessary, the time limit for evaluating bid-envelopes or proposals may be extended as long as the project progress is ensured.

9. The time limit shall be 30 days from the receipt of sufficient documents for evaluation of: Plan for investor selection, pre-qualification documents, bidding documents, request for proposals, pre-qualification result, list of investors satisfying technical requirements, and result of investor selection.

10. Time limit for approval for the pre-qualification documents, bidding documents, request for proposals, pre-qualification results, and investor selection result is 20 days from the day on which the evaluation result is received by the competent person.

11. The effective period of the bidding documents and proposals is 320 days from the bid closing date. If necessary, the expiration dates of the bid-envelopes or proposals may be extended as long as the project progress is ensured.

12. The adjustment to pre-qualification documents must be sent to the investors that received the pre-qualification documents must be sent (directly, by post, fax, or email) at least 10 days before the bid closing date; the adjustment to bidding documents must be sent to investors that received the bidding documents at least 15 days (for domestic bidding) or 25 days (for international bidding) before the bid closing date; the adjustment to the request for proposals must be sent at least 10 days before the bid closing date. If the documents cannot not be sent by the deadlines prescribed in this Article, the soliciting entity shall delay the bid closing deadline to ensure the adjustment to the pre-qualification documents, bidding documents, or request for proposals is sent by the deadline.

13. The soliciting entity shall send written notifications of the investor selection result to investors by post or fax within 05 working days from the day on which the investor selection result is approved.

14. The contract shall be negotiated and completed within 120 days from the day on which the investor selection result is approved.

#### **Article 7. Costs of investor selection**

1. In consideration of the scale and characteristics of the project, the soliciting entity shall decide the selling price for a set of pre-qualification documents, bidding documents, or request for proposals (inclusive of tax). With regard to domestic bidding, the selling price for a bidding documents or request for proposals shall not exceed VND 20,000,000; the price for a set of pre-qualification documents shall not exceed VND 5,000,000. With regard to international bidding, the selling price for a bidding documents or request for proposals shall not exceed VND 30,000,000; the price for a set of pre-qualification documents shall not exceed VND 10,000,000.

2. Costs of making and appraisal of pre-qualification documents; evaluation of pre-qualification applications; appraisal of pre-qualification result:

a) The cost of making the pre-qualification documents is 0.02% of the total investment. Nevertheless, the cost shall not fall below VND 10,000,000 and not exceed VND 100,000,000;

b) The cost of appraising the pre-qualification documents is 0.01% of the total investment. Nevertheless, the cost shall not fall below VND 10,000,000 and not exceed VND 50,000,000;

c) The cost of evaluating pre-qualification applications is 0.02% of the total investment. Nevertheless, the cost shall not fall below VND 10,000,000 and not exceed VND 100,000,000;

d) The cost of appraising the pre-qualification result is 0.01% of the total investment. Nevertheless, the cost shall not fall below VND 10,000,000 and not exceed VND 50,000,000;

3. Costs of making, appraisal of bidding documents and request for proposals; evaluation of bid-envelopes and proposals; appraisal of investor selection result:

a) The cost of making the bidding documents or request for proposals is 0.05% of the total investment. Nevertheless, the cost shall not fall below VND 10,000,000 and not exceed VND 200,000,000;

b) The cost of appraising the bidding documents/request for proposals and the investor selection result is 0.02% of the total investment. Nevertheless, the cost shall not fall below VND 5,000,000 and not exceed VND 100,000,000;

c) The cost of evaluating pre-qualification applications/proposal is 0.03% of the total investment. Nevertheless, the cost shall not fall below VND 10,000,000 and not exceed VND 200,000,000.

4. With regard to projects with similar contents of the same competent authority and solicited by the same party, the projects in which investors have to be selected again, the costs of making, appraising the pre-qualification documents; making, appraising the bidding documents or request for proposals shall not exceed 50% the costs that were paid as prescribed in Clause 2 and Clause 3 of this Article. If investor selection has to be carried out again, such cost shall be included in the investment preparation cost.

5. The costs prescribed in Clause 2, Clause 3, and Clause 4 of this Article apply to the cases in which the investor selection is directly carried out by the competent authority or soliciting entity. If the tasks mentioned in Clause 2, Clause 3 and Clause 4 are done by hired consultants, the costs shall depend on the contents and extent of the tasks, duration, capacity, experience of the consultants, their salary scale, and other factors.

If the salary scale of consultants is not available, the consultants' salaries shall be determined according to the salaries of consultants for similar projects in certain period of time or included in the total investment.

6. The cost of payment for Advisory Council to settle investors' complaints against investor selection result is 0.02% of the total investment of the complaining investor. Nevertheless, the cost shall not fall below VND 10,000,000 and not exceed VND 200,000,000;

7. The cost of publishing bidding information, cost of participation in national bidding network and use of revenues collected during the investor selection process shall comply with instructions of the Ministry of Planning and Investment and the Ministry of Finance.

## **Article 8. Time and cost of investor selection PPP project of Group C**

1. Time of investor selection PPP project of Group C:

a) The pre-qualification documents (if any) or bidding documents shall be published within 03 working days from the first day on which the notice of pre-qualification or notice of bidding is posted on the national bidding network or Vietnam Public Procurement Review Journal; invitations for bids must be sent before the bid closing time.

b) The time for preparing the pre-qualification application is at least 10 days from the first day on which the pre-qualification documents is published to the bid closing date. Investors must submit pre-qualification applications before the bid closing time.

c) The time for preparing bid-envelopes is at least 30 days, proposals 15 days from the first day on which the bidding documents or request for proposals is published to the bid closing date. Investors must submit bid-envelopes or proposals before the bid closing time.

d) If the pre-qualification documents, bidding documents, or request for proposals has to be adjusted, the soliciting entity must notify investors 03 days before the bid closing date.

dd) The time limit for evaluating bid-envelopes is 30 days, proposals 20 days from the bid closing date to the day on which the soliciting entity submits the investor selection result to a competent person for approval.

e) The time limit shall be 10 days (from the day on which the request for approval is submitted) for evaluation of: Plan for investor selection, pre-qualification documents, bidding documents, request for proposals, pre-qualification result, and result of investor selection.

g) Other time limits are similar to those prescribed in Article 6 of this Decree.

## 2. Costs of selection of investors in PPP project of Group C:

a) The value of bid security is 0.5% – 1% of total investment in the project; The value of performance security is 1% - 1.5% of total investment in the project.

b) In consideration of the characteristics of the project, the soliciting entity shall decide the selling price for a set of pre-qualification documents, bidding documents, or request for proposals (inclusive of tax). The selling price for a bidding documents or request for proposals shall not exceed VND 15,000,000; the price for a set of pre-qualification documents shall not exceed VND 5,000,000.

c) Costs of making, appraisal of pre-qualification documents; evaluation of pre-qualification applications; appraisal of pre-qualification result:

- The cost of making the pre-qualification documents is 0.02% of the total investment. Nevertheless, the cost shall not fall below VND 5,000,000 and not exceed VND 50,000,000;

- The cost of appraising the pre-qualification documents and pre-qualification result is 0.01% of the total investment. Nevertheless, the cost shall not fall below VND 5,000,000 and not exceed VND 25,000,000;

- The cost of evaluating pre-qualification applications is 0.02% of the total investment. Nevertheless, the cost shall not fall below VND 5,000,000 and not exceed VND 50,000,000.

d) Costs of making, appraisal of the bidding documents/request for proposals; evaluation of bid-envelopes/proposals; appraisal of investor selection result:



- The cost of making the bidding documents/request for proposals is 0.05% of the total investment. Nevertheless, the cost shall not fall below VND 5,000,000 and not exceed VND 100,000,000;

- The cost of appraising the bidding documents/request for proposals and the investor selection result is 0.02% of the total investment. Nevertheless, the cost shall not fall below VND 5,000,000 and not exceed VND 50,000,000;

- The cost of evaluating pre-qualification applications/proposals is 0.03% of the total investment. Nevertheless, the cost shall not fall below VND 5,000,000 and not exceed VND 100,000,000.

dd) With regard to projects with similar contents of the same competent authority and solicited by the same party, the projects in which investors have to be selected again, the costs of making, appraising the pre-qualification documents; making, appraising the bidding documents or request for proposals shall not exceed 50% the costs that were paid as prescribed in Point c and Point d of this Clause. If investor selection has to be carried out again, such cost shall be included in the investment preparation cost.

e) The costs prescribed in Point a, Point b, Point c, and Point d of this Clause apply to the cases in which the investor selection is directly carried out by the competent authority or soliciting entity. Clause 5, Clause 6, and Clause 7 Article 7 of this Decree shall apply to costs of bidding consultancy, operating cost of Advisory Council in charge of complaint settlement, cost of bidding information publishing, and cost of participation in national bidding network.

## **Article 9. Methods of investor selection**

1. The selection of investors in PPP projects and projects of investment using land must be carried out by international competitive bidding except for the cases mentioned in Clause 2 and Clause 3 of this Article.

2. Domestic competitive bidding shall be applied in the following cases:

a) The fields in which foreign investment is restricted by Vietnam's law or international agreements to which the Socialist Republic of Vietnam is a signatory;

b) Foreign investors do not participate in international pre-qualification or fail the pre-qualification;

c) PPP projects of Group C as defined by regulations of law on public procurement. Where advanced technologies or international management experienced are needed, domestic investor may form joint ventures with foreign investors or employ foreign contractors to execute the projects.

d) Projects of investment using land in which preliminary investment (not including cost of land clearance and compensation) is below VND 120 billion.

3. Cases of appointment of investors in projects according to Clause 4 Article 22 of the Law on Bidding:

- a) Only one investor registers and satisfies requirements of the pre-qualification documents; only one investor passes the pre-qualification;
- b) Only one investor is capable of executing the project as prescribed in Point b Clause 4 Article 22 of the Law on Bidding;
- c) The project proposed by the investor is feasible and most efficient including PPP projects, projects of investment using land meant for protection of national sovereignty, national borders, and islands as prescribed in Point c Clause 4 Article 22 of the Law on Bidding. Feasible and most efficient projects are considered and decided by the Prime Minister when the following conditions are satisfied:
  - There are feasibility study reports (for PPP projects) or project proposals (for PPP projects of Group C) that are approved;
  - The investor proposes reasonable service prices, state contribution, social benefits, or state interests;
  - The requirements for protection of national sovereignty, national borders, and islands are satisfied.

**Article 10. List of projects of investment using land (hereinafter referred to as land-using projects)**

1. Compiling and approving the list of projects

a) Basis for compiling the list of projects

- Socio-economic development plans;
- Annual land use plans; lists of approved projects that need land withdrawal;
- Overall planning on a scale of 1:2000 spatial planning on a scale of 1:500 (if any).

b) Compiling and approving the list of projects

Relevant Departments and equivalent agencies or the People's Committees of districts shall propose projects using land with high commercial value that need investor selection and send proposals to the Department of Planning and Investment; the provincial Department of Planning and Investment shall submit the list of land-using projects to the President of the People's Committee of the province for approval.

2. Publishing of list of projects

a) After a decision on approval is issued, the list of land-using projects shall be published by the deadline prescribed in Clause 1 Article 6 of this Decree. The list should be published on other mass media to facilitate access to information of interested investors.

b) The published information must specify: the project location, land area, purposes of land, approved targets, current land condition, and other necessary information.

## **Article 11. Preliminary plan for land clearance and compensation for land-using projects**

According to the approved list of land-using projects mentioned in Point b Clause 1 Article 10 of this Decree, relevant Departments and equivalent agencies or the People's Committees of districts shall cooperate with the organization in charge of land clearance and compensation in making a preliminary plan for land clearance and compensation when land is withdrawn by the State as the basis for making the bidding documents/request for proposals. The compensation levels depend on the land prices according to the latest land price list and price adjustment coefficients as prescribed by regulations of law on land.

## **Article 12. Retention of bidding information**

1. All documents about the selection of investors shall be retained for at least 03 years after the project contract is completed, except for the documents mentioned in Clause 2, Clause 3, and Clause 4 of this Article.
2. Financial - commercial proposals of investors that do not pass technical evaluation shall be returned as is to investors at the same time as the refund or release of bid security of unselected investors. If investors do not receive their financial – commercial proposals, the soliciting entity shall consider destroying them in a way that information contained therein is not revealed.
3. In case of bidding cancellation, relevant documents shall be kept for 12 months from the day on which the decision on bidding cancellation is issued.
4. Project contract finalization documents and documents related to the selected investor in accordance with regulations of law on documents retention.

## **Article 13. Training in bidding**

The registration, evaluation, recognition, and removal of bidding training centers, lecturers, provision of bidding training; requirements applied to lecturers in bidding; requirements for issuance of training certificate and practicing certificate; responsibilities of the Ministry of Planning and Investment for management of training in bidding must comply with regulations of law on contractor selection.

## **Article 14. Group of experts**

1. Every individual participating in the group of experts must have the bidding practicing certificate, except for those mentioned in Clause 3 and Clause 4 of this Article.
2. Depending on the characteristics and complication of the project, the group of experts shall consists of experts in technology, finance, commerce, administration, law, land, and relevant fields.
3. With regard to individuals that are not mentioned in Clause 2 Article 16 of the Law on Bidding, in order to participate in the group of experts, the individual must satisfy the following conditions:

- a) have a certificate of training in bidding;
  - b) have qualifications related to the project;
  - c) have foreign language skills that satisfy the project's requirements;
  - d) be conversant with relevant contents of the projects;
  - dd) have at least 05 years' experience in the field related to the project.
4. With regard to special cases in which professional opinions of experts are necessary, the experts are not required to have certificates of training in bidding.

## **Chapter II**

### **PRE-QUALIFICATION AND INVESTOR SELECTION PLAN**

#### **Section 1. PRE-QUALIFICATION**

##### **Article 15. Detailed procedures**

1. Prepare the pre-qualification:
  - a) Make the pre-qualification documents;
  - b) Appraise, approve the pre-qualification documents.
2. Organize the pre-qualification:
  - a) Announce the pre-qualification;
  - b) Publish, adjust, clarify the pre-qualification documents;
  - c) Prepare, submit, receive, manage, adjust, withdraw pre-qualification applications;
  - d) Bid opening.
3. Evaluate pre-qualification applications.
4. Submit, appraise, approve the pre-qualification results; publish the short list.

##### **Article 16. Application or pre-qualification**

1. Pursuant to the feasibility study report of the PPP project and the approved list of land-using projects, the pre-qualification shall be carried out before the investor selection plan is made to determine qualified and experienced investors that satisfy the project's requirements, invite them to participate in competitive bidding as prescribed in Clause 1 and Clause 2 Article 9 of this Decree, or carry out direct contracting as prescribed in Point a and Point b Clause 3 Article 9 of this Decree.

2. International pre-qualification shall be applied to PPP projects and land-using projects, Except for the cases in Clause 3, Clause 4, and Clause 5 of this Article.

3. Domestic pre-qualification shall be applied to the projects mentioned in Point a Clause 2 Article 9 of this Decree.

4. With regard to PPP projects of group C, the competent persons shall decide whether to apply domestic qualification or not apply pre-qualification after the project proposal is approved depending on the characteristics of the projects.

5. With regard to land-using projects in which total investment (not including the cost of land clearance and compensation) is below VND 120 billion, the competent persons shall decide whether to apply domestic qualification or not apply pre-qualification depending on the characteristics of the projects.

### **Article 17. Making, appraising, and approving the pre-qualification documents.**

#### 1. Making the pre-qualification documents

Contents of the pre-qualification documents include:

a) Instructions for investors: Fundamental information about the project and instructions to participate in pre-qualification for investors;

b) Requirements for valid status of investors according to Article 5 of the Law on Bidding; requirements prescribed in Point c Clause 3 Article 58 of the Law on land (for land-using projects);

c) Required capacity and experience of investors: financial – commercial capacity, ability to prepare capital, ability to execute the project; required experience of similar projects; preliminary project execution methods and commitment to execute the project; responsibility to declare disputes and lawsuits concerning current and past contracts. Experience and capacity of investors are experience and capacity of investors that participate in the bidding as independent investors or joint ventures with other partners, including the lender, contractors, producers, insurers, and relevant partners.

#### d) Methods and standards for evaluation

Pre-qualification applications shall be evaluated according to the evaluation standards mentioned in the pre-qualification documents. The grade shall be given according to a scale of 100 or 1,000 shall be used to evaluate the investors' capacity and experience. When establishing standards for evaluating investors' capacity and experience, the minimum grade of a qualified investor must be specified. Nevertheless, the minimum grade must not be lower than 60% and the grade of each requirement must not be lower than 50% of the maximum grade given to such requirement.

#### 2. Appraising, approving the pre-qualification documents:

a) The soliciting entity shall submit the draft pre-qualification documents and relevant documents to the competent persons and the appraising unit;

b) The pre-qualification documents shall be appraised in accordance with Clause 1 Article 82 of this Decree;

c) The pre-qualification documents shall be approved in writing according to the written request for approval and the appraisal report.

### **Article 18. Announcement, publishing, adjustment, and clarification of the pre-qualification documents**

1. Announcement of the pre-qualification shall be made in accordance with Point dd Clause 1 Article 4 and Point b Clause 1 or Point a Clause 2 Article 5 of this Decree.

2. Publishing, adjustment, and clarification of the pre-qualification documents

a) The pre-qualification documents shall be published in accordance with Clause 3 Article 6 of this Decree. With regard to joint ventures, only one member of the joint venture shall buy the pre-qualification documents, even if the joint venture has not been established;

b) In case of adjustment to the pre-qualification documents after publishing, the soliciting entity must send the decision on adjustment and the adjusted contents to the investors that have bought the pre-qualification documents;

c) If the pre-qualification documents must be clarified, the investor shall send a written request to the soliciting entity at least 05 working days before the bid closing date. The soliciting entity shall clarify the pre-qualification documents in one of the following manners:

- Send clarifying documents to the investors that have bought or received the pre-qualification documents;

- Where necessary, a pre-bidding convention shall be held to discuss contents of the pre-qualification documents that need to be clarified. The discussion must be recorded in writing. The record shall be use as the clarifying document and sent to investors that have bought the pre-qualification documents;

- The clarification must not contravene the contents of the pre-qualification documents that have been approved. If the pre-qualification documents must be adjusted after clarification, the pre-qualification documents shall be adjusted in accordance with Point b of this Clause;

d) The decision on adjustment of the pre-qualification documents and the clarifying document is an integral part of the pre-qualification documents.

### **Article 19. Preparing, receiving, managing, changing, withdrawing pre-qualification applications; bid opening**

1. Preparing, receiving, managing, changing, withdrawing pre-qualification applications

a) Investors are responsible for preparation and submission of pre-qualification applications as required in the pre-qualification documents;

b) The soliciting entity shall receive and manage pre-qualification applications in accordance with regulations on confidential document management until the pre-qualification results is published. Information in the pre-qualification application submitted by an investor must not be revealed to any other investor in any case, except when information is revealed upon bid opening. Pre-qualification applications sent to the soliciting entity after the bid closing time shall not be opened, be considered invalid, and disqualified. Any documents sent by investors after the bid closing time for the purpose of adjustment or supplementation to the submitted pre-qualification applications are invalid, except for documents submitted by investors for clarification of the pre-qualification applications at the request of the soliciting entity or for proving the investors' eligibility, capacity, and experience;

c) Any investor that wishes to adjust or withdraw the submitted pre-qualification applications shall send a written request to the soliciting entity. The soliciting entity shall only accept it if the written request is received before the bid closing time;

d) The soliciting entity must receive pre-qualification applications of every investor who submits it before the bid closing time, including those who have not bought or received the pre-qualification documents directly from the soliciting entity. If the pre-qualification documents is not bought, the investor must pay the soliciting entity an amount equal to the selling price of the pre-qualification documents before the pre-qualification applications is received.

## 2. Bid opening

Pre-qualification applications submitted in accordance with the location and deadline written in the pre-qualification documents shall be publicly opened within 01 hours form the bid closing time. The opening of pre-qualification applications shall be recorded in writing. The record shall be sent to every investor that submits the pre-qualification application. Pre-qualification applications sent after the bid closing time shall not be opened, be considered invalid, and disqualified.

## **Article 20. Evaluation of pre-qualification applications**

1. Pre-qualification applications shall be evaluated according to the evaluation standards in the pre-qualification documents. Pre-qualification applications whose grades are not lower than the minimum passing grade shall be put on the short list; the pre-qualification application having the highest grade shall be ranked first. If there are more than 03 investors that satisfy requirements, 03 – 05 investors ranked highest shall be put on the short list.

### 2. Clarification of pre-qualification applications:

a) After bid opening, investors are responsible for clarifying pre-qualification applications at the request of the soliciting entity. If the pre-qualification application lacks documents proving the investor's eligibility, capacity, and experience, the soliciting entity shall request the investor to clarify and provide additional documents to prove the investor's eligibility, capacity, and experience;

b) If the investor finds that the pre-qualification application lacks documents proving the investor's eligibility, capacity, and experience, such investor may send clarifying documents to the soliciting entity. The soliciting entity must receive and consider clarifying documents

sent by the investor; additional documents meant to clarify the investor's eligibility, capacity, and experience is considered an integral part of the pre-qualification application;

c) Clarification of the pre-qualification application shall only be carried out between the soliciting entity and the investor whose pre-qualification application needs clarifying. The clarification must be made in writing and kept by the soliciting entity as an integral part of the pre-qualification application. The clarification must not change the nature of the investor.

### **Article 21. Submission, appraisal, and approval of pre-qualification results; publishing of the short list**

1. According to the report on evaluation of pre-qualification applications, the soliciting entity shall submit the pre-qualification result, specifying the opinions of the soliciting entity about the evaluation provided by the group of experts.

2. The pre-qualification result shall be appraised in accordance with Clause 2 Article 83 of this Decree before being approved.

3. The pre-qualification result shall be approved in writing according to the written request for approval and the appraisal report. In case a short list is made, the written approval must specify the name of investors that pass the pre-qualification and notes (if any). In case a short list is not made, the written approval must specify the reasons.

4. Publishing of the short list: the short list must be posted in accordance with Point dd Clause 1 Article 4 and Point c Clause 1 or Point b Clause 2 Article 5 of this Decree, and notified to every investor that submits the pre-qualification application.

### **Section 2. Investor selection plan**

#### **Article 22. Making the investor selection plan**

1. Basis for making the investor selection plan:

a) The decision on approval for project proposal (for PPP projects of Group c), feasibility study report (for PPP projects); the decision to approve the list of land-using projects;

b) Documents about use of state investment in PPP projects (if any);

c) International agreements on the PPP projects funded by ODA or concessional loan (if any);

d) The pre-qualification results (if any);

dd) Relevant documents.

2. Pursuant to Clause 1 of this Article, the soliciting entity shall make and submit the investor selection plan to the competent person and the appraising unit.

3. The set of documents submitted consists of the written request for approval and enclosed documents. The written request contains the summary of the implementation process and contents of the investor selection plan as prescribed in Article 23 of this Decree. Enclosed



documents are photocopies being basis for making the investor selection plan prescribed in Clause 1 of this Article.

### **Article 23. Contents of the investor selection plan**

1. Name of the project.
2. Total investment (for PPP projects); preliminary cost of project execution, cost of land clearance and compensation (for land-using projects).
3. Preliminary state capital to support construction of the PPP project, financial mechanism, and method of guaranteeing such state investment (if any).
4. Methods of investor selection
  - a) Determine whether to carry out competitive bidding or direct contracting, international or domestic bidding as prescribed in Article 9 of this Decree. With regard to PPP projects of Group C and land-using projects in which total investment (not including the cost of land clearance and compensation) is below VND 120 billion, domestic competitive bidding shall be carried out if pre-qualification is not applied, except for the case in Point c Clause 3 Article 9 of this Decree.
  - b) Determine whether to select investor through single-envelope procedures or two-envelope procedures as prescribed in Article 28 or Article 29 of the Law on Bidding.

#### 5. Beginning of investor selection

The beginning of investor selection is the time of publishing of the bidding documents or request for proposals, specifying the month or quarter in the year.

#### 6. Type of contract

The type of contract shall be determined in accordance with Article 68 of the Law on Bidding.

#### 7. Contract duration

The duration is expressed as years or months, begins from the effective date of the contract and ends when the parties have fulfilled their contractual obligations.

### **Article 24. Evaluating and approving the investor selection plan**

#### 1. Evaluating the investor selection plan

- a) The investor selection plan shall be evaluated in accordance with Article 23 of this Decree;
- b) The unit appointed to evaluate the investor selection plan shall make and submit the evaluation report to the competent person.

2. According to competent person, the competent persons shall issue a written approval for the investor selection plan, which is the basis for investor selection.

### **Chapter III**

#### **COMPETITIVE BIDDING FOR SELECTION OF INVESTORS IN PPP PROJECTS**

##### **Section 1. DETAILED PROCEDURES**

###### **Article 25. Detailed procedures**

1. Preparation for the investor selection:

- a) Make the bidding documents;
- b) Appraise, approve the bidding documents.

2. Organization of investor selection:

- a) Invite bids;
- b) Publish, adjust, clarify the bidding documents;
- c) Prepare, submit, receive, manage, adjust, withdraw bid-envelopes;
- d) Open technical proposals.

3. Evaluate technical proposals, including:

- a) Inspect the validity of technical proposals;
- b) Evaluate technical proposals in details;
- c) Appraise, approve the list of investors that satisfy technical requirements.

4. Opening and evaluating financial – commercial proposals, including:

- a) Open financial – commercial proposals;
- b) Inspect the validity of financial – commercial proposals;
- c) Evaluate financial – commercial proposals in details and rank investors;
- d) Preliminarily negotiate the contract.

5. Submit, appraise, approve, and publish the investor selection result.

6. Contract negotiation, completion, and conclusion:

- a) Negotiate and complete the contract;

b) Sign the investment agreement and contract.

## **Section 2. PREPARATION FOR INVESTOR SELECTION**

### **Article 26. Making the bidding documents**

1. Basis for making the bidding documents:

a) Decision to approve the feasibility study report, project documents, and relevant documents;

b) The pre-qualification results;

c) The approved investor selection plan;

d) Relevant regulations of law and State policies.

2. Contents of the bidding documents:

a) The bidding documents must not contain any condition that restricts the participation of investors or provide advantage for one or some investors, which create unfair competition;

b) The bidding documents must contain sufficient information for investors to make their bid-envelopes, including:

- Overall information about project, including the contents and scale of the project, detailed description of the project output, and services provided when the project is completed;

- Instructions for investors including the bidding procedures and the bidding data table;

- Requirements of the project according to the approved feasibility study report, including:

+ Technical requirements: standards for project execution, required quality of the construction, products or services provided; detailed description of technical requirements and technical norms applied to evaluation of bid-envelopes; environmental and safety requirements;

+ Financial – commercial requirements: plan for organization of investment and business; financial plan (total capital, capital structure, capital raising plan; state capital (if any); expenditures, revenues, goods/services prices; duration of capital recovery, profits); specific risk distribution requirements;

- Bid-envelope evaluation standards, including technical standards, financial - commercial standards, and method of evaluation. It is not required to establish standards for evaluation of investors' capacity and experience. However, investors must be required to update information about their capacity and experience;

- The forms including: the letter of bid, technical proposal, financial - commercial proposal, bid security, commitment of a financial institution (if any), and other form;

- The type of project contract, contract conditions, and the draft contract, including project execution requirements, construction quality standards, service provision standards, pricing mechanism, applied regulations, contractual rewards and penalties, force majeure events, reconsideration of the contract during the project execution, and other contents according to the Government's regulations on PPP.

## **Article 27. Methods and standards for evaluation of bid-envelopes**

The method for evaluating bid-envelopes is expressed by the evaluation standards written in the bidding documents, including:

### 1. Methods and standards for technical evaluation

a) Depending on the scale, characteristics, and type of the project, technical standards include:

- Quantitative and qualitative standards;
- Standards for operation, management, and maintenance;
- Environmental and safety standards.

When making the bidding documents, it is required to establish detailed technical standards according to the standards prescribed in this Article that suit the project on a case-by-case basis in and ensure that the selected investor satisfy output requirements of the project. During the establishment of detailed technical standards, other technical standards may be added to suit the project on a case-by-case basis.

### b) Technical evaluation method

Grades shall be given on a scale of 100 or 1,000 to establish technical standards for evaluation, including the minimum and maximum grade for each overall standard and detailed standard. When establishing technical standards, it is required to set a minimum grade which is not lower than 70% of total technical grades and the grade for each criterion with regard to quantity, quality, operation, management, maintenance, environment, and safety; and not lower than 60% of the maximum grade for the same criterion.

c) The grading structure mentioned in Point a of this Clause must suit the project contract on a case-by-case basis. The total grade must be 100%.

### 2. Financial – commercial evaluation

Methods for evaluating bid-envelopes specified in the bidding documents include:

a) Service-price-based method:

- This is applied to the project of which service prices are the criterion for financial - commercial evaluation. Other criteria such as standards of assets, services of the project, capital recovery duration, and related elements are already specified in the bidding documents;

- With regard to bid-envelopes that satisfy technical requirements, their service prices shall be used for comparison and ranking. The investor that offers the lowest service prices shall be ranked first and invited to preliminary contract negotiation.

b) State-investment-based method:

- The state-investment-based method is applied to the project in which state capital is the criterion for financial - commercial evaluation. Other criteria such as standards of assets, services of the project, capital recovery duration, service prices, and related elements are already specified in the bidding documents;

- With regard to bid-envelopes that satisfy technical requirements, their proposed state investment shall be used for comparison and ranking. The investor that proposes the lowest state investment shall be ranked first and invited to preliminary contract negotiation.

c) Public-interest-based method:

- This is a method for evaluating investors that offer the most efficient project execution plan; other contents are already specified in the bidding documents. Investment efficiency is evaluated according to the propose payment to state budget;

- With regard to bid-envelopes that satisfy technical requirements, their proposed payment to state budget be used for comparison and ranking. The investor that offers the highest payment to state budget shall be ranked first and invited to preliminary contract negotiation.

d) Combined method:

This is a method that combines the methods prescribed in Point a, Point b, and Point c of this Clause.

### **Article 28. Appraising and approving the bidding documents**

1. The bidding documents shall be appraised in accordance with Clause 2 Article 82 of this Decree before being approved.

2. The bidding documents shall be approved in writing according to the written request for approval and the appraisal report.

### **Section 3. ORGANIZATION OF INVESTOR SELECTION**

#### **Article 29. Bid solicitation**

Invitations for bids shall be sent to the short-listed investors, specifying the time and location of publishing the bidding documents, bid closing time, and bid opening time.

#### **Article 30. Publishing, adjusting, clarifying bidding documents**

1. The bidding documents shall be issued to short-listed investors. With regard to joint ventures, only one member of the joint venture shall buy the bidding documents.

2. In case of adjustment to the bidding documents after publishing, the soliciting entity must send the decision on adjustment and the adjusted contents to the investors that have bought or received the bidding documents.

3. If the bidding documents must be clarified, the investor shall send a written request to the soliciting entity at least 07 working days (for domestic bidding) or 15 days (for international bidding) before the bid closing date. The soliciting entity shall clarify the bidding documents in one of the following manners:

a) Send written clarifying documents to the investors that have bought the bidding documents;

b) Where necessary, a pre-bidding convention shall be held to discuss contents of the bidding documents that need to be clarified. The discussion must be recorded in writing. The record shall be used as clarifying document and sent to investors that have bought the bidding documents.

The clarification must not contravene the contents of the bidding documents that have been approved. If the bidding documents must be adjusted after clarification, it shall be adjusted in accordance with Clause 2 of this Article.

4. The decision on adjustment and the clarifying document is an integral part of the pre-qualification documents.

### **Article 31. Preparing, receiving, managing, changing, withdrawing bid-envelopes**

1. Investors are responsible for preparation and submission of bid-envelopes as required in the bidding documents.

2. b) The soliciting entity shall receive and manage bid-envelopes in accordance with regulations on confidential document management until the investor selection result is published. Information in the bid-envelope submitted by an investor must not be revealed to any other investor in any case, except when such information is revealed upon bid opening. Bid-envelopes sent to the soliciting entity after the bid closing time shall not be opened, be considered invalid and disqualified. Any documents sent by investors after the bid closing time for the purpose of adjustment or supplementation to the submitted bid-envelopes are invalid, except for documents submitted by investors for clarification of the bid-envelopes at the request of the soliciting entity or for proving the investors' eligibility.

3. Any investor that wishes to adjust or withdraw the submitted bid-envelope shall send a written request to the soliciting entity. The soliciting entity shall only accept it if the written request is received before the bid closing time.

4. Any investor who wishes to change the investor's status (name) in the short list shall send a written report to the soliciting entity at least 07 working days before the bid closing date. The soliciting entity shall request the competent person to consider allowing the change of the investor's status as follows:

a) Allow the establishment of a joint venture to add a member outside the short list to the joint venture;

b) Do not allow a member to withdraw from the joint venture without addition of another member with equivalent or better capacity and experience.

### **Article 32. Opening technical proposals**

1. Technical proposals shall be publicly opened within 01 hours form the bid closing time. Only the technical proposals received by the soliciting entity before the bid closing time shall be opened as required by the bidding documents in front of representatives of investors who attend the bid opening ceremony, regardless of the investors' presence.

2. Each of the bid-envelopes shall be opened in alphabetical order of investors' name and in the following procedures:

- Check the seal;

- Open the envelope and read out loud information about: The investor's name; quantity of originals and photocopies of the technical proposal; the letter of bid of the technical proposal; effective period of the technical proposal; contract duration; value and validity of the bid security; relevant information.

3. Bid opening record: The information mentioned in Clause 2 of this Article must be written in the bid opening record The bid opening record must bear the signature of the representatives of the soliciting entity and investors who attend the bid opening ceremony. This record must be sent to investors that participate in the bidding.

4. The representative of the soliciting entity must sign the original letters of bid, letters of attorney made by investors (if any); joint venture agreements (if any); bid security; important contents of each technical proposal.

5. Financial – commercial proposals of all investors must be sealed by the soliciting entity in separate bags. The seals must be signed by representatives of the soliciting entity and investors that attend the bid opening ceremony.

### **Article 33. Rules for evaluating bid-envelopes**

1. Bid-envelopes must be evaluated according to standards for evaluating bid-envelopes and other requirements in the bidding documents, explanatory and clarifying documents of investors in order to select technically and financially qualified investors to execute the project.

2. The evaluation shall be carried on the photocopies; investors area responsible for the consistency of the originals and photocopies. In case of discrepancies between the original and the photocopy which do not affect investors' rankings, the original shall prevail.

3. In case of discrepancies between the original and the photocopy which do lead to incorrect evaluation and change the investors' rankings, such bid-envelope shall be disqualified.

### **Article 34. Clarifying bidding documents**

1. After bid opening, investors are responsible for clarifying their bid-envelopes at the request of the soliciting entity. The clarification of the technical proposal and financial – commercial proposal in the bid-envelope must ensure that the primary contents of the submitted bid-envelopes are not changed.

2. After bid closing, if the investor finds that the bid-envelope lacks documents proving the investor's eligibility, capacity, and experience, such investor may send additional documents to the soliciting entity, provided the change of the investor's status is permitted. The soliciting entity must receive and consider clarifying documents sent by the investor to consider; additional documents meant to clarify the investor's eligibility, capacity, and experience is considered an integral part of the bid-envelope.

3. c) Clarification of the bid-envelope shall only be carried out between the soliciting entity and the investor whose bid-envelope needs clarifying, ensuring that the investor's nature is not changed. The clarification must be done in writing and kept by the soliciting entity as an integral part of the bid-envelope.

### **Article 35. Correction of errors and adjustment of deviation**

1. Correction of errors means the correction of errors in the bid-envelope, including arithmetic errors, unit errors; differences between the technical proposal and financial – commercial proposal, and other errors.

2. Adjustment of deviation means the adjustment of missing or redundant contents of the bid-envelope compared to the bidding documents. Adjustment of deviation shall be done to ensure fairness, transparency, and economic efficiency.

3. After finding an error or deviation, the soliciting entity must send a written notification of such error/deviation correction/adjustment thereto to the investor. Within 07 working days from the receipt of the soliciting entity's notification, the investor must send a written response to the soliciting entity which states:

a) Whether to accept or not accept the error correction result. If the investor does not accept the error correction result, the investor's bid-envelope shall be disqualified;

b) Offer the investor's opinion about the deviation adjustment result. If the investor does not accept the deviation adjustment result, an explanation must be provided for the soliciting entity to consider.

## **Section 4. EVALUATION OF TECHNICAL PROPOSALS**

### **Article 36. Evaluation of technical proposals**

1. Check the validity of the technical proposal:

a) Check the quantity of originals and photocopies of the technical proposal;

b) Check the composition of the technical proposal, including: the letter of bid, joint venture agreement (if any), letter of attorney to sign the bid form (if any); bid security; specific technical proposals; and other components of a technical proposal;



c) Check the consistency of the originals and photocopies to serve the detailed evaluation of the technical proposal.

## 2. Evaluate the validity of the technical proposal:

An investor's technical proposal shall be considered legitimate when all of the following conditions are satisfied:

a) The original of the technical proposal is available;

b) The letter of bid of the technical proposal bears the signature and seal (if any) of the legal representative of the investor as required in the bidding documents. The letter of bid of a joint venture must bear the signatures and seals (if any) of every joint venture member. The head member of the joint venture may sign the letter of bid on behalf of the joint venture if so agreed in the joint venture agreement;

c) The effectiveness of the technical proposal satisfies requirements in the bidding documents;

d) There is a bid security of which the effectiveness and duration satisfy requirements in the bidding documents. In case of bid security in the form of letter of guarantee, the letter of guarantee must be signed by the legal representative of a credit institution with the effectiveness, value, and beneficiary conformable with the bidding documents;

dd) The investor's name is not present in more than one technical proposal as an independent investor or joint venture member;

e) There is a joint venture agreement bearing the signatures and seals (if any) of legal representatives of every joint venture member;

g) The investor is not banned from bidding as prescribed by regulations of law on bidding;

h) The investor is eligible as prescribed in Clause 1 Article 5 of the Law on Bidding.

3. The investor that has a valid technical proposal, updated capacity and experience that satisfy requirements of the bidding documents shall have the technical proposal undergone detailed evaluation.

## 4. Detailed evaluation of the technical proposal:

a) Detailed evaluation of the technical proposal shall be carried out according to the evaluation standards in bidding documents;

b) If the technical proposal is satisfactory, the investor shall have the financial - commercial proposal evaluated.

## **Article 37. Appraising, approving the list of investors that satisfy technical requirements**

The list of investors that satisfy technical requirements shall be approved in writing according to the written request for approval and appraisal report. The soliciting entity must send the list of investors that satisfy technical requirements to all participating investors; invite investors that satisfy technical requirements to attend the opening of financial - commercial proposals.

## **Section 5. OPENING AND EVALUATING FINANCIAL – COMMERCIAL PROPOSALS**

### **Article 38. Opening financial – commercial proposals**

1. Check the seals of the bags that contain financial – commercial proposals.
2. Open financial – commercial proposals:
  - a) Only the financial - commercial proposals of investors that satisfy technical requirements shall be opened in front of representatives of investors who attend the opening ceremony, regardless of the investors' presence;
  - b) The representative of each of the investors shall be requested to confirm the availability of the proposal of reduction in service price, reduction in state investment, or increase in payment to state budget enclosed with their financial - commercial proposals.
  - c) Each of the financial - commercial proposals shall be opened in alphabetical order of investors that satisfy technical requirements' names and in the following procedures
    - Check the seal;
    - Open the envelope and read out loud information about: The investor's name; quantity of originals and photocopies of the financial - commercial proposal; the letter of bid of the financial - commercial proposal; effective period of the financial - commercial proposal; total investment and total capital of the project, service prices, state investment in project construction (if any); payment to state budget written in the bid form (if any); reduction in service prices or reduction in state investment or increase in payment to state budget (if any); grades of bid-envelopes that satisfy technical requirements; and relevant information.
3. Record on opening of financial – commercial proposals:
  - a) The information mentioned in Clause 1 and Clause 2 of this Article must be written in the opening record. The opening record bear the signatures of the soliciting entity and investors who attend the opening ceremony. This record must be sent to investors that satisfy technical requirements;
  - b) The representative of the soliciting entity must sign all pages of the original financial – commercial proposals;

### **Article 39. Evaluating financial – commercial proposals**

1. Inspect the validity of financial – commercial proposals:
  - a) Check the quantity of originals and photocopies of the financial - commercial proposal;

b) Check the components of the financial - commercial proposal, including the letter of bid and other components of the proposal.

c) Check the consistency between the original and photocopies.

2. Inspect the validity of financial – commercial proposals;

An investor's financial - commercial proposal shall be considered legitimate when all of the following conditions are satisfied:

a) There is the original financial – commercial proposal;

b) There is a letter of bid of the financial - commercial proposal which bears the investor's signature and seal (if any) as requested in the bidding documents. The total investment and capital of the project, service prices, state investment, payment to state budget written in the letter of bid must be specific in both number and text, logical, and appropriate for the investor's financial plan; the same item must not have various proposed values or put under conditions that are disadvantageous for state authorities or the soliciting entity. The letter of bid of a joint venture must be signed and stamped (if any) by each of the joint venture member. The head member of the joint venture may sign the bidding form on behalf of the joint venture if so agreed in the joint venture agreement;

c) The effectiveness of the financial – commercial proposal satisfies requirements in the bidding documents.

Valid financial – commercial proposals shall undergo detailed evaluation.

3. Detailed evaluation of financial – commercial proposals and ranking of investors:

a) Detailed evaluation of the financial – commercial proposal and investor ranking shall be carried out according to the evaluation standards in bidding documents;

b) After investors are short-listed, the group of experts shall submit a report to the soliciting entity. The report must contain:

- The list of ranked investors and their ranks;

- The list of disqualified investors and reasons for disqualification;

- Opinions about the competitiveness, fairness, transparency, and economic efficiency of the investor selection process. If competitiveness, fairness, transparency, or economic efficiency is yet to be achieved, explanation and solutions must be provided;

- Any contents of the bidding documents that are not conformable with regulations of law on bidding that lead to conflicting interpretation or deviation of the investor selection result (if any); solutions.

#### **Article 40. Preliminary contract negotiation**

1. The investor ranked first shall be invited to preliminary contract negotiation. If the invited investor does not come or refuses the preliminary contract negotiation, such investor shall not have the bid security returned.

2. Preliminary contract negotiation must be based on:

a) Report on evaluation of bid-envelopes;

b) The bid-envelope and clarifying documents provided by the investor (if any);

c) The bidding documents.

3. Rules for Preliminary contract negotiation:

a) Do not negotiate the investor's offers that are conformable with the bidding documents;

b) The preliminary contract negotiation must not change fundamental contents of the bid-envelope.

4. Contents of preliminary contract negotiation:

a) Preliminary negotiation of the contents that are not specific, clear, or appropriate enough, or not consistent between the bidding documents and the bid-envelope, and inconsistency within that same bid-envelope, which may lead to disputes or affect the responsibilities of parties during the contract execution;

b) Preliminary negotiation of issues that arise during the investor selection (if any) to complete details the project;

c) Negotiation of other necessary issues.

5. During the preliminary contract negotiation, the parties shall draft the investment agreement and the contract.

6. If the preliminary contract negotiation does not succeed, the soliciting entity shall request the competent person to consider inviting the investor ranked next to preliminary contract negotiation. If the next negotiation does not succeed, the soliciting entity shall request the competent person to consider canceling the bidding as prescribed in Clause 1 Article 17 of the Law on Bidding.

#### **Article 41. Rules for approving successful bidder**

An investor shall be considered for selection when all of the conditions below are satisfied:

1. The investor has a valid bid-envelope;

2. The investor is qualified in terms of capacity and experience;

3. The investor satisfy technical requirements;

4. The investor offers the lowest service price which does not exceed the service price determined in the approved feasibility study report, is conformable with regulations of law on prices, fees, and charges (if service-price-based method is applied); proposes the lowest state investment which does not exceed the state investment determined in the approved feasibility study report (if state-investment-based method is applied); or offers the highest payment to state budget (if public-interest-based method is applied.)

## **Section 6. SUBMISSION, APPRAISAL, APPROVAL, AND PUBLISHING OF INVESTOR SELECTION RESULT**

### **Article 42. Submission, appraisal, approval, and publishing of investor selection result**

1. According to report on evaluation of bid-envelopes, the soliciting entity shall submit the investor selection result which specifies the soliciting entity's opinions about the evaluations given by the group of experts.

2. The investor selection result shall be appraised in accordance with Clause 4 Article 83 of this Decree before being approved.

3. The investor selection result shall be approved in writing according to the written request for approval and appraisal report.

4. If an investor is selected, the written approval for the investor selection result must contain:

a) Name, location, and scale of the project;

b) Name of the selected investor;

c) Type of contract;

d) Time for commencement of construction, completion, operation, and transfer of the project;

dd) Conditions for using land to execute the project (location, area, purpose, and duration);

e) Total investment and total capital of the project;

g) Service prices, state investment, or payment to state budget;

h) Notes (if any).

5. In case of bidding cancellation prescribed in Clause 1 Article 17 of the Law on Bidding, the written approval for investor selection result or the decision on bidding cancellation must specify the reasons for cancellations and responsibilities of relevant parties.

6. After receiving the written approval for investor selection result, the soliciting entity post information about the investor selection result as prescribed in Point dd Clause 1 Article 4 and Point c Clause 1 or Point b Clause 2 Article 5 of this Decree; send notifications of investor selection result to the investors that participated in the bidding by the deadline

prescribed in Clause 13 Article 6 of this Decree. The notification of investor selection result must contain:

- a) The information mentioned in Clause 4 of this Article;
- b) The list of unselected investors and reasons for each investor;
- c) The plan for negotiating, completing, and concluding the contract with the selected investor.

## **Section 7. CONTRACT NEGOTIATION, COMPLETION, AND CONCLUSION**

### **Article 43. Contract negotiation and completion**

1. According to the investor selection result, preliminary contract negotiation result, a competent authority shall organize the contract negotiation and completion with the selected investor.

2. Contents of contract negotiation and completion:

a) The contents of contract negotiation and completion must not change fundamental contents of preliminary contract negotiation prescribed in Clause 4 Article 40 of this Article and the investor selection result. Contents of contract negotiation and completion include:

- Details of preliminary contract negotiation;
- Foundations for concluding the project contract;
- Changes to special terms of the contract (if any).

b) Apart from the contents mentioned in Point a of this Clause, the soliciting entity shall request the competent person to decide other contract negotiation and completion contents that suit the type of contract.

3. If the contract negotiation and completion does not succeed, the soliciting entity shall request the competent person to consider cancelling the investor selection result and inviting the investor ranked next to preliminary contract negotiation, then following the steps prescribed in Articles 40, 41, and 41 of this Decree and Clause 1, Clause 2 of this Article.

### **Article 44. Conclusion of investment agreement and contract.**

1. The investment agreement shall be concluded in accordance with regulations of the Government on PPP.

2. The concluded contract must comply with regulations in Articles 69, 70, 71, and 72 of the Law on Bidding and regulations of the Government on PPP.

## **Chapter IV**

## **COMPETITIVE BIDDING FOR SELECTION OF INVESTORS IN PPP PROJECTS OF GROUP C**

### **Article 45. Detailed procedures**

1. Preparation for the investor selection:
  - a) Make the bidding documents;
  - b) Appraise, approve the bidding documents.
2. Organization of investor selection:
  - a) Invite bids;
  - b) Publish, adjust, clarify the bidding documents;
  - c) Prepare, submit, receive, manage, adjust, withdraw bid-envelopes;
  - d) Open technical proposals.
3. Evaluate technical proposals, including:
  - a) Evaluate the validity of technical proposals;
  - b) Evaluate technical proposals in details;
  - c) Approve the list of investors that satisfy technical requirements.
4. Opening and evaluating financial – commercial proposals, including:
  - a) Open financial – commercial proposals;
  - b) Inspect the validity of financial – commercial proposals;
  - c) Evaluate financial – commercial proposals in details and rank investors.
5. Submit, appraise, approve, and publish the investor selection result.
6. Contract negotiation, completion, and conclusion:
  - a) Negotiate and complete the contract;
  - b) Conclude the contract.

### **Article 46. Making the bidding documents**

1. Basis for making the bidding documents:
  - a) The decision to approve the project proposal; project dossier, and relevant documents;

- b) The pre-qualification results (if any);
- c) The approved investor selection plan;
- d) Relevant regulations of law and State policies.

## 2. Contents of the bidding documents:

- a) The bidding documents must not contain any condition that restricts the participation of investors or provide advantage for one or some investors, which create unfair competition;
- b) The bidding documents must contain sufficient information for investors to make their bid-envelopes, including:
  - Overall information about project, including the contents and scale of the project, detailed description of the project output, and services provided when the project is completed;
  - Instructions for investors including the bidding procedures and the bidding data table;
  - Requirements of the project prescribed the approved project proposal, including:
    - + Technical requirements: standards for project execution, required quality of construction, products or serviced provided; detailed description of technical requirements and technical norms applied to evaluation of bid-envelopes; environmental and safety requirements;
    - + Financial – commercial requirements: plan for organization of investment and business; financial plan (total capital, capital structure, capital raising plan; state capital (if any); expenditures, revenues, goods/services prices; duration of capital recovery, profits); specific risk distribution requirements;
  - Bid-envelope evaluation standards, including standards for evaluating investors' experience and capacity if pre-qualification is not applied (If pre-qualification is applied, it is not required to establish standards for evaluation of investors' capacity and experience. However, investors must be required to update information about their capacity and experience); standards for technical evaluation and financial – commercial evaluation, and corresponding evaluation methods;
  - Bid forms;
  - Type of the project contract, contractual conditions and the draft contract.

### **Article 47. Methods and standards for evaluation of bid-envelopes**

The method for evaluating bid-envelopes is expressed by the evaluation standards written in the bidding documents, including:

1. Standards and methods for evaluating investors' capacity and experience as prescribed in Point d Clause 1 Article 17 of this Decree (if pre-qualification is not applied).



2. Methods and standards for technical evaluation prescribed in Clause 1 Article 27 of this Decree.

3. Methods and standards for financial – commercial evaluation prescribed in Clause 2 Article 27 of this Decree.

#### **Article 48. Appraising and approving the bidding documents**

1. The bidding documents shall be appraised in accordance with Clause 2 Article 82 of this Decree before being approved.

2. The bidding documents shall be approved in writing according to the written request for approval and the appraisal report.

#### **Article 49. Organization of investor selection**

Investor selection shall be carried out in accordance with Section 3 Chapter III of this Decree. If pre-qualification is not applied, the publishing of bidding documents and opening of technical proposals shall be carried out as follows:

##### 1. Bid solicitation

The bidding announcement shall be posted in accordance with Point dd Clause 1 Article 4 and Point b Clause 1 or Point a Clause 2 Article 5 of this Decree.

##### 2. Publishing of bidding documents

The bidding documents shall be issue to investors that participate in competitive bidding. With regard to joint ventures, only one member of the joint venture shall buy the pre-qualification documents, even if the joint venture has not been established.

##### 3. Opening of technical proposals

Technical proposals shall be opened in accordance with Article 32 of this Article, even if only one investor submits the bid-envelope.

#### **Article 50. Evaluation of technical proposals**

1. The validity of technical proposals shall be checked in accordance with Clause 1 and Clause 2 Article 36 of this Decree.

##### 2. Evaluation of investors' capacity and experience:

Evaluation of investors' capacity and experience shall be carried out according to the evaluation standards set out in the bidding documents. If pre-qualification is applied, it is not required to evaluate investors' capacity and experience. However, investors must be required to update information about their capacity and experience

3. Every investor that has a valid technical proposal and satisfactory in terms of capacity and experience shall have the technical proposal undergone detailed evaluation.

4. Detailed evaluation of technical proposals shall be carried out in accordance with Clause 4 Article 36 of this Decree.

**Article 51. Appraising, approving the list of investors that satisfy technical requirements**

The list of investors that satisfy technical requirements shall be appraised and approved in accordance with Article 37 of this Decree.

**Article 52. Opening and evaluating financial – commercial proposals**

Financial – commercial proposals shall be opened and evaluated in accordance with Article 38 and Article 39 of this Decree.

**Article 53. Rules for approving successful bidder**

An investor shall be considered for selection when all of the conditions below are satisfied:

1. The investor has a valid bid-envelope;
2. The investor is qualified in terms of capacity and experience;
3. The investor satisfy technical requirements;
4. The investor offers the lowest service price which does not exceed the service price determined in the approved project proposal, is conformable with regulations of law on prices, fees, and charges (if service-price-based method is applied); proposes the lowest state investment which does not exceed the state investment determined in the approved project proposal (if state-investment-based method is applied); or offers the highest payment to state budget (if public-interest-based method is applied.)

**Article 54. Submission, appraisal, approval, and publishing of investor selection result**

The submission, appraisal, approval, and publishing of investor selection result shall comply with Article 42 of this Decree.

**Article 55. Contract negotiation, completion, and conclusion**

1. Foundations for contract negotiation and completion:
  - a) The investor selection result;
  - b) Report on evaluation of bid-envelopes;
  - c) The bid-envelope and clarifying documents provided by the investor (if any);
  - d) The bidding documents.
2. Rules for contract negotiation and completion:

- a) Do not negotiate the investor's offers that are conformable with the bidding documents;
  - b) The contract negotiation and completion must not change fundamental contents of the bid-envelope.
3. Contents of contract negotiation and completion:
- a) Negotiation of the contents that are not specific, clear, or appropriate enough, or not consistent between the bidding documents and the bid-envelope, and between inconsistency within the bid-envelope, which may lead to disputes or affect the responsibilities of parties during the contract execution;
  - b) Negotiation of issues that arise during the investor selection (if any) to complete details the project;
  - c) Negotiation of other necessary issues.
4. If the contract negotiation and completion does not succeed, the soliciting entity shall request the competent person to consider cancelling the investor selection result and inviting the investor ranked next to contract negotiation and completion.
5. The concluded contract must comply with regulations in Articles 69, 70, 71, Clauses 1, 3, 4 Article 72 of the Law on Bidding, Point a Clause 2 Article 8 of this Decree, and regulations of the Government on PPP.

## **Chapter V**

### **COMPETITIVE BIDDING FOR SELECTION OF INVESTORS IN LAND-USING PROJECTS**

#### **Section 1. DETAILED PROCEDURES**

##### **Article 56. Detailed procedures**

1. Preparation for the investor selection:
  - a) Make the bidding documents;
  - b) Appraise, approve the bidding documents.
2. Organization of investor selection:
  - a) Invite bids;
  - b) Publish, adjust, clarify the bidding documents;
  - c) Prepare, submit, receive, manage, adjust, withdraw bid-envelopes;
  - d) Open technical proposals.

3. Evaluate technical proposals, including:
  - a) Evaluate the legitimacy of technical proposals;
  - b) Evaluate technical proposals in details;
  - c) Appraise, approve the list of investors that satisfy technical requirements.
4. Opening and evaluating financial – commercial proposals, including:
  - a) Open financial – commercial proposals;
  - b) Inspect the legitimacy of financial – commercial proposals;
  - c) Evaluate financial – commercial proposals in details and rank investors;
  - d) Preliminarily negotiate the contract.
5. Submit, appraise, approve, and publish the investor selection result.
6. Contract negotiation, completion, and conclusion:
  - a) Negotiate and complete the contract;
  - b) Conclude the contract.

## **Section 2. PREPARATION FOR INVESTOR SELECTION**

### **Article 57. Making the bidding documents**

1. Basis for making the bidding documents:
  - a) The announced list of projects;
  - b) The pre-qualification results (if any);
  - c) The approved investor selection plan;
  - d) Applicable regulations of law on land, housing, real estate trading, investment, construction, and relevant regulations of law.
2. Contents of the bidding documents:
  - a) The bidding documents must not contain any condition that restricts the participation of investors or provide advantage for one or some investors, which create unfair competition;
  - b) The bidding documents must contain sufficient information for investors to make their bid-envelopes, including:

- Overall information about the project including the project name, purposes, functions, location, scale, progress schedule, condition of the site, land area, and planning targets;
- Instructions for investors including the bidding procedures and the bidding data table;
- Requirements for project execution; requirements in terms of architecture, environment, safety; other contents of the project (if any);
- Bid-envelope evaluation standards, including standards for evaluating investors' experience and capacity if pre-qualification is not applied (If pre-qualification is applied, it is not required to establish standards for evaluation of investors' capacity and experience. However, investors must be required to update information about their capacity and experience); standards for technical evaluation and financial – commercial evaluation, and corresponding evaluation methods;
- The forms including: the letter of bid, technical proposal, financial - commercial proposal, bid security, commitment of a financial institution (if any), and other form;
- Deadline for land allocation or land lease; land use purposes; land area for each purpose;
- The basis for determination of the land levies, land rents payable by the investor to state budget within the land allocation or land lease period;
- Preliminary plan for land clearance and compensation;
- Floor price =  $m_1 + m_2$

Where:

+  $m_1$  is the preliminary total cost of project execution (not including the cost of land clearance and compensation) determined by the soliciting entity on a case-by-case basis for the purpose of making the best use of the land area; land use plan is based on the overall planning on a scale of 1:2000 or spatial planning on a scale of 1:500 (if any).

+  $m_2$  is the total cost of land clearance and compensation determined by the soliciting entity according to the plan mentioned in Article 11 of this Decree.

The bidding documents must specify that if the cost of land clearance and compensation is lower than the level offered by the investor, the difference shall be paid to state budget; otherwise, the investor shall cover the deficit. The investor shall have the cost of land clearance and compensation deducted from the land rent. Nevertheless, the deduction shall not exceed the land rent as prescribed by land laws.

- The draft contract consists of requirements of the project, deadline for land allocation or land lease; land area; land rent, land levies; method for deducting cost of land clearance and compensation from land rents; method of land levy payment; responsibility to cooperate with organizations specialized in land clearance and compensation; applicable regulations; contractual rewards and penalties; force majeure events, reconsideration of the contract during the project operation, and other contents.

## **Article 58. Methods and standards for evaluation of bid-envelopes**

The method for evaluating bid-envelopes is expressed by the evaluation standards written in the bidding documents, including:

1. Standards and methods for evaluating investors' capacity and experience as prescribed in Point d Clause 1 Article 17 of this Decree (if pre-qualification is not applied).

2. Methods and standards for technical evaluation:

a) Depending on the scale, characteristics, and type of the project, technical standards include:

- The conformity of the project targets proposed by the investor with the approved overall planning on a scale of 1:2000 or spatial planning on a scale of 1:500 (if any).
- Requirements in terms of project scale, architectural solutions, and basic functions of the project;
- Environmental and safety requirements;
- Other standards that suit the project on a case-by-case basis.

b) Technical evaluation method:

Grades shall be given on a scale of 100 or 1,000 to establish technical standards for evaluation, including the minimum and maximum grade for each overall standard and detailed standard. When establishing technical standards, it is required to set a minimum passing grade which is not lower than 70% of the total technical grade and the grade for each criterion prescribed in Point a Clause 1 of this Article; not lower than 60% of the maximum grade of the same criterion.

c) The grading structure mentioned in Point a of this Clause must suit the project contract on a case-by-case basis. The total grade must be 100%.

3. Standards and method for financial – commercial evaluation:

a) Standards and method for financial – commercial evaluation include:

- The price offered by the investor (A) =  $M_1 + M_2$
- Investment efficiency (B) =  $M_2 + M_3$

Where:

+  $M_1$  is the total cost of project execution (not including cost of land clearance and compensation) proposed by the investor in the bid-envelope.

+  $M_2$  is the cost of land clearance and compensation proposed by the investor in the bid-envelope, which must be transferred to a competent unit to carry out land clearance and provide compensation.

+  $M_3$  is the payment to state budget offered by the investor in the bid-envelope.

b) Financial – commercial evaluation method

- Public-interest-based method shall be applied to financial – commercial evaluation.

- Bid-envelopes that satisfy technical requirements shall be ranked according to investment efficiency (B). The investor that have the offered price (A) that is not lower than the floor price, the cost of land clearance and compensation ( $M_2$ ) that is not lower than  $m_2$ , and the highest investment efficiency shall be ranked first and invited to preliminary contract negotiation.

### **Article 59. Appraising and approving the bidding documents**

The bidding documents shall be appraised and approved in accordance with Article 28 of this Decree.

## **Section 3. ORGANIZATION OF INVESTOR SELECTION**

### **Article 60. Conditions for publishing bidding documents**

Bidding documents to select investors in land-using projects when all of the conditions below are satisfied:

1. The conditions in Clause 2 Article 7 of the Law on Bidding are satisfied;
2. There is a overall planning on a scale of 1:2000 or spatial planning on a scale of 1:500 (if any).

### **Article 61. Organization of investor selection**

Investor selection shall be carried out in accordance with Section 3 Chapter III of this Decree. If pre-qualification is not applied, the publishing of bidding documents and opening of technical proposals shall be carried out as follows:

#### **1. Bid solicitation**

The bidding announcement shall be posted in accordance with Point dd Clause 1 Article 4 and Point b Clause 1 or Point a Clause 2 Article 5 of this Decree.

#### **2. Publishing of bidding documents**

The bidding documents shall be issue to investors that participate in competitive bidding. With regard to joint ventures, only one member of the joint venture shall buy the pre-qualification documents, even if the joint venture has not been established.

### 3. Opening of technical proposals

Technical proposals shall be opened in accordance with Article 32 of this Article, even if only one investor submits the bid-envelope.

## **Section 4. EVALUATION OF TECHNICAL PROPOSALS**

### **Article 62. Evaluation of technical proposals**

1. The validity of technical proposals shall be checked in accordance with Clause 1 and Clause 2 Article 36 of this Decree.

2. Evaluation of investors' capacity and experience:

Evaluation of investors' capacity and experience shall be carried out according to the evaluation standards set out in the bidding documents. If pre-qualification is applied, it is not required to evaluate investors' capacity and experience. However, investors must be required to update information about their capacity and experience

3. Every investor that has a valid technical proposal and satisfactory in terms of capacity and experience shall have the technical proposal undergone detailed evaluation.

4. Detailed evaluation of technical proposals shall be carried out in accordance with Clause 4 Article 36 of this Decree.

### **Article 63. Appraising, approving the list of investors that satisfy technical requirements**

The list of investors that satisfy technical requirements shall be appraised and approved in accordance with Article 37 of this Decree.

## **Section 5. OPENING AND EVALUATING FINANCIAL – COMMERCIAL PROPOSALS**

### **Article 64. Opening financial – commercial proposals**

Financial – commercial proposals shall be opened in accordance with Article 38 of this Decree. The following information must be read out loud during the opening session: The investor's name; quantity of originals and photocopies of the financial - commercial proposal; the letter of bid of the financial - commercial proposal; effective period of the financial - commercial proposal; total investment in the project (not including the cost of land clearance and compensation) proposed by the investor ( $M_1$ ), the cost of land clearance and compensation offered by the investor ( $M_2$ ), payment to state budget ( $M_3$ ), if any; increase in payment to state budget (if any); technical grads of bid-envelopes that satisfy technical requirements; and relevant information.

### **Article 65. Evaluating financial – commercial proposals**

Financial – commercial proposals shall be evaluated in accordance with Article 39 of this Decree. The validity of the letter of bid of the financial - commercial proposal shall be



evaluated according to: the letter of bid which bears the signature and seal (if any) of the investor legal representative as requested in the bidding documents. Total project cost (not including the cost of land clearance and compensation) proposed by the investor ( $M_1$ ), the cost of land clearance and compensation offered by the investor ( $M_2$ ), payment to state budget ( $M_3$ ), if any, written in the letter of bid must be specific in number and text, appropriate, and logical; the same item must not have various offered values or put under conditions that are disadvantageous for state authorities or the soliciting entity. The letter of bid of a joint venture must bear the signatures and seals (if any) of every joint venture member. The head member of the joint venture may sign the letter of bid on behalf of the joint venture if so agreed in the joint venture agreement.

#### **Article 66. Preliminarily contract negotiation**

1. The investor ranked first shall be invited to preliminary contract negotiation. If the invited investor does not come or refuses the contract negotiation, such investor shall not have the bid security returned.

2. Preliminary contract negotiation must be based on:

- a) Report on evaluation of bid-envelopes;
- b) The bid-envelope and clarifying documents provided by the investor (if any);
- c) The bidding documents.

3. Rules for Preliminary contract negotiation:

- a) Do not negotiate the investor's offers that are conformable with the bidding documents;
- b) The preliminary contract negotiation must not change fundamental contents of the bid-envelope.

4. Contents of preliminary contract negotiation:

- a) Preliminary negotiation of the contents that are not specific, clear, or appropriate enough, or not consistent between the bidding documents and the bid-envelope, and inconsistency within the bid-envelope, which may lead to disputes or affect the responsibilities of parties during the contract execution;
- b) Preliminary negotiation of issues that arise during the investor selection (if any) to complete details the project;
- c) Negotiation of other necessary issues.

5. During the preliminary contract negotiation, the parties shall complete the draft contract.

6. If the preliminary contract negotiation does not succeed, the soliciting entity shall request the competent person to consider inviting the investor ranked next to preliminary contract negotiation. If the next negotiation does not succeed, the soliciting entity shall request the

competent person to consider canceling the bidding as prescribed in Clause 1 Article 17 of the Law on Bidding.

#### **Article 67. Rules for approving successful bidder**

An investor shall be considered for selection when all of the conditions below are satisfied:

1. The investor has a valid bid-envelope;
2. The investor is qualified in terms of capacity and experience;
3. The investor satisfy technical requirements;
4. The investor's offered price (A) is not lower than the floor price, the cost of land clearance and compensation ( $M_2$ ) is not lower than  $m_2$ , and the investment efficiency is highest.

#### **Section 6. SUBMISSION, APPRAISAL, APPROVAL, AND PUBLISHING OF INVESTOR SELECTION RESULT; CONTRACT NEGOTIATION, COMPLETION, AND CONCLUSION**

##### **Article 68. Submission, appraisal, approval, and publishing of investor selection result**

1. The submission, appraisal, approval, and publishing of investor selection result shall comply with Clauses 1, 2, 3, 4, and 6 of Article 42 of this Decree.
2. If an investor is selected, the written approval for investor selection result must contain:
  - a) The project's name; purposes, functions; location; scale;
  - b) Name of the selected investor;
  - c) The time limit and schedule of project execution;
  - d) Conditions for using land to execute the project (location, area, purpose, and duration); time limit for completion of the detailed construction planning on a scale of 1:500;
  - dd) Total cost of project execution (not including cost of land clearance and compensation); unit price of land use right (LUR) or land rent; payment to state budget;
  - e) Other information (if any).

##### **Article 69. Contract negotiation, completion, and conclusion**

1. According to the investor selection result, preliminary contract negotiation result, a competent authority shall organize the contract negotiation and completion with the selected investor.
2. Contents of contract negotiation and completion:

a) The contents of contract negotiation and completion must not change fundamental contents of preliminary contract negotiation prescribed in Clause 4 Article 66 of this Article and the investor selection result. Contents of contract negotiation and completion include:

- Details of preliminary contract negotiation;
- Foundations for concluding the project contract.

b) Apart from the contents mentioned in Point a of this Clause, the soliciting entity shall request the competent person to decide other contract negotiation and completion contents.

3. If the contract negotiation and completion does not succeed, the soliciting entity shall request the competent person to consider cancelling the investor selection result and inviting the investor ranked next to preliminary contract negotiation, then following the steps prescribed in Articles 66, 67, and 68 of this Decree and Clause 1, Clause 2 of this Article.

4. The contract conclusion shall comply with Articles 69, 70, 71, and 72 of the Law on Bidding. The selected investor shall commence the execution of the land-using projects in accordance with the contract, regulations of law on investment, construction, and relevant law.

## **Chapter VI**

### **DIRECT CONTRACTING**

#### **Section 1. DIRECT CONTRACTING OF PPP PROJECTS**

##### **Article 70. Preparation for investor selection**

###### **1. Making the request for proposals**

###### **a) Basis for making the request for proposals:**

The request for proposals shall be made in accordance with Clause 1 Article 26 or Clause 1 Article 46 (for PPP projects of Group C) of this Decree.

###### **b) Contents of the request for proposals:**

- General information about the project; instructions for investors;
- Requirements of the project according to the project proposal (for PPP projects of group C) or the approved feasibility study reports;
- Proposal evaluation standards, including technical standards, financial - commercial standards, and method of evaluation. It is not required to establish standards for evaluation of investors' capacity and experience. However, investors must be required to update information about their capacity and experience;
- Bid forms; contract conditions and the draft contract.

- The standards and methods for evaluation of proposals shall comply with Article 27 or Clause 2 and Clause 3 Article 47 (for PPP projects of Group C) of this Decree. Nevertheless, comparison and ranking of investors that satisfy financial - commercial requirements are not required.

2. Appraising and approving the request for proposals:

a) The request for proposals shall be appraised in accordance with Clause 2 Article 82 of this Decree before being approved;

b) The request for proposals shall be approved in writing according to the written request for approval and the appraisal report.

### **Article 71. Organization of investor selection**

1. The request for proposals shall be issued to a pre-determined investor.

2. The investor shall prepare and submit the proposal as requested in the request for proposals.

### **Article 72. Proposal evaluation and preliminarily contract negotiation**

1. The proposal shall be evaluated in accordance with the standards and methods for evaluation written in the request for proposals. During the evaluation, the soliciting entity shall invite the investor to clarify or make necessary adjustment to the proposal.

2. The preliminary contract negotiation shall comply with Clause 4 Article 40 of this Decree, except for projects of group C.

### **Article 73. Rules for approving successful bidder**

An investor shall be considered for selection when all of the conditions below are satisfied:

1. The investor has a valid proposal;

2. The investor is qualified in terms of capacity and experience;

3. The investor satisfies technical requirements;

4. The service price offered by the investor does not exceed the service price determined in the approved feasibility study report or project proposal (for group C projects), is conformable with regulations of law on prices, fees, and charges if service-price-based method is applied; the proposed state investment does not exceed the level determined in the approved feasibility study report or project proposal (for group C projects) if state-investment-based method is applied; the payment to state budget offered is reasonable and total investment in the project is not lower than the level determined in the approved feasibility study report or project proposal (for group C projects) if public-interest-based method is applied.

### **Article 74. Submission, appraisal, approval, and publishing of direct contracting result**

1. The submission, appraisal, approval, and publishing of direct contracting result shall comply with Article 42 of this Decree.

#### **Article 75. Contract negotiation, completion, and conclusion**

1. The contract shall be negotiated and completed in accordance with Article 43 of this Decree.

2. The investment agreement and contract shall be concluded in accordance with Article 44 of this Decree.

3. The regard to group C projects, the contract shall be negotiated, completed, and concluded in accordance with Article 55 of this Decree.

### **Section 2. DIRECT CONTRACTING OF LAND-USING PROJECTS**

#### **Article 76. Preparation for investor selection**

1. Making the request for proposals:

a) Basis for making the request for proposals:

- The announced list of projects;
- The pre-qualification results (if any);
- The approved investor selection plan;
- Applicable regulations of law on land, housing, real estate trading, investment, construction, and relevant regulations of law.

b) Contents of the request for proposals shall comply with Clause 2 Article 57 of this Decree. However, it is not required to establish standards for evaluation of investors' capacity and experience. The investor is required to update information about their capacity and experience. The standards and methods for proposal evaluation shall comply with Clause 2 and Clause 3 Article 58 of this Decree. Nevertheless, comparison and ranking of investors that satisfy financial - commercial requirements are not required.

2. Appraising and approving the request for proposals:

a) The request for proposals shall be appraised in accordance with Clause 2 Article 82 of this Decree before being approved;

b) The request for proposals shall be approved in writing according to the written request for approval and the appraisal report.

#### **Article 77. Organization of investor selection**

1. The request for proposals shall be issued to a pre-determined investor.

2. The investor shall prepare and submit the proposal as requested in the request for proposals.

#### **Article 78. Proposal evaluation and preliminarily contract negotiation**

1. The proposal shall be evaluated in accordance with the standards for evaluation written in the request for proposals. During the evaluation, the soliciting entity shall invite the investor to clarify or make necessary adjustment to the proposal.

2. Preliminary contract negotiation shall comply with Article 66 of this Decree.

#### **Article 79. Rules for approving successful bidder**

An investor shall be considered for selection when all of the conditions below are satisfied:

1. The investor has a valid proposal;

2. The investor is qualified in terms of capacity and experience;

3. The investor satisfies technical requirements;

4. The investor's offered price (A) is not lower than the approved floor price in the request for proposals, the cost of land clearance and compensation (M<sub>2</sub>) is not lower than m<sub>2</sub>, and the investment efficiency is reasonable.

#### **Article 80. Submission, appraisal, approval, and publishing of direct contracting result**

The submission, appraisal, approval, and publishing of direct contracting result shall comply with Article 68 of this Decree.

#### **Article 81. Contract negotiation, completion, and conclusion**

1. The contract shall be negotiated and completed in accordance with Clause 1 and Clause 2 Article 69 of this Decree.

2. The contract conclusion shall comply with Articles 69, 70, 71, and 72 of the Law on Bidding. The selected investor shall commence the execution of the land-using projects in accordance with the contract, regulations of law on investment, construction, and relevant law.

### **Chapter VII**

#### **EVALUATION CONTENTS, POWERS TO APPRAISE AND GRANT APPROVAL**

#### **Article 82. Evaluating pre-qualification documents, bidding documents, request for proposals**

1. Evaluating pre-qualification documents

a) An application for appraisal and approval consists of:

- The written request for approval for the pre-qualification documents of the soliciting entity;
- Draft pre-qualification documents;
- Photocopies of documents being the basis for pre-qualification;
- Relevant documents.

b) Evaluation contents:

- Inspect documents being the basis for making the pre-qualification documents;
- Inspect the conformity of the pre-qualification documents with the scale, targets, tasks, duration of the project; conformity with regulations of law on bidding and relevant laws;
- Consider conflicting opinions between the entities participating in the making of the pre-qualification documents;
- Relevant tasks.

c) An appraisal report include:

- Summary of the project, legal basis for making the pre-qualification documents;
- Comments of the appraising unit about the legal basis, conformity with regulations of law on bidding and relevant laws; assenting or dissenting opinions about the draft pre-qualification documents;
- Proposals of the appraising unit about approval for the pre-qualification documents; actions to be taken if the pre-qualification documents is not conformable with regulations of law on bidding and relevant laws; solutions for lack of foundations for approving the pre-qualification documents;
- Other comments (if any).

d) Before signing the appraisal report, the appraising unit shall hold a meeting with parties to settled unresolved issues if necessary.

2. Appraising bidding documents/request for proposals

a) An application for appraisal and approval consists of:

- The written request for approval for the bidding documents/request for proposals of the soliciting entity;
- The draft bidding documents or draft request for proposals;
- Photocopies of the Decision on approval for investor selection plan, Approval for pre-qualification result (if any);

- Relevant documents.

b) Appraisal contents:

- Examine documents being the basis for making the bidding documents/request for proposals;

- Inspect the conformity of the bidding documents/request for proposals with the scale, targets, tasks, duration of the project; conformity with regulations of law on bidding and relevant laws;

- Consider conflicting opinions between the entities participating in the making of the bidding documents/request for proposals;

- Relevant tasks.

c) An appraisal report include:

- Summary of the project, legal basis for making the bidding documents/request for proposals;

- Comments of the appraising unit about the legal basis, conformity with regulations of law on bidding and relevant laws; assenting or dissenting opinions about the draft bidding documents/request for proposals;

- Proposals of the appraising unit about approval for the bidding documents/request for proposals; measures to be taken if the bidding documents/request for proposals is not conformable with regulations of law on bidding and relevant laws; solutions for lack of foundations for approving the bidding documents/request for proposals;

- Other comments (if any).

d) Before signing the appraisal report, the appraising unit shall hold a meeting with parties to settled unresolved issues if necessary.

### **Article 83. Appraising the pre-qualification result, list of investors that satisfy technical requirements, and investor selection result**

1. General principles:

a) The pre-qualification result, list of investors that satisfy technical requirements, and investor selection result must be appraised before approval;

b) With regard to projects that follow single-envelope procedures, only the investor selection result shall be appraised;

c) With regard to projects that apply two-envelope method, the list of investors that satisfy technical requirements must be appraised before being approved;



d) The list of investor rankings shall not be appraised before approval. It shall be approved at the request of the soliciting entity;

dd) Before signing the appraisal report, the appraising unit may hold a meeting with parties to settled unresolved issues if necessary.

## 2. Appraising pre-qualification result:

a) An application for appraisal consists of:

- A report on pre-qualification application evaluation result;
- The soliciting entity's report on evaluation of pre-qualification applications, specifying the soliciting entity's opinions about the comments and proposals of the group of exerts
- Photocopies of the pre-qualification documents, bid closing record, bid opening record, pre-qualification applications of investors, and relevant documents.

b) Appraisal contents:

- Inspect documents being the basis for pre-qualification;
- Inspect the adherence to deadlines during the pre-qualification;
- Inspect the adherence to regulations of the pre-qualification documents and law on bidding during the pre-qualification.

c) An appraisal report include:

- Summary of the project, legal basis for investor selection;
- Summary of the implementation and recommendations of the submitting agency about the pre-qualification result;
- Comments about adherence to regulations of law on bidding and relevant laws during the pre-qualification;
- Assenting or dissenting opinions about the pre-qualification result; actions against failure to comply with regulations of law on bidding during pre-qualification or measures for lack of basis for conclusion of the pre-qualification result;
- Comments of the appraising unit about assurance of competitiveness, fairness, and transparency during the pre-qualification;
- Recommendations and proposals of the appraising unit;
- Other comments.

## 3. Appraising the list of investors that satisfy technical requirements:

a) An application for appraisal consists of:

- The soliciting entity's written request for approval for technical proposal evaluation result;
- A report on technical proposal evaluation result;
- Photocopies of the bidding documents, bid closing record, bid opening record, technical proposals of investors, and relevant documents.

b) Appraisal contents:

- Inspect the evaluation of technical proposals; adherence to regulations of law on bidding and relevant laws during the evaluation of technical proposals;
- Relevant tasks.

c) An appraisal report consists of:

- Summary of the investor selection process from shortlisting (if any) to submission of the list of investors that satisfy technical requirements;
- Comments about adherence to regulations of law on bidding and relevant laws during the investor selection process;
- Comments of the appraising unit about assurance of competitiveness, fairness, and transparency during the investor selection process;
- Recommendations for the soliciting entity and group of experts;
- Assenting or dissenting opinions about the result of technical proposal evaluation; actions against failure to comply with regulations of law on bidding during the investor selection process or measures for lack of basis for giving conclusion about the result of technical proposal evaluation;
- Other comments.

4. Appraising the investor selection result:

a) An application for appraisal consists of:

- The soliciting entity's written request for approval for the investor selection result;
- A report on result of evaluation of bid-envelopes and proposals;
- The preliminary contract negotiation record;
- Photocopies of the bidding documents, request for proposals, bid closing record, bid opening record, bid-envelopes, proposals submitted by investors, and relevant documents.

b) Appraisal contents:

- Inspect the conformity of the bidding documents/request for proposals with regulations; conformity with regulations of law on bidding and relevant laws;
- Inspect the adherence to deadlines during the contract negotiation and completion;
- Inspect the adherence to regulations of law on submission of investor selection result.

c) An appraisal report consists of:

- Summary of the project, legal basis for investor selection;
- Summary of the whole investor selection process from shortlisting (if any) to submission of the investor selection result;
- Comments about adherence to regulations of law on bidding and relevant laws during the investor selection process;
- Comments of the appraising unit about assurance of competitiveness, fairness, and transparency during the investor selection process;
- Recommendations for the soliciting entity and group of experts;
- Assenting or dissenting opinions about the investor selection result; actions against failure to comply with regulations of law on bidding during the investor selection process or measures for lack of basis for giving conclusion about the investor selection result;
- Other comments.

**Article 84. Responsibilities of Ministers, Heads of ministerial agencies, Governmental agencies, other central agencies, and President of the People's Committees of provinces**

1. With regard to PPP projects of which the investor selection plans and investor selection results are approved by the Prime Minister and that they are not the soliciting entity:

- a) Offer opinions in writing about the investor selection plan and investor selection result;
- b) Perform other tasks delegated by the Prime Minister.

2. With regard to PPP projects of which the investor selection plans are approved by the Prime Minister and that they are the soliciting entity:

- a) Consider approving the pre-qualification documents, pre-qualification results, bidding documents, requests for proposals, and the lists of investors that satisfy technical requirements;
- b) Sign and manage the execution of contracts with the selected investors;

c) Perform other tasks of the soliciting entity prescribed in Article 75 of the Law on Bidding.

3. With regard to PPP projects and land-using projects under their management:

- a) Consider approving the investor selection plans and investor selection results;
- b) Consider approving the pre-qualification documents, pre-qualification results, bidding documents, requests for proposals, and the lists of investors that satisfy technical requirements, or authorize the head of the soliciting entity to grant such approval;
- c) Perform other tasks of the competent person prescribed in Article 73 of the Law on Bidding;
- d) With regard to land-using projects, President of the People's Committee of the province shall appoint the relevant provincial Department or an equivalent provincial agency to act as the soliciting entity.

#### **Article 85. Responsibilities of Presidents of the People's Committees of districts**

- 1. With regard to PPP projects and land-using projects and that they are the soliciting entity:
  - a) Perform other tasks of the soliciting entity prescribed in Article 75 of the Law on Bidding;
  - b) Perform other tasks delegated by superior authorities.
- 2. With regard to PPP projects under their management:
  - a) Consider approving the investor selection results;
  - b) Consider approving the pre-qualification documents, pre-qualification results, bidding documents, requests for proposals, and the lists of investors that satisfy technical requirements, and investor selection results;
  - c) Perform other tasks of the competent person prescribed in Article 73 of the Law on Bidding.

#### **Article 86. Responsibilities of appraising units**

- 1. The Ministry of Planning and Investment is responsible for approval for:
  - a) The investor selection plans and investor selection results within the competence to approve of the Prime Minister;
  - b) The investor selection plans in special cases decided by the Prime Minister as prescribed in Article 26 of the Law on Bidding and other cases at the request of the Prime Minister;
  - c) Projects eligible for direct contracting within the competence to decide of the Prime Minister as prescribed in Point c Clause 3 Article 9 of this Decree.
- 2. The provincial Departments of Planning and Investment are responsible for approval for:
  - a) Investor selection plans of the projects under the management of the President of the People's Committee of the province;

b) Pre-qualification documents, pre-qualification results, bidding documents, requests for proposals, and the lists of investors that satisfy technical requirements, and investor selection results of the projects under the management of President of the People's Committees of provinces.

3. Organizations and agencies appointed by Ministers, Heads of ministerial agencies, Governmental agencies, other central agencies are responsible for appraisal for:

a) Investor selection plans of the projects under the management of Ministers, Heads of ministerial agencies, Governmental agencies, other central agencies;

b) Pre-qualification documents, pre-qualification results, bidding documents, requests for proposals, and the lists of investors that satisfy technical requirements, and investor selection results of the projects under the management of Ministers, Heads of ministerial agencies, Governmental agencies, other central agencies.

4. Planning and Finance Departments of districts are responsible for approval for investor selection plans, pre-qualification documents, pre-qualification results, bidding documents, requests for proposals, the lists of investors that satisfy technical requirements, and investor selection results of projects under the management of Presidents of the People's Committees of districts or authorized persons.

## **Chapter VIII**

### **SETTLEMENT OF SITUATIONS AND COMPLAINTS DURING INVESTOR SELECTION**

#### **Article 87. Settlement of situations**

1. If the investor selection plan must be adjusted, the procedures for adjusting the investor selection plan shall be followed before technical proposals (for competitive bidding) or proposals (for direct contracting) are opened.

2. With regard to PPP projects, land-using projects, in case of urgency that affects investment efficiency, the competent person may decide to carry out competitive bidding without pre-qualification, provided competitiveness, fairness, transparency, and economical efficiency are ensured. In this case the bidding documents must specify the investors' capacity and experience.

3. At the bid closing time, if no investor submits the pre-qualification application or bid-envelope, the soliciting entity shall request the competent person to:

a) Allow delay of the bid closing time for up to 30 days; or

b) Cancel the bidding, request the soliciting entity to adjust the pre-qualification documents, bidding documents, and reorganize the investor selection, or change the method of investment because the project is not attractive to investors.

4. At the contract conclusion time, if the selected investor fails to satisfy requirements in terms of technical and financial requirements prescribed in Clause 2 Article 70 of the Law on

Bidding, the investor ranked next shall be invited to preliminary contract negotiation or contract negotiation and completion (for PPP projects of group C). In this case, the investor shall be invited to preliminary contract negotiation; the contract validity and bid security shall be restored if the bid-envelope has expired and the investor's bid security has been redeemed or released.

5. If all investors are equally ranked after financial - commercial proposals are evaluated, the investor with the highest technical grade shall be ranked first.

6. If all investors that satisfy technical requirements and are short-listed offers service prices, state investment higher than service prices or state investment in the feasibility study report or project proposal (for PPP projects of Group c), the competent persons shall:

a) Allow such investors to remake the financial – commercial proposals; or

b) Allow such investors that satisfy technical requirements and are short-listed offers service prices, state investment higher than service prices or state investment in the feasibility study report or project proposal (for PPP projects of Group c), the competent persons shall:

7. With regard to selection of investors in land-using projects, if all investors offer equal investment efficiency (B), the investor that offer higher payment to state budget ( $M_3$ ) shall be preferred. If all investors offer equal value of land clearance and compensation ( $M_2$ ) and equal payment to state budget ( $M_3$ ), the investor that offers the highest price (A) which is not lower than the floor price shall be proposed for selection.

8. The soliciting entity shall report the situations other than the aforementioned cases to the competent persons in order to ensure competitiveness, fairness, transparency, and economic efficiency.

### **Article 88. Conditions for considering and settling complaints**

1. Complaints must be made by investors who participate in the bidding.

2. The complaint form must bear the signature of the person who signs the letter of bid or the investor's legal representative and the seal (if any).

3. The person in charge of complaint settlement receives the complaint as prescribed in Clause 3, Clause 4, and Clause 5 Article 92 of the Law on Bidding.

4. The case is not brought to court.

5. The complaint settlement cost prescribed in Clause 6 Article 7 of this Decree is paid by the investor to the standing committee of the Advisory Council if the complaint against the investor selection result is settled by the competent person.

### **Article 89. Advisory Council**

1. President of Advisory Council

a) The President of Central Advisory Council is an authorized representative of the Ministry of Planning and Investment. The Central Advisory Council is responsible for providing consultancy on settlement of complaints about projects of national importance decided by the National Assembly, projects of group A or equivalent;

b) Presidents of Advisory Councils of Ministries, ministerial agencies, Governmental agencies, and other central agencies (hereinafter referred to as Ministerial Advisory Council) are the head of the units in charge of bidding of such agencies. Presidents of Local Advisory Councils are Directors of Departments of Planning and Investment. Ministerial and local Advisory Councils are responsible for providing consultancy on settlement of complaints about projects decided by Ministries, ministerial agencies, Governmental agencies, other central agencies, and provincial authorities, except for the projects mentioned in Point a of this Clause.

## 2. Members of Advisory Council

a) Members of Central Advisory Councils are individuals of bidding units affiliated to the Ministry of Planning and Investment, representatives of competent authorities, representatives of relevant professional associations. Members of Ministerial Advisory Councils are individuals of bidding units affiliated to corresponding agencies, representatives of competent authorities, representatives of relevant professional associations. Members of local Advisory Councils are individuals of Departments of Planning and Investment, representatives of competent authorities, representatives of relevant professional associations.

b) Depending on the characteristics of each project, the President of the Advisory Council may invite additional members.

c) Members of an Advisory Council must not relatives (parent, parent-in-law, spouse, birth child, adopted child, daughter-in-law, son-in-law, sibling) of the complainant, of the individuals directly participating in evaluation of bid-envelopes, proposals, of individuals directly appraise the list of investors that satisfy technical requirements, investor selection results, and of the person that approves the investor selection result.

## 3. Operation of Advisory Council

a) The President of Advisory Council shall issue a decision to establish the Advisory Council within 05 working days from the day on which the investor's complaint is received. The Advisory Council shall operate on a case-by-case basis;

b) The Advisory Council shall work on the principle of collectives, cast votes under the majority rule, and send reports to the competent persons; every member is entitled to reserved their opinions and take legal responsibility for their opinions.

## 4. Standing committee of Advisory Council

a) Standing committee of Central Advisory Council is the unit in charge of bidding management affiliated to the Ministry of Planning and Investment. Standing committees of Ministerial Advisory Councils are the units in charge of bidding management affiliated to corresponding agencies. Standing committees of local Advisory Council are the units in charge of bidding management affiliated to Departments of Planning and Investment.

Standing committees are not participated by the individuals that directly appraise the investor selection result of such project;

b) The standing committee shall perform administrative tasks given by the Advisory Council President; receive and manage payments made by complainants as prescribed in Clause 6 of Article 7 of this Decree.

### **Article 90. Settlement of complaints about investor selection**

1. The time limit for complaint settlement mentioned in Clause 3 and Clause 4 Article 92 of the Law on Investment begins when the administrative unit of the person in charge of complaint settlement receives the complaint.
2. If the complaint does not satisfy conditions in Article 88 of this Decree, the person in charge of complaint settlement shall send a written notification to the investor.
3. The investor is entitled to withdraw the complaints during the settlement process, provided a written request for withdrawal is submitted.
4. The response sent to the investor must have the conclusion about the complaint. If the complaint is proven truthful, it is required to specify the measures and time limit for remediation. The standing committee shall request responsible for entities to pay the complainant the amount that was paid by the complainant to the Advisory Council. If the investor's complaint is proven untruthful, the response must provide explanation.

## **Chapter IX**

### **ACTIONS AGAINST VIOLATIONS OF LAWS; INSPECTION, SUPERVISION, AND MONITORING OF BIDDING DURING INVESTOR SELECTION**

#### **Section 1. Actions against violations**

##### **Article 91. Penalties**

1. Warnings and fines shall be imposed upon any organization or individual that violations regulations of law on bidding in accordance with regulations of law on penalties for administrative violations against regulations of law on planning and investment.
2. Ban from bidding shall be imposed upon any organization or individual that violates Article 89 of the Law on Bidding.
3. Any individual whose violations against regulations of law on bidding constitute crimes shall face criminal prosecution in accordance with criminal laws.
4. Any official that violate regulations of law on bidding shall also be dealt with in accordance with regulations of law on officials.

##### **Article 92. Ban from participation in investor selection**

Depending on the seriousness of violations, ban from bidding shall be imposed as follows:



1. Any entity that commits violations against Clauses 1, 2, 3, 4, or 5 Article 89 of the Law on Bidding shall be banned from bidding for 03 – 05 years.
2. Any entity that commits violations against Points a, b, c, d, or h of Clause 6 Article 89 of the Law on Bidding shall be banned from bidding for 01 – 03 years.
3. Any entity that commits violations against Clause 7 Article 89 of the Law on Bidding shall be banned from bidding for 06 months – 01 year.

### **Article 93. Cancellation, suspension of bidding, rejection of investor selection result**

1. Bidding cancellation is a measure taken by the competent persons to deal with violations against regulations of law on bidding and relevant laws committed by participants in the bidding.

The competent person is entitled to decide bidding cancellation in the cases mentioned in Article 17 of the Law on Bidding.

2. Suspension of bidding, rejection of investor selection result, annulment of decisions made during investor selection process:

a) Bidding suspension, rejection of investor selection result shall apply when there is evidence that violations against regulations of law on bidding or relevant laws are committed by participants in the bidding which lead to failure to achieve bidding targets and/or alter the investor selection result.

b) Suspension shall be applied to instantly stop the violations before the investor selection result is approved. Investor selection result shall be rejected from the day on which the investor selection result is approved to the contract conclusion date;

c) The decision on suspension or rejection of investor selection result must specify the reasons, necessary measures and time limit for remediation;

d) The soliciting entity's decisions shall be annulled by the competent person when finding that such decisions are not conformable with regulations of law on bidding and relevant laws.

### **Article 94. Compensation for damage caused by violations against regulations of law on bidding**

Any entity that commits violations against regulations of law on bidding and causes damage shall pay compensation in accordance with regulations of law on damages and relevant laws.

## **Section 2. INSPECTION, SUPERVISION, MONITORING**

### **Article 95. Inspection of bidding**

1. Inspection of bidding shall be carried out periodically or irregularly when there are difficulties, complaints, or at the request of the Prime Minister, Presidents of the People's Committees of provinces, competent persons of bidding inspection agencies in accordance with Clause 2 of this Article. Inspection method: Direct inspection and request for reports.

2. Ministers, Heads of ministerial agencies, Governmental agencies, other central agencies, Presidents of the People's Committees of provinces; Directors of the Departments of Planning and Investment, Heads of other Departments and agencies affiliated to the People's Committees of provinces; Presidents of the People's Committees of districts shall direct bidding inspection of the units under their management and the projects in which investment is decided by them in order to boost the progress, improve efficiency, discover and prevent violations against regulations of law on bidding.

3. The Ministry of Planning and Investment shall take charge of bidding inspection nationwide. Ministries, ministerial agencies, Governmental agencies, other central agencies, the People's Committees of provinces; Departments of Planning and Investment, other Departments and agencies affiliated to the People's Committees of provinces; the People's Committees of districts shall carry out bidding inspection at the request of the competent persons of bidding inspection agencies. The Departments of Planning and Investment shall assist the People's Committees of provinces in organizing bidding inspection in within the province.

#### 4. Contents of bidding inspection

##### a) Contents of periodic inspection:

- Inspect the promulgation of documents on guidelines for investor selection.
- Inspect the provision of training in bidding;
- Inspect the issuance of certificates of training in bidding, bidding practising certificate;
- Inspect the formulation and approval of the investor selection plan, pre-qualification documents, bidding documents, request for proposals, pre-qualification result, and investor selection result;
- Inspect the concluded contract and conformity with legal basis during the contract conclusion and execution;
- Inspect the procedures and progress of project execution according to the approved investor selection plan;
- Inspect the reporting on bidding;
- Inspect the bidding inspection and supervision.

b) Contents of irregular inspection: In consideration of the inspection requirements and the decision on inspection, chief of the inspectorate shall specify the inspection contents.

5. After the inspection is completed, a report and conclusion must be made. The inspecting agency shall monitor the remediation according to the conclusion. Actions against violations committed shall be proposed or the case shall be transferred to an inspecting/investigating agency.

##### 6. Contents of inspection conclusion:

- a) The situation at the inspected unit;
- b) The inspection contents;
- c) Comments;
- d) Conclusion;
- dd) Recommendations.

## **Article 96. Monitoring of bidding**

1. Bidding supervision and monitoring is applied when Ministers, Heads of ministerial agencies, Governmental agencies, other central agencies authorize the heads of organizations affiliated to Ministries, ministerial agencies, Governmental agencies, other central agencies; the People's Committees of provinces authorize heads of specialized agencies affiliated to the People's Committees of provinces or Presidents of the People's Committees of districts to fulfill the responsibilities of competent persons to investor selection in order to deal with improper acts and issues that contravene regulations of law on bidding and relevant laws.

2. The competent person shall appoint an individual or unit in charge of bidding management to supervise, monitor the investor selection process with regard to the tasks mentioned in Clause 3 of this Article to ensure conformity with regulations of law on bidding.

3. Investor selection tasks that needs monitoring and supervising:

- a) Making, appraising, and approving the pre-qualification documents, bidding documents, request for proposals;
- b) Evaluating pre-qualification applications, bid-envelopes, and proposals;
- c) Appraising and approving pre-qualification result, investor selection result;
- d) Result of contract negotiation, completion, and conclusion.

4. Method of supervision and monitoring:

a) The soliciting entity shall provide investors that bought the pre-qualification documents, bidding documents, or request for proposals with the name and address of the organization or individual in charge of supervision and monitoring (hereinafter referred to as supervising entity);

b) The soliciting entity shall provide information about the investor selection process for the supervising entity when receiving a written request;

c) Any act or issue that contravenes regulations of law on bidding committed by the supervising entity must be reported in writing to the competent person in order to take appropriate measures and ensure the efficiency of the investor selection process.

5. Responsibilities of supervising entity:

- a) Be honest and objective; do not harass the authorized person and soliciting entity during the supervision, monitoring process.
- b) Request the authorized person and soliciting entity to provide relevant documents serving the supervision, monitoring;
- c) Receive feedbacks from relevant entities about the investor selection process of the project being supervised monitored;
- d) Protect confidentiality of information as prescribed;
- dd) Fulfill other responsibilities prescribed by regulations of law on bidding and relevant laws.

## **Chapter X**

### **IMPLEMENTATION**

#### **Article 97. Transitional provisions**

1. If the investor selection result of a project is approved before the effective date of this Decree, it is not required to carry out the investor selection again.
2. With regard to pre-qualification documents, bidding documents, and requests for proposals published before January 01, 2014, the investor selection shall be carried out in accordance with Decree No. 108/2009/NĐ-CP dated November 27, 2009, Decree No. 24/2011/NĐ-CP dated April 05, 2011, Decision No. 71/2010/QĐ-TTg dated November 09, 2010, and guiding Circular.
3. With regard to pre-qualification documents, bidding documents, and requests for proposals published from January 01, 2014 until the effective date of this Circular, regulations of the Law on Investment, Decree No. 108/2009/NĐ-CP dated November 27, 2009, Decree No. 24/2011/NĐ-CP dated April 05, 2011, Decision No. 71/2010/QĐ-TTg dated November 09, 2010, and guiding Circular shall apply, provided regulations of the Law on Bidding No. 43/2013/QH13 dated November 26, 2013 are complied with.

#### **Article 98. Effect**

This Decree takes effect on May 05, 2015.

#### **Article 99. Instructions on implementation**

1. The Ministry of Planning and Investment shall:
  - a) Compile and issue templates of bidding documents, including the pre-qualification documents, bidding documents, request for proposals (for PPP projects), bidding documents, request for proposals (for land-using projects), and other templates
  - b) Specify the roadmap for application and provide guidelines for:

- Registration of investor's information on national bidding network as prescribed in Point d Clause 1 Article 5 of the Law on Bidding;

- Issue practising certificates to individuals that are required to have practising certificates as prescribed in Clause 2 Article 16 and Point c Clause 1 Article 19 of the Law on Bidding;

c) Take charge and cooperate with relevant agencies in developing the national bidding network and the roadmap for application; develop a mechanism for management and operation; provide guidelines for online investor selection;

d) Provide guidelines for other issues of this Decree to meet state management requirements for investor selection bidding.

2. The Ministry of Finance shall provide instructions on costs of the investor selection process.

3. Ministries, ministerial agencies, Governmental agencies, other central agencies, and the People's Committees of provinces shall:

a) Take charge and cooperate with the Ministry of Planning and Investment in issuing templates of documents for selection of investors in PPP projects of group C;

b) Provide specific instructions on some parts of this Decree within the area of their competence if necessary, provided the principles of this Decree are complied with.

4. Ministers, Heads of ministerial agencies, Presidents of the People's Committees shall appoint officials in charge of investor selection and appoint a unit specialized in management of investor selection within their competence. Difficulties that arise during the implementation of this Decree should be reported to the Prime Minister for consideration. Ministries, ministerial agencies, the People's Committees of provinces shall send annual reports on investor selection bidding to the Ministry of Planning and Investment. The Ministry of Planning and Investment shall submit summary reports to the Prime Minister./.

**FOR THE GOVERNMENT  
THE PRIME MINISTER**

**Nguyen Tan Dung**

---

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