

DECREE
ON AMENDMENTS AND ADDITIONS TO A NUMBER OF ARTICLES
OF THE REGULATIONS ON TENDERING ISSUED WITH DECREES OF THE
GOVERNMENT NO. 88-1999-ND-CP DATED 1 SEPTEMBER 1999
AND NO. 14-2000-ND-CP DATED 5 MAY 2000

Pursuant to the *Law on Organization of the Government* dated 25 December 2001;

On the proposal of the Minister of Planning and Investment,

Decrees

Article 1

To amend a number of articles of the *Regulations on Tendering* issued with Decrees of the Government No. 88-1999-ND-CP dated 1 September 1999 and No. 14-2000-ND-CP dated 5 May 2000 (hereinafter referred to as *D88-CP* and *D14-CP* respectively) as follows:

1. To amend and add to article 2.2(c) of D88-CP as follows:

- “(c) Projects funded by aid from international organizations or foreign countries shall be implemented on the basis of the Agreement signed by the parties (the donors and the Vietnamese parties). Where there are provisions relating to rules on tendering in a draft Agreement which are inconsistent with these Regulations, the body responsible for negotiating and signing the Agreement must, prior to signing, submit it to the Prime Minister for consideration and decision. Where there are provisions relating to rules on tendering in an already signed Agreement which are inconsistent with the *Regulations on Tendering* of Vietnam, the provisions in such Agreement shall apply. But procedures on submission for approval, evaluation and approval of tendering plans, of tender invitation documents and of the result of selection of a tenderer shall be implemented in accordance with the *Regulations on Tendering* of Vietnam.

2. To amend article 3.10 of D88-CP and to add article 3.35 to D88-CP as follows:

- “10. A *tenderer/bidder* means a domestic or foreign organization or individual with legal civil capacity, and an individual must also have legal capacity for civil acts in order to enter into and perform a contract. The legal civil capacity and the legal capacity for civil acts of a domestic tenderer shall be considered in accordance with the laws of Vietnam, and of a foreign tenderer in accordance with the laws of the country of the tenderer's nationality. Tenderers must guarantee their financial independence.

A tenderer means a constructor in tendering for construction and installation; a supplier in tendering for procurement of goods; a consultant (who may be an individual) in tendering for selection of consultants; and an investor in tendering for selection of investment partners.

A tenderer may participate in an independent bid (referred to as an *independent tenderer*) or join with other tenderers (referred to as *tenderers in partnership*). In the latter case there must be a written

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

30. *Contract signing price* means the price agreed by the party calling for tenders and the successful tenderer after negotiations for finalization of the contract, and must be consistent with the successful tender price, the tender invitation documents and the tender. The contract signing price together with the specific clauses on payment recorded in the contract shall be the basis for making capital payments for the tender package.
35. *Project investor* means the organization to which responsibility is assigned to directly manage and implement a project defined in article 3.5 of D88-CP. In the case of investment projects, the project investor is the investor.”

3. To amend article 4.1 and 4.2 of D88-CP as follows:

1. Open tendering:

Open tendering is a form of tendering whereby the number of participating tenderers is unlimited. The party calling for tenders must publicly announce conditions and time-limits for participation in the tendering in the mass media or announce them in the tendering newsletters¹ and web pages of the State and of ministries, branches and localities no later than ten (10) days prior to issuing tender invitation documents. Open tendering is the main form applied in tendering.

Other forms of selecting tenderers shall only be applied when there are sufficient grounds and the authorized person has approved them in the tendering plan.

2. Limited tendering:

Limited tendering is a form of tendering whereby the party calling for tenders invites a limited number of experienced and capable tenderers (not less than five) to participate. If in fact there are less than five tenderers, the party calling for tenders must report to the investor to make a submission to the authorized person to consider and make a decision. The investor shall make a decision on the list of participating tenderers on the basis of an assessment of their experience and capability by the party calling for tenders, but ensuring objectivity, equality and the correct subject. The application of this form shall only be considered upon satisfaction of one of the following conditions:

- (a) Only a limited number of tenderers are capable of satisfying the requirements of the tender package;
- (b) The sources of capital used require limited tendering;
- (c) Limited tendering has certain advantages due to the specific circumstances relating to the tender package”.

4. To amend and add to article 4.3 (b), (c) and (d) of D88-CP as follows²:

- “(b) Tender packages of a research or experimental nature or of national confidentiality as decided by the authorized person.

¹ PF Note: Literally “information sheet”.

² PF Note: The literal translation is “article 1.2 (b), (c) and (d) of D14-CP” which amended article 4.3(b), (c) and (d) of D88-CP.

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

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

When appointing a tenderer for the tender packages specified in this clause³, the authorized person making the decision to appoint the tenderer shall be responsible before the law for his or her decision.

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

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

- (d) For other tender packages of a special nature due to the requirements of the funding agency, due to technical or technological complexity, or due to one-off requirements of a project: The authorized person shall consider and make a decision to appoint a tenderer on the basis of the evaluation report of the relevant evaluating authority and the written opinions of the funding agency and other relevant bodies”.

5. To amend and add to article 6.2 (b) of D88-CP as follows:

- “(b) A turn-key contract is a contract for all works of design, supply of equipment, construction and installation of a tender package performed by a tenderer (in English abbreviated as EPC).

The selection of a tenderer to perform an EPC tender package via an EPC contract must comply with the provisions of article 4 of D88-CP and must be based on an approved tendering plan. The tender invitation documents must include three sections, design (E), supply of equipment (P), and construction and installation (C). The standards for assessment of an EPC tender package must also include all these three items of work, with specified points for minimum technical requirements applicable to each of these items of work. The tenderer whose tender satisfies the high technical requirements pursuant to the approved assessment standards (not less than 90% of the total points for technical items) and whose price is assessed to be the lowest shall be considered and awarded the contract.

The Ministry of Planning and Investment shall issue guidelines on the process of holding tendering in order to select a contractor to perform an EPC tender package.

The contents of an EPC contract shall follow the guidelines of the Ministry of Construction as stipulated in article 1.21 of Decree No. 07-2003-ND-CP of the Government dated 30 January 2003.

The investor shall be responsible for supervising the performance process and accepting and taking over the completed project from the contractor in accordance with the signed contract”.

³ PF Note: The literal translation is “in article 1.2 of D14-CP”.

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

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

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

- “2. A tenderer participating in tendering or in the other forms of selecting tenderers prescribed in article 4 of D88-CP must satisfy the following conditions:
- (a) Be financially independent, and have legal civil capacity and in the case of an individual also have legal capacity for civil acts in order to enter into and perform a contract. In the case of procurement of complex goods, the tenderer must have a licence to sell goods from the manufacturer.
 - (b) A tenderer may submit only one tender in respect or each tender package, either in the form of participating as an independent tenderer or in partnership.
 - (c) Be named on the list of tenderers on the data-information system”.

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

- “2. A foreign tenderer participating in international tendering for construction and installation or for procurement of goods held in Vietnam must either enter into a partnership with a Vietnamese contractor or undertake to use Vietnamese sub-contractors and must clearly specify the scope of work, volume and relevant unit price shared between the parties. With respect to tender packages for consultancy belonging to projects funded by the State Budget, funded by credit facilities guaranteed by the State, and funded by credit facilities for investment and development of the State, when there is a need to use a foreign consultant, then foreign organizations and experts participating in the process of selecting tenderers must enter into a partnership with a domestic consultant to implement [the tender] (except where the Prime Minister of the Government provides permission for there not to be a partnership).
8. Domestic tenderers and goods manufactured domestically shall be entitled to the following preferential treatment in international tendering held in Vietnam for projects listed in article 2.2 of D88-CP:
- (a) Entities entitled to preference:
 - Domestic tenderers satisfying the conditions for participating in tendering comprising:
 - + Enterprises operating under the *Law on Enterprises*, the *Law on State Owned Enterprises*, or the *Law on Co-Operatives*;
 - + Joint venture enterprises operating under the *Law on Foreign Investment in Vietnam* in which legal capital contributed by the Vietnamese party is above 50%.
 - Tender packages for construction and installation or for consultancy in which the work that the domestic contractor undertakes is more than 50% of the value.
 - Tender packages for procurement of goods where the ratio of domestic manufacturing costs exceeds 30% of ex-factory cost.
 - (b) Items of preference:

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

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

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

“1. Tender opening:

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

The minutes of the tender opening shall include the following main particulars:

- (a) Name of the tender package;
- (b) Date, time and location of the tender opening;
- (c) Names and addresses of the tenderers;
- (d) Tender price, tender guarantee in the case of procurement of goods or construction and installation, and time schedule for performance;
- (dd) Other relevant contents.

A representative of the party calling for tenders, and representatives of participating tenderers if they are present, must sign the minutes of the tender opening.

After the tender opening, the party calling for tenders must sign and certify each page of the original copy of the tenders in order to retain their status quo, prior to conducting the assessment and shall keep them in accordance with the regulations on archiving of confidential documents.

2.(b) The method of assessment price shall be used for tender packages for procurement of goods or for construction and installation in the following two steps:

- Step 1: Assessment of the technical aspects in accordance with the assessment standards stipulated in the tender invitation documents in order to select a shortlist (namely, the list of tenderers satisfying technical requirements in accordance with the assessment standards).

A tender which achieves minimum points or more as stipulated in the assessment standards but on the principle that the standards do not provide for less than 70% of total technical points, and for tender packages with high technical requirement not less than 90% of the total points for technical items (in the case of the points score method) or which satisfies the criteria for “pass/failure”, shall be deemed to have satisfied the technical requirements.

- Step 2: Determination of the assessment price in respect of tenders included in the shortlist in order for [tenders] to be classified.

10. To amend and add to article 15 of D88-CP as follows:

“Article 15 *Responsibilities of the authorized person, of the investor, and of the party calling for tenders:*

1. The authorized person shall be responsible for:

- (a) Approving plans for project tendering, approving or delegating approval of tender invitation documents, and approving results of selection of a contractor for all tender packages belonging to projects on the basis of the evaluation report of the relevant authority.
- (b) Directing and inspecting the implementation of the *Regulations on Tendering* by the party calling for tenders.

2. The investor shall be responsible for:

- (a) Submitting to the authorized person for approval tendering plans, tender invitation documents and the result of selection of a contractor for all tender packages belonging to projects.
- (b) The process of selecting tenderers in accordance with the provisions of the *Regulations on Tendering* and shall be responsible before the law for its own decisions. If an investor has sufficient capability then it may itself act as the party calling for tenders in order to hold tendering; if an investor does not have sufficient capability it shall be permitted to employ an expert organization with sufficient status and capability to replace the investor as the party calling for tenders, but the investor shall remain responsible for the process of selecting tenderers in accordance with the provisions of the *Regulations on Tendering* and directly signing a contract with the winning tenderer.
- (c) Making decisions on the contents of the tendering process, comprising:
 - Prequalification invitation documents, criteria for assessment of prequalification and result of prequalification of tenderers;
 - Lists of tenderers taking part in limited tendering;

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

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

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

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

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

"1. Composition of an expert group:

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

- (a) Technical issues and technology;

⁴ PF Note: The literal translation is "article 1.2 (c) and (e) of D14-CP" which amended article 4.3(c) and (e) of D88-CP.

- (b) Finance and trade;
- (c) Legal issues and other issues (if required).

The investor shall decide the list of experts.

The head of the expert group shall be responsible for managing its operation, and for compiling and preparing assessment reports of tenders or other relevant documents.

2. Standards of members of an expert group:

- (a) Having knowledge of the law on tendering;
- (b) Having professional qualifications relating to the tender package;
- (c) Having knowledge of the specific contents of the tender package;
- (d) Having experience in practical management or doing research”.

12. To amend and add to article 29 of D88-CP as follows:

“Article 29 *Criteria for assessment of tenders*

The criteria on which tenders will be assessed must be fully set out in the tender invitation documents, comprising:

1. Criteria on capability and experience of tenderers:

- (a) Production and business capability, physical and technical facilities and qualifications of professional staff;
- (b) Financial position (turnover, profit and other norms);
- (c) Experience in implementing similar contracts in Vietnam and abroad; in order to create conditions for domestic tenderers to develop in some special cases, the requirements on experience may be the minimum only, but this must be considered and decided by the authorized person in the tender invitation documents.

The items set out in this clause shall be assessed on the criterion of “pass” or “fail”. Only when a tenderer passes all three items (a), (b) and (c) shall it be deemed to have sufficient capability and experience to be a participating tenderer.

2. Criteria on technical aspects:

- (a) The capacity to satisfy the requirements in relation to quantity, quality and technical specifications of goods as stated in the tender invitation documents;
- (b) Economic and technical specifications of goods, manufacturing standards and other items (tender invitation documents may not provide requirements on commercial firm names or specific origins of goods);
- (c) Suitability and economic efficiency of technical solutions and methods of organizing supply of goods;

- (d) Capability for equipment installation and ability of technical staff;
- (dd) Geographical adaptability;
- (e) Environmental impact and solutions thereto;
- (g) Financing ability (if so required);
- (h) Other issues (if any) namely commercial and financial conditions, duration of implementation, and training on technology transfer.

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

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

3. The criteria for conversion to a level ground [i.e. the same basis] in order to fix the assessment price shall comprise:

- (a) Duration of use;
 - (b) Design output;
 - (c) Standards on product quality;
 - (d) The origin of goods stated in the tender invitation documents;
 - (dd) Costs of operation, service and maintenance;
 - (e) Commercial and financial conditions;
 - (g) Schedule of supply, of assembly and installation.
4. None of the criteria for assessment set out in the tender invitation documents, and no item of any criteria for assessment may be removed, added to or changed during the tender consideration process”.

13. To amend and add to article 30.2 (a) of D88-CP as follows:

“(a) Step 1: Assessment of technical aspects in order to select a shortlist:

Assessment of technical aspects shall be based on the criteria for assessment set out in the tender invitation documents in order to select a shortlist. During the tender consideration process, the party calling for tenders shall have the right to request a tenderer to explain unclear or unreasonable⁵ items in its tender such as volumes and unit prices”.

⁵ PF Note: Literally “not yet reasonable”.

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

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

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

15. To amend and add to article 40 of D88-CP as follows:

“Article 40 *Criteria for assessment of tenders*⁶

The criteria on which tenders will be assessed must be fully set out in the tender invitation documents, comprising:

1. Criteria on experience and capability of tenderers:
 - (a) Experience in implementing projects with similar technical conditions in similar geographical areas and sites;
 - (b) Number and qualifications of workers and technicians directly involved in the implementation of the project;
 - (c) Financial capability (turnover, profits and other norms).

The items set out in this clause shall be assessed on the criterion of “pass” or “fail”. Only when a tenderer passes all three items (a), (b) and (c) shall it be deemed to have sufficient capability and experience to be a participating tenderer.

2. Criteria on technical aspects:
 - (a) Degree of satisfaction of technical requirements and of requirements for quality of materials and equipment as specified in the design documents;
 - (b) Suitability and feasibility of technical solutions and organization of construction and installation;
 - (c) Assurance of environmental hygiene, and other conditions such as fire prevention and labour safety must also be ensured;
 - (d) Degree of satisfaction of construction and installation equipment (quantity, type, quality and availability for use), manpower for construction and installation;
 - (dd) Measures to ensure quality;
 - (e) Financing ability (if so required);

⁶ PF Note: The heading is the same as article 29, but article 29 applies to tendering for procurement of goods, and this article 40 applies to tendering for construction and installation.

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

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

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

3. The criteria for conversion to a level ground [i.e. the same basis] in order to fix the assessment price shall comprise:

- (a) Quality of the materials to be used for construction, assembly and installation;
 - (b) Costs of operation, service and maintenance;
 - (c) Costs arising outside the contract for construction and installation which the investor must pay (if any);
 - (d) Contractual conditions (especially the payment schedule);
 - (dd) Financial conditions (such as terms of loans, loan interest rates and so forth, if any);
 - (e) Duration for performance of the contract.
4. None of the criteria for assessment set out in the tender invitation documents, and no item of any criteria for assessment may be removed or changed during the tender consideration process”.

16. To amend and add to article 41.2 of D88-CP as follows:

“2. Detailed assessment:

Detailed assessment of tenders shall comprise the following two steps:

- (a) Step 1: Assessment of technical aspects in order to select a shortlist:

Assessment of technical aspects shall be based on the criteria for assessment set out in the tender invitation documents in order to select a shortlist. The party calling for tenders shall have the right to request a tenderer to explain any unclear or not yet reasonable items such as quantities and unit prices.

- (b) Step 2: Assessment of financial and commercial aspects:

Assessment of financial and commercial aspects of shortlisted tenderers shall be carried out on a level ground [i.e. same basis] in accordance with the approved criteria for assessment.

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

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

During the assessment process the party calling for tenders shall have the right to request a tenderer to clarify any illogical unit prices in a tender, and if there are unclear explanatory statements from that tenderer then these shall be deemed discrepancies and included in the assessment price of such tenderer”.

17. To add clauses 8 to 11 inclusive to article 50 of D88-CP as follows:

- “8. Administering the tendering information system.
- 9. Managing the system of data-information on tenderers.
- 10. Managing foreign tenderers in Vietnam.
- 11. Conducting inspections and checks of tendering and of contract performance”.

18. To amend article 51 of D88-CP as follows:

“Article 51 *Information about tenders*

- 1. Methods of publishing information about tenders:

Methods of publishing information about tenders shall comprise:

- (a) The tendering newsletter and the web page on tenders of the State issued nationwide;
- (b) The tendering newsletter and the web page on tenders of ministries, branches and localities;
- (c) Other mass media such as central and local daily newspapers, radio and television.

- 2. Items of information which must be published:

The following items must be published:

- (a) Tendering plans;
- (b) Announcement of invitation for prequalification tenders, and result of prequalification of tenderers;
- (c) Announcement of invitation for tenders;
- (d) List of tenderers participating in limited tendering;
- (dd) List of consultants participating in tendering;
- (e) Result of selection of a tenderer;
- (g) List of individuals and organizations being tenderers in breach of the *Regulations on Tendering*;
- (h) List of tenderers prohibited from participating in tendering;

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

3. Administration of tendering newsletters and web pages on tenders:

(a) Administering agencies:

- The Ministry of Planning and Investment shall be responsible for nationwide administration of the State's tendering newsletter and web page on tenders.
- Ministries, branches and localities shall be responsible for administration of tendering newsletters and web pages on tenders within their respective areas of management.

(b) Information contents on tendering:

The Ministry of Planning and Investment shall publish the following items:

- Items (a) to (e) inclusive of clause 2 of this article shall be applicable to important national projects, Group A and Group B projects (irrespective of funding source), joint venture projects, business co-operation projects and shareholding projects.
- The remaining items (g) to (n) inclusive of clause 2 of this article shall be applicable to projects for which the information-providing agency set out in sub-clause (c) of this clause provides the information.

Ministries, branches and localities shall make a decision on which items in clause 2 of this article to publish depending on the actual conditions and status of a project, and they shall also provide any such published information on a project to the Ministry of Planning and Investment for general publication.

(c) Agencies which shall provide information:

- Investors of important national projects, Group A and Group B projects (irrespective of funding source), joint venture projects, business co-operation projects and shareholding projects shall be responsible to provide information, namely items (a) to (g) inclusive and (i) of clause 2 of this article, regarding any projects they manage, to the agency administering tendering newsletters and web pages on tenders.
- Ministries, ministerial equivalent bodies, Government bodies, and people's committees of provinces and cities under central authority shall be responsible to provide information, namely items (g), (i), (l) and (m) of clause 2 of this article within their respective areas of management to the Ministry of Planning and Investment.
- Tenderers shall provide data-information about themselves as prescribed in clause 2 (n) of this article to the Ministry of Planning and Investment.

4. Other mass media:

Other mass media prescribed in clause 1 (c) of this article shall publish announcements of invitations for tenders for Group C projects and other information".

19. To amend and add to article 52 of D88-CP as follows:

“Article 52 *Delegation of responsibility for tendering*

1. The Prime Minister of the Government shall:

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

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

(d) Make decisions on inspections and dealing with breaches of the laws on tendering.

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

- (a) Evaluating and submitting the following to the Prime Minister of the Government for approval:
 - Tendering plans for projects for which the Prime Minister makes the investment decision;
 - Tendering results of tender packages within the Prime Minister’s authority to approve;
 - Proposals for appointment of a tenderer, direct procurement and self-implementation in respect of tender packages set out in clauses 3, 5 and 6 of article 4 of D88-CP for projects within the Prime Minister’s authority to approve.
 - (b) To issue and to administer the State’s tendering newsletter and web page on tenders, and to administer the system of data-information on tenderers.
 - (c) To inspect and check tendering work nationwide.
3. Ministers, heads of ministerial equivalent bodies and Government bodies, heads of financial management bodies of the Central party and of central agencies of socio-political organizations (stipulated in the *Law on State Budget*) and chairmen of provinces and cities under central authority shall be responsible:

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

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

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

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

1. With respect to important national projects for which the National Assembly makes the investment policy decision and the Prime Minister of the Government makes the investment decision:
 - (a) The Prime Minister of the Government shall approve the result of selection of a tenderer on the basis of the evaluation report of the Ministry of Planning and Investment for a tender package within the Prime Minister's authority to approve pursuant to the regulations.
 - (b) Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people's committees of provinces and cities under central authority shall approve tender invitation documents for tender packages within the Prime Minister's authority to approve the tendering results, and shall approve tender invitation documents and the tendering results for tender packages for which the Prime Minister delegates authority pursuant to the regulations, on the basis of the evaluation of the entity assisting the work concerned or of the Department of Planning and Investment if [the project] belongs to a locality.
2. With respect to projects using State budget funds:
 - (a) Ministers, heads of ministerial equivalent bodies and Government bodies and heads of financial management bodies of the Central party and of central agencies of socio-political organizations (stipulated in the *Law on State Budget*) shall approve tender invitation documents and the result of selection of a tenderer for all tender packages for projects within their authority to make the investment decision on the basis of the evaluation of the entity assisting the work concerned.
 - (b) Chairmen of people's committees of provinces and cities under central authority shall approve tender invitation documents and the result of selection of a tenderer for all tender packages for projects within their authority to make the investment decision on the basis of the evaluation of the Department of Planning and Investment.
 - (c) Chairmen of people's committees of districts, towns, provincial cities, townships, communes and wards shall approve tender invitation documents and the result of selection of a tenderer for all tender packages for projects within their authority to make the investment decision on the basis of the evaluation of the section assisting the work concerned.
3. With respect to projects for which enterprises make the investment decision:

The authorized person of the enterprise shall be responsible to approve tender invitation documents and the result of selection of a tenderer for all tender packages for projects within the enterprise's authority to make the investment decision on the basis of the evaluation of the section assisting the work concerned”.

21. To amend and add to article 55.5. and 55.7 of D88-CP as follows:

- “5. Cancellation of tendering and financial liability for cancellation:

- (a) Tendering shall be cancelled in any one of the following circumstances:
- The objectives stated in the tender invitation documents are changed;
 - There is evidence that the party calling for tenders has colluded with a tenderer to avoid competition in tendering;
 - All tenders fail to satisfy the basic requirements set out in the tender invitation documents;
 - There is evidence that tenderers have colluded to avoid competition in tendering, affecting the interests of the party calling for tenders.

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

- (b) Financial liability for a cancellation:

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

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

- + Expenses of purchase of tender invitation documents;
- + Travelling expenses (to purchase the tender invitation documents, to submit a tender, to survey sites and so forth);
- + Expenses of drawing up the tender;
- + Other expenses (stationery, depreciation of equipment and so forth).
- If compensation costs for cancellation of tendering are for reasons of change of objectives or investment scope as decided by the authorized person, they shall be paid from project costs; if they are for other reasons due to the fault of the party calling for tenders, the relevant individuals belonging to the party calling for tenders shall be liable to make payment.

7. A tender shall be rejected in any one of the following circumstances:

- (a) The tender fails to satisfy the preconditions set out in the tender invitation documents;
- (b) The tender fails to satisfy the basic requirements in terms of technical aspects;
- (c) The tenderer does not accept arithmetical errors identified and requested to be rectified by the party calling for tenders, or has an arithmetical error causing a difference of more than 15% from the tender price (only applicable to tender packages for procurement of goods or for construction and installation);
- (d) The total value of discrepancies exceeds 10% of the tender price (only applicable to tender packages for procurement of goods or for construction and installation);
- (dd) False information has been declared".

22. To add article 57a to D88-CP (after article 57) as follows:

"Article 57a *System of data-information on tenderers*

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

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

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

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

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

3. Responsibility of tenderers to provide data-information:

Tenderers shall be responsible to provide the information set out in clause 1 of this article to the Ministry of Planning and Investment, and it shall be a condition for participation in tendering that a tenderer is named on the system of data-information on tenderers which is published in the State’s Tendering newsletter and web page on tenderers”.

23. To add article 57b to D88-CP as follows:

“Article 57b *Management of foreign contractors in Vietnam*

- 1. Foreign contractors wishing to participate in tendering in Vietnam shall be responsible to provide data-information to the agency in charge of the system of data-information on tenderers prescribed in article 1.22 of this Decree [i.e. the new article 57a of D88 above].
- 2. The Ministry of Construction shall oversee co-ordination with the Ministry of Police, the Ministry of Trade and the Ministry of Finance to research and submit to the Prime Minister of the Government for promulgation regulations on administration of foreign tenderers operating in Vietnam and on the responsibilities of investors regarding administration of foreign contractors after they have won a tender and their operations in performance of the contract in Vietnam”.

24. To amend and add to article 59.1 of D88-CP as follows:

“1. Inspection of tendering shall be conducted as follows:

- (a) Authorized body for issuing inspection decisions and undertaking inspections:
 - The Prime Minister of the Government shall, in necessary cases, make a decision on an inspection of tendering work by ministries, ministerial equivalent bodies, Government bodies and localities throughout the country.
 - When the Prime Minister of the Government makes a decision in a specific case, the Ministry of Planning and Investment shall undertake the inspection of tendering work on a nationwide basis.
 - Ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of people’s committees at all levels shall make decisions on an inspection of tendering work and shall

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

(b) Periodical inspections:

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

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

(c) One-off inspections:

One-off inspections shall be conducted of tender packages where the price of the successful tender is very low in comparison with the tender package price, where there are problems with a tender package or where the authorized person requests a one-off inspection. One-off inspections shall concentrate on the following main issues:

- Legal procedures and attached documentation;
- Order of and period for implementing the stages during the process of selection of the contractor;
- Result of selection of the contractor;
- Specific problems and any difficulties faced by the party calling for tenders (an individual or an organization) or by tenderers;
- Recommendations from the entity on how to deal with such problems.

- (d) Any problems discovered during the inspection process should be reported to the authorized person for consideration and resolution, and any breaches of the laws on tendering should be reported to the authorized person for transfer to the Inspectorate or a legal body to be dealt with. A written report on the whole inspection process should be submitted to the authorized person and to the agency administering the State's tendering newsletter and web page on tenders for publication thereon".

25. To add article 59a to D88-CP (after article 59) as follows:

"Article 59a *Inspectorate of tendering*

The Inspectorate of Tendering shall exercise the functions of inspectorate of the tendering sector, and the following specific regulations shall apply to it:

1. The body which shall exercise the functions of inspectorate of the tendering sector:

The body which shall exercise the functions of inspectorate of tendering throughout the whole country shall be the Ministry of Planning and Investment. Ministries, branches and localities shall hold inspections of tendering work by entities which they manage and by entities with projects for which they issued the investment licence prescribed in clause 2b of article 2 of D88-CP.

2. Matters which shall be subject to inspection:

All activities of organizations and individuals participating in tendering shall be matters which may be inspected.

3. Holding inspections:

An inspection may be held whenever signs of a breach of the laws on tendering are detected, on request by the inspecting bodies listed in article 1.24 of this Decree [i.e. article 59.1 of D88], or on request by the authorized person to inspect a specific case of tendering.

4. Contents of an inspection:

The contents of an inspection shall be fixed depending on each specific case. Where there is an inspection of a case of selection of a tenderer, the inspection shall focus on the following main items:

- (a) Contents of legal instruments applicable to implementation of the tender package, specifically:
 - The approved tendering plan, forms of selection of the tenderer, and especially the grounds for application of limited tendering or selection of the contractor;
 - Tender invitation documents and other legal instruments applicable to contents of the tendering process;
 - Decision approving the result of selection of the tenderer.
- (b) The process of conducting the selection of a contractor, the time landmarks during the tendering.
- (c) The opinions expressed or stressed by consultants, expert groups or any other individuals to the inspecting body.

5. Dealing with breaches during an inspection:

Any breaches detected during an inspection shall, depending on their seriousness, be dealt with by the Inspectorate or inspectors within their functions prescribed by the laws on State inspectorates by imposing administrative penalties, or by recommending that the competent body impose a disciplinary penalty on individuals (if they are State officials) under the Ordinance on State Officials, or by imposing a penalty under the Anti-Corruption Ordinance, or by criminally prosecuting the offender.

6. Reports by the Inspectorate of Tendering:

After carrying out their tasks, the Inspectorate of Tendering or inspectors shall forward a report on the results of their activities to the authorized person”.

26. To amend article 60.2 and to add a new clause 5 to article 60 of D88-CP as follows:

- “2. Any tenderer in breach of the laws on tendering shall, depending on the seriousness of the breach, be dealt with in accordance with law and specifically as follows:
- (a) If a tenderer is guilty of fraud such as reporting or providing false information in its tender about its financial or technical capability, about its experience or in the CVs of its expert consultants, then the party calling for tenders shall have the right to exclude the tender of such tenderer and to not refund the tender guarantee (if any). The [name of the] tenderer in breach shall be published in the State’s tendering newsletter and web page.
 - (b) If a tenderer bribes any organization or individual belonging to the party calling for tenders or any entity involved in the tendering process or tendering consideration, then the tender of such tenderer shall not be considered, its tender guarantee shall not be refunded, its name shall be published in the State’s tendering newsletter and web page, and it shall be dealt with in accordance with the provisions of law.

- (c) If tenderers collude with each other to effect the interests of the party calling for tenders, their tender guarantees shall not be refunded and their names shall be published in the State's tendering newsletter and web page.
- (d) If a consultant's design for execution of works is inaccurate and results in construction works having to be changed or supplemented, or if the design causes a waste of expenses then the consultant must compensate for the loss and its name shall be published in the State's tendering newsletter and web page.
- (dd) If a consultant supervising the execution of works is irresponsible, or colludes with the construction contractor to falsely confirm volumes and quality of works completed resulting in a quality reduction of the works, then both the consultant and the construction and installation contractor must compensate for the loss and their names shall be published in the State's tendering newsletter and web page; and individuals belonging to the contractor may, depending on the seriousness of the offence, be prosecuted for criminal liability in accordance with law.
- (e) If a construction contractor fails to correctly implement the scope of contractual work, or fails to correctly implement what was agreed by the partners to a partnership, or fails to implement the contractual work agreed between the head contractor and sub-contractors or as stated in the tender, or relies on another party not named in the contract to do work, then it must carry out the work correctly under the contract and shall be liable for all the costs caused by its conduct. The names of the construction contractor and of the consultant supervising the execution of works shall be published in the State's tendering newsletter and web page; and individuals belonging to the contractor may, depending on the seriousness of the offence, be prosecuted for criminal liability in accordance with law.
- (g) If a contractor fails to perform its contract for a reason other than force majeure, or if a contract is rescinded for contractual breach, then the name of such contractor shall be published in the State's tendering newsletter and web page.
- (h) With respect to a contractor who commits one or more of the offences listed in sub-clauses (a) to (g) inclusive of this clause and whose name appears in the State's tendering newsletter and web page: if its name is published three times, then such contractor shall not be permitted to participate in any tendering at all for one year; if the contractor commits three breaches for a second time, then it shall not be permitted to participate in tendering for two years; and if the contractor commits three breaches for a third time, then it shall not be permitted to participate in tendering for three years; and if the contractor commits a further breach after the third occasion, it shall be prohibited from ever participating in any tendering again.

The agency administering the State's tendering newsletters and web pages on tenders shall publish a list of tenderers prohibited from participating in tendering and shall delete their names from the list of tenderers on the data-information system.

5. Parties calling for tenders (whether individuals or groups, and including expert groups) in breach of the laws on tendering shall, in addition to being dealt with as set out in clauses 1, 3 and 4 of article 60 of D88-CP, be dealt with as follows:
 - (a) Parties calling for tenders (whether individuals or groups, and including expert groups) who provide inaccurate reports on the tender process and tender consideration, or who collude with a tenderer, or who take bribes, shall, depending on the seriousness of the offence, be subject to a disciplinary penalty or may be criminally prosecuted.
 - (b) Parties calling for tenders (including expert groups) who fail to correctly implement the procedures for holding tendering, or who hold tendering without an approved tendering plan, or who fail to provide

information on tendering as required by the regulations, then depending on the type and seriousness of the offence, the authorized person may issue a decision changing the composition of the party calling for tenders or of the expert group, may impose a disciplinary penalty on an individual State official under the Ordinance on State Officials and prohibit participation in any tendering at all and require compensation be paid for any loss or propose that the competent body (such as the Inspectorate) impose an administrative penalty or that another legal body deal with the matter in accordance with law”.

27. To repeal article 61.5 of D88-CP.

Article 2 *Dealing with follow-on issues*

1. Tender packages for which tender invitation documents were issued prior to the date of effectiveness of this Decree shall be implemented pursuant to D88-CP.
2. Tender packages for which tender invitation documents are issued after the date of effectiveness of this Decree shall be implemented pursuant to this Decree.
3. Announcement of invitations to tender and use of data-information on tenderers in the State's tendering newsletter and web page shall be implemented after the Minister of Planning and Investment issues guidelines.

Article 3

This Decree shall be of full force and effect fifteen days after the date of its publication in the Official Gazette.

Article 4

The Ministry of Planning and Investment shall oversee co-ordination with the relevant ministries and branches to research and issue sample forms for tender invitation documents, and guidelines on inspections of tendering and on checking implementation of this Decree.

Article 5

Ministers, heads of ministerial equivalent bodies, heads of Government bodies, chairmen of people's committees of provinces and cities under central authority, chairmen of boards of management of State owned enterprises and relevant organizations shall be responsible for implementation of this Decree.

On behalf of the Government
Prime Minister
Phan Van Khai