

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 88-1999-ND-CP

Hanoi, 1 September 1999
(as amended 5 May 2000
and 12 June 2003)

DECREE ON TENDERING

Issuing Regulations on Tendering

The Prime Minister

Pursuant to the *Law on the Organization of the Government* dated 30 September 1992;

Following the proposal of the Minister of Planning and Investment, Minister of Finance, Minister of Construction and Minister of Trade;

Decrees:

Article 1

To issue with this Decree the *Regulations on Tendering* which shall replace the *Regulations on Tendering* issued with Decree 43-CP dated 16 July 1996 and Decree 93-CP dated 23 August 1997 of the Government.

Article 2

This Decree shall be of full force and effect after fifteen (15) days from its date of signing.

Article 3

The Minister of Planning and Investment shall, in co-ordination with the Minister of Construction, the Minister of Finance, the Minister of Trade, the Governor of the State Bank of Vietnam and heads of relevant ministries and branches, be responsible

for providing guidelines for and inspecting the implementation of the *Regulations on Tendering* issued with this Decree.

Article 4

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

On behalf of the Government
The Prime Minister

PHAN VAN KHAI

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
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REGULATIONS ON TENDERING

(As issued with Decree 88-1999-ND-CP of the Government dated 1 September 1999 and as amended by Decree 14-2000-ND-CP of the Government dated 5 May 2000 and Decree 66-2003-ND-CP of the Government dated 12 June 2003)¹

The *Regulations on Tendering* are issued with the objective of achieving unified management of tendering activities with respect to the selection of consultants, the procurement of goods, construction and installation, or selection of partners for the purpose of implementation of the whole or parts of projects within the territory of the Socialist Republic of Vietnam.

CHAPTER I

General Provisions

Article 1 *Objectives, basis and process of tendering*

1. The objective of tendering is to apply competitiveness, fairness and transparency in the tendering process for the purpose of selecting suitable tenderers and ensuring the economic efficiency of projects.
2. Tendering shall be carried out on the basis of tender packages.
3. The process of tendering shall comprise tender preparation, tender organization, tender consideration, evaluation and approval, announcement of successful tenderers, negotiation for finalization of contracts and signing of contracts.

¹ *Decree 14-2000-ND-CP of the Government dated 5 May 2000 became effective as of 20 May 2000. Decree 66-2003-ND-CP of the Government dated 12 June 2003 became effective as of 16 July 2003.*

Article 2 *Subjects and scope of application*

1. The *Regulations on Tendering* shall be applied in order to select tenderers for investment projects in Vietnam; tendering must be organized and conducted in Vietnam.²
2. Subjects of application:
 - (a) Investment projects carried out in accordance with the *Regulations on Management of Investment and Construction* which are required to comply with the *Regulations on Tendering*;
 - (b) Joint venture projects, business co-operation contracts or shareholdings in which the participating interest of State owned economic organizations (State owned enterprises) is thirty (30) per cent or more of the legal capital, business capital or equity;
 - (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. However, 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;³
 - (d) Investment projects for which investment partners are selected:
 - In the case of domestic investment projects, tendering shall only be carried out where there are two or more investors wishing to participate in the same project;
 - In the case of foreign invested projects, tendering in accordance with these Regulations shall only be carried out where there are two or more investors wishing to participate in the same project or the Prime Minister requires tendering to select investment partners for implementation of projects.

2 As amended by article 1.1 of Decree 14-2000-ND-CP of the Government dated 5 May 2000.

3 As amended by article 1.1 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

- (dd) Investment in procurement of tools, materials, equipment, working facilities of State bodies or organizations and State owned enterprises; or normal working tools and facilities of the armed forces. The Ministry of Finance shall provide detailed guidelines for the scope of procurement, responsibility and power of procuring units in accordance with the *Law on the State Budget*.

The subjects stipulated in clause 2 of this article must apply the *Regulations on Tendering* and other projects are only encouraged to apply them.

Article 3 *Interpretation of terms*

The following terms used in these Regulations shall have the meanings ascribed to them hereunder:

1. *Tendering* is the process of selecting tenderers which satisfy the requirements set by the party calling for tenders.
2. *Domestic tendering* is tendering in which only domestic tenderers participate.
3. *International tendering* is tendering in which domestic and foreign tenderers participate.
4. *Tender consideration* is the process by which tenders are considered, analysed, assessed and classified by the party calling for tenders for the purpose of selection of successful tenderers.
5. *Project* is a combination of proposals for the purpose of implementation of parts or the whole of certain tasks, objectives or requirements. Projects consist of investment projects and non-investment projects.
6. *Group A, B or C projects* in these Regulations are as defined and classified in the *Regulations on Management of Investment and Construction*.
7. *A party calling for tenders* is a project owner, an investor, or the lawful representative being a legal person of a project owner or an investor delegated with the responsibility of carrying out tendering.
8. *The authorized person* means the head or the person authorized in accordance with the laws of State bodies or organizations or of enterprises as follows:
 - (a) In the case of investment projects, the authorized person is the investment decision-making authority as stipulated in the *Regulations on Management of Investment and Construction*;
 - (b) In the case of procurement of tools, materials, equipment, working facilities of State bodies or organizations and State owned enterprises; or normal working tools and facilities of the armed forces, the authorized

person is the person making the decision on procurement in accordance with law;

- (c) In the case of projects funded by capital owned by companies or other forms of ownership, the authorized person is the board of management or the authorized head in accordance with law.

9. *The competent authority* is the organization or body delegated or authorized by the authorized person in accordance with law.

10.⁴ *A tenderer* means a domestic or foreign organization or individual with civil legal capacity, and also capacity for civil acts in the case of an individual, in order to enter into and perform a contract. The civil legal capacity and the 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 nationality of the tenderer. 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.

11. *A tender package* is the whole of an investment project or a part thereof divided according to the technical characteristics or order of implementation of the project, having reasonable scale and ensuring the unity of the project. In the case of procurement, a tender package may be in respect of one, or one type of, tool, equipment or facility. A tender package may be carried out pursuant to one or more contracts (where the tender package is divided into several parts).

12. *Small scale tender package* means a tender package having a value of under two billion Vietnamese dong for procurement of goods or construction and installation.

13. *Consultancy* means the activity of providing professional knowledge and experience as required by a party calling for tenders in respect of the consideration, decision and examination of the preparation and implementation processes of projects.

4 As amended by article 1.2 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

14. *Construction and installation* means the work relating to the process of construction and installation of the equipment of a project or items of a project.
15. *Goods* comprise machinery, means of transportation, equipment (complete or incomplete sets, or individual equipment), industrial property rights, technology ownership rights, raw materials, fuel, supplies, consumer goods (finished or semi-finished products).
16. *Tender invitation documents* means all of the documents prepared by the party calling for tenders comprising the requirements for one tender package as the basis for tenderers to prepare tenders and for the party calling for tenders to assess tenders.

Tender invitation documents shall be approved by the authorized person or the competent authority prior to issue.
17. *Tender* means the documents prepared by tenderers in accordance with the requirements of tender invitation documents.
18. *Expert group* means a group of experts and consultants established or employed by the party calling for tenders, which is responsible for assisting the party calling for tenders in carrying out tasks relating to the tendering process.
19. *Tender closing* means the deadline for receiving tender documents as specified in the tender invitation documents.
20. *Tender opening* means the time when tender documents are opened as specified in the tender invitation documents.
21. *Shortlist* means a shortened list of tenderers selected through process of evaluation. In the case of tendering for selection of consultants, a shortlist shall comprise consultants selected from a long list or from the list of consultants registered to participate in the tendering.
22. *Evaluation* means the inspection and assessment by bodies in charge of evaluation of tendering plans of projects, tendering results of tender packages as well as relevant tender documents prior to approval by the authorized person or the competent authority.
23. *Tender package price* means the price determined for each tender package in the tendering plan of a project based on the approved total invested capital, total estimated budget or estimated budget. In the case of tendering for selection of consultants for project preparation, the tender package price shall be approved by the authorized person prior to organizing the tendering.

24. *Tender price* means the price stated by a tenderer in the tender after deducting the discount (if any), including all expenses required for the implementation of the tender package.
25. *Assessment price* means the tender price in which errors and discrepancies (if any) have been rectified and adjusted and which is converted to the same ground (technical, financial, commercial and other contents) as the basis for comparison of tenders.
26. *Error rectification* means the rectification of errors in order to standardize tenders, comprising arithmetical errors, typographical errors, spelling mistakes, errors in the units used, made by the party calling for tenders to provide a basis for assessment.
27. *Discrepancy adjustment* means the addition or adjustment of contents which are insufficient or irrelevant in the tenders compared to the requirements of the tender invitation documents and the addition or adjustment of discrepancies between different parts of the tenders, made by the party calling for tenders.
28. *Proposed contract award price* means the price proposed by the party calling for tenders on the basis of the tender price of the tenderer proposed to be awarded with the contract after error rectification and discrepancy adjustment as required by the tender invitation documents.
29. *Contract award price* means the price of the authorized person or the competent authority approving the tendering results as the basis for the party calling for tenders to negotiate for finalization of the contract and signing thereof with the successful tenderer.
- The contract award price shall not be higher than the tender package price in the approved tendering plan.
- 30.⁵ *Contract signing price* means the price agreed by the party calling for tenders and the successful tenderer after negotiations for finalization of the contract, which must be consistent with the successful tender price, the tender invitation documents and the tender documents. 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.
31. *Tendering results* means the contents approved by the authorized person or the competent authority of the name of the successful tenderer, the contract award price and the type of contract.

5 As amended by article 1.2 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

32. *Negotiation for finalization of contract* means the process of further negotiation to finalize the detailed contents of the contract with the successful tenderer for the purpose of signing.
33. *Tender guarantee* means the deposit of the tenderer of an amount of money (cash, cheque, bank guarantee or equivalent form) at an address for a definite term as stipulated in the tender invitation documents in order to secure the responsibility of the tenderer for its tender.
34. *Performance guarantee* means the deposit of the successful tenderer of an amount of money (cash, cheque, bank guarantee or equivalent form) at an address for a definite term as stipulated in the tender invitation documents and the tendering results in order to secure the responsibility for performance of the signed contract.
- 35.⁶ *Project investor* means the organization to which is assigned responsibility for direct management and implementation of a project defined in article 3.5 of this Decree. In the case of investment projects, the project investor is the investor.

Article 4 *Forms of selecting tenderers*⁷

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 by means of the mass media or announce them in the tendering information sheets 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 there are less than five tenderers, the party calling for

6 *Inserted by article 1.2 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

7 *Clauses 1 and 2 are as amended by article 1.3 of Decree 66-2003-ND-CP of the Government dated 12 June 2003. Clause 3 is as amended by article 1.2 of Decree 14-2000-ND-CP of the Government dated 5 May 2000 and article 1.4 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

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.

3. Appointment of tenderer:

The appointment of a tenderer is the form of direct selection of a tenderer capable of satisfying the requirements of the tender package for the purpose of negotiating the contract.

This form shall only be applicable in the following special cases:

- (a) In the case of events of *force majeure* due to natural disasters, wars or breakdowns which should be immediately dealt with, a project owner (the person to whom the authorized person has assigned the responsibility to manage and implement the project) may immediately appoint a capable unit to carry out the work promptly. Within ten (10) days from the date of decision to appoint a tenderer, the project owner must report the contents of the appointment of the tenderer to the authorized person or the competent authority; if the authorized person or the competent authority discovers that the appointment of the tenderer is not consistent with the regulations, he, she or it must promptly deal with the problem.
- (b) Tender packages of a research or experimental nature or of national confidentiality as decided by the authorized person.
- (c) Projects having a value of less than one billion Vietnamese dong in respect of procurement of goods or construction and installation; of less than five hundred (500) million Vietnamese dong in respect of consultancy.

In the case of tender packages entitled to appointment of a tenderer specified in this clause of important national projects for which the National Assembly makes the investment policy decision and the Prime Minister of the Government makes the investment decision, the Prime Minister of the Government shall delegate responsibility to the investor

to make a decision, but ensuring it is correct in accordance with the *Regulations on Tendering*.

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

Where it is not necessary 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 body, due to technical or technological complexity, or due to unexpected 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 body and other relevant bodies.
- (dd) Tendering shall not be required in respect of the share of capital funded by the State Budget for projects of administrative bodies in order to undertake studies of planning for economic development, planning for industry development or master planning for construction of urban and rural areas to which authorized State bodies have assigned the responsibility for implementation thereof, but a detailed contract shall be made and products shall be delivered as stipulated.
- (e) Tendering shall not be required in respect of tender packages for consultancy for preparation of a pre-feasibility study or a feasibility study, but the investor must select a consultant suitable to the requirements of the project.

Where the appointment of a tenderer is conducted in accordance with the provisions of sub-clauses (a), (b), (c) and (d) of this clause, the following three items shall be specified:

- Reasons for appointment of a tenderer;
- Experience and technical and financial management capacity of the tenderer proposed to be appointed;
- Value and volume approved by the authorized person or the competent authority as the basis for appointment of a tenderer (in the case of tender

packages for construction and installation, the design and the estimated budget which are approved in accordance with regulations shall be required).

Where the consequences of a natural disaster, war or breakdown must be immediately dealt with, the project owner must determine volume and temporary estimate of value and afterwards shall prepare complete documentation and an estimated budget and submit them for approval as stipulated which shall be used as the basis for finalization.

4. Competitive offers:

This form shall be applied to tender packages for procurement of goods having a value of under two billion Vietnamese dong. Each tender package shall require at least three offers from three different tenderers on the basis of the order request in the tender invitation documents. Offers may be hand delivered, sent by fax, by mail or other means.

5. Direct procurement:

On the basis of compliance with article 4.3 of these Regulations, the form of direct procurement shall be applied in the case of supplementation of a former contract which has been completed (for less than one year) or to a contract which is being performed where the investor wishes to increase the quantity of goods or volume of work which was previously the subject of tendering provided that the price or unit price in the previously signed contract is not exceeded. Prior to signing the contract, the tenderer must prove that it is technically and financially capable of performing the tender package.

6. Self-management:

This form shall only be applicable to tender packages which the investor is capable of performing on the basis of compliance with article 4.3 of these Regulations (beyond the scope stipulated in article 63 of the *Regulations on Management of Investment and Construction*).

7. Special procurement:

This form shall apply to extremely special industries where tendering is impossible without special requirements. The body in charge of the industry shall prepare a process of implementation which satisfies the objectives of the *Regulations on Tendering* for agreement by the Ministry of Planning and Investment and submission to the Prime Minister for decision.

Article 5 *Methods of tendering*

1. Single envelope tendering:

By this method, the tenderer shall submit the tender in one envelope. This method applies to tendering for procurement of goods and construction and installation.

2. Dual envelope tendering:

By this method, the tenderer shall submit technical and financial proposals in two separate envelopes at the same time. The technical proposal envelope shall be first considered for assessment. The tenderers which achieve a technical score of seventy (70) per cent or more shall have their financial proposal envelopes opened and considered. This method shall only apply to tendering for selection of consultants.

3. Two-phase tendering:

This method shall apply in the following cases:

- Tender packages for procurement of goods and construction and installation having the price of five hundred (500) billion Vietnamese dong or more;
- Tender packages for procurement of goods which require selection of complete equipment technology or which are technologically and technically complex, or especially complex tender packages for construction and installation;
- Turn-key projects.

The process for implementing this method shall be as follows:

- (a) First phase: Tenderers shall submit their preliminary tender, consisting of technical and financial proposals (without prices), to the party calling for tenders for consideration. The party calling for tenders shall hold detailed discussions with each of the tenderers in order to reach agreement on the technical requirements and specifications for the purpose of the preparation and submission of official tenders by the tenderers.
- (b) Second phase: The party calling for tenders shall invite the tenderers participating in the first phase to submit their final complete technical proposals on the same technical basis and detailed financial proposals, including all

implementation schedules, terms and conditions of the contract, and tender price.

Article 6 *Contracts*

1. The party calling for tenders and the successful tenderer must sign a contract in writing. The contract shall comply with the following principles:
 - (a) The applicable laws of the Socialist Republic of Vietnam relating to contracts must be strictly complied with. Where no relevant provisions are stipulated in the laws of Vietnam, the permission of the Prime Minister of the Government shall be required prior to execution of the contract.
 - (b) The contents of the contract must be approved by the authorized person or the competent authority (compulsory only for contracts to be signed with foreign tenderers or contracts to be signed with domestic tenderers on the basis of the tendering results approved by the Prime Minister of the Government).
2. Depending on the time-limit and nature of the tender package stipulated in the tendering plan, the contract may be performed in one of the following forms:
 - (a) A package contract is a contract which is performed for a package price and is applicable to tender packages which are clearly defined in terms of quantity and requirements in relation to quality and time-limits. Any matter arising outside the contract, but not caused by the tenderer, shall be considered and decided by the authorized person or the competent authority.
 - (b)⁸ 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 (abbreviated in English as *EPC*).

The selection of a tenderer to perform an EPC tender package by way of an EPC contract must comply with the provisions of article 4 of this Decree 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 of these three items of work, with specified points for minimum technical requirements applicable to each of these items of work. The tenderer having the tender which satisfies the high technical requirements pursuant to the approved assessment standards (not less than ninety (90) per cent of the total points

8 As amended by article 1.5 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

for technical items) and the price of which 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 conducting 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 07-2003-ND-CP of the Government dated 30 January 2003⁹.

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.

- (c) A contract with adjustable price is a contract applicable to tender packages the exact quantity and volume of which cannot be accurately determined at the time of signing of the contract or the prices of which have been subject to considerable fluctuation due to a change in State policy and the duration of implementation of the contract exceeds twelve (12) months. The performance of contracts with adjustable price must comply with the provisions stipulated in article 7 of these Regulations.

Article 7 *Adjustments to the value of contracts*

An adjustment to the value of a contract shall only be carried out when:

1. Detailed provisions on conditions, limits of adjustable works or items and price adjustment formula are stipulated in the tender invitation documents approved by the authorized person or the competent authority.
2. After being certified by the parties concerned and permitted by the authorized person or the competent authority, it shall apply in the following cases:
 - (a)¹⁰ Where a quantity or volume arises due to a change in design: If the change is within the scope of the approved tender invitation documents, the value of the quantity or volume which arises shall be calculated using the unit price of the original contract. If the change is not within the scope of work in the tender invitation documents, it shall be calculated using the unit price under State regulations at the time of approval;

9 *Phillips Fox Note: See article 62 of Decree 52-1999-ND-CP of the Government dated 8 July 1999 (as amended by Decree 12-2000-ND-CP of the Government dated 5 May 2000 and Decree 07-2003-ND-CP of the Government dated 30 January 2003).*

10 *As amended by article 1.6 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

- (b) Where there is a change in prices resulting from a change in State policy in relation to costs of labour, raw material, supplies and equipment under contracts with adjustable price the duration of implementation of which exceeds twelve (12) months. The adjustment to the price shall be calculated only as from the thirteenth month from the commencement of the performance of the contract.
3. The adjusted value of the contract shall not exceed the total estimated budget or estimated budget or price of the tender package set out in the approved tendering plan. The total value of adjustments and value of contracts of the project shall not exceed the approved total invested capital.

Article 8 *Plans for project tendering*

1. A plan for project tendering shall be prepared by the party calling for tenders in accordance with these Regulations and must be approved by the authorized person or the competent authority. Where it is not yet possible to prepare a tendering plan for the whole project, the party calling for tenders may prepare a tendering plan for each part of the project as appropriate for each phase of implementation subject to permission of the authorized person.
2. A plan for project tendering shall have the following contents:
 - (a) Division of the project into different tender packages;
 - (b) Price of each tender package and financing sources;
 - (c) Form of selection of tenderers and method of tendering to be applied to each tender package;
 - (d) Time schedule for tendering in respect of each tender package;
 - (dd) Form of contract applicable to each tender package;
 - (e) Time schedule for performance of the contract.

Article 9 *Conditions for conducting tendering*

1. Tendering may only be conducted upon satisfaction of all of the following conditions:
 - (a) A written investment decision or investment licence is issued by the authorized person or the competent authority;
 - (b) The tendering plan is approved by the authorized person;
 - (c) The tender invitation documents are approved by the authorized person or the competent authority.

In the case of tendering to select consultants for the preparation of a project or tendering for selection of partners to perform a project, the written approval of the authorized person or the competent authority and the approved tender invitation documents shall be required as a condition for organization of tendering.

- 2.¹¹ A tenderer participating in tendering or in the other forms of selecting tenderers prescribed in article 4 of this Decree must satisfy the following conditions:
- (a) Be financially independent, and have civil legal capacity, and in the case of an individual also have 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 of 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.

Article 10 *Conditions for international tendering and preferential treatment for tenderers*¹²

1. International tendering may be only conducted in the following cases:
 - (a) Where no domestic tenderer satisfies the requirements of a tender package;
 - (b) In respect of projects funded with aid from international or foreign organizations pursuant to a treaty which requires international tendering.
2. A foreign tenderer participating in international tendering for construction and installation or for procurement of goods conducted 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 requirement to use a foreign consultant, the foreign organizations and experts participating in the process of selecting tenderers must enter into a partnership with a domestic consultant for implementation (except where the Prime

¹¹ As amended by article 1.7 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

¹² Clauses 2 and 8 are as amended by article 1.8 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

Minister of the Government provides permission for there not to be a partnership).

3. The successful foreign tenderer must perform the undertaking as to the percentage of volume of work at the relevant unit price to be shared with the Vietnamese party being a partner in the partnership or the sub-contractor referred to in the tender. During negotiation for finalization of the contract, if the successful foreign tenderer fails to perform the undertakings referred to in the tender, the tendering results shall be cancelled.
4. Tenderers participating in tendering in Vietnam must undertake to procure and to use materials and equipment which are suitable in terms of quality and price and are manufactured, processed or available in Vietnam.
5. Where two tenders of different foreign tenderers are assessed as equal, the tender providing a higher proportion of work to the Vietnamese party (as a partner in the partnership or sub-contractor) shall be accepted.
6. A domestic tenderer participating in international tendering (as an individual tenderer or in a partnership) shall be given priority in cases where its tender is considered to be equal to the tenders of foreign tenderers.
7. Where two tenders are assessed as equal, the tender providing a higher rate of labour shall be given priority.
8. Domestic tenderers and goods manufactured domestically shall be entitled to the following preferential treatment in international tendering conducted in Vietnam for projects listed in article 2.2 of this Decree:
 - (a) Entities entitled to preferential treatment:
 - 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 over fifty (50) per cent.
 - Tender packages for construction and installation or for consultancy in which the work that the domestic contractor undertakes is more than fifty (50) per cent of the value.
 - Tender packages for procurement of goods where the ratio of domestic manufacturing costs exceeds thirty (30) per cent of ex-factory cost.

(b) Items of preferential treatment:

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

- With respect to a tender package for selection of a consultant, when assessing tenders, a domestic tenderer entitled to preferential treatment which has already achieved the minimum points or more for technical matters shall be given an extra seven point five (7.5) per cent of the total points in the overall assessment.
- With respect to a tender package for construction and installation, when determining the assessment price, preferential treatment shall be given by adding an extra seven point five (7.5) per cent of the tender price (after rectifying arithmetical errors and after making the discrepancy adjustment) to the assessment prices of tenderers not entitled to preferential treatment 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 preferential treatment, 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 which is not duty exempt must pay for the goods in the tender, or fifteen (15) per cent 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 types of taxes and importing fees exceed fifteen (15) per cent (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.

Article 11 *Clarification of tenders*

Tenderers shall not be permitted to amend their tenders after the tender closing. Throughout the process of considering tenders, the party calling for tenders may request the tenderers to clarify certain contents of tenders by way of direct or indirect communication provided that equality between tenderers is ensured and that there is no change to the main substance of the tenders and tender price. All requests for

clarification from the party calling for tenders and replies from tenderers must be made in writing and retained by the party calling for tenders in accordance with law.

Article 12 *Period of preparation of tenders and period of validity of tenders*

1. The deadline for tender closing and the period of validity of tenders shall be clearly stated in the tender invitation documents. Depending on the scale and complexity of the tender package, the period of preparation of tenders shall be at least fifteen (15) days in the case of domestic tendering (or seven days in the case of small scale tender packages) and thirty (30) days in the case of international tendering, as from the date of issue of tender invitation documents.

In special cases where the party calling for tenders wishes, prior to the expiry of the deadline for tender closing, to make modifications to certain contents of the tender invitation documents, it may extend the period of preparation of tenders.

Written modifications shall be sent to every tenderer participating in the tendering at least ten (10) days prior to the stipulated deadline for tender closing in order that the tenderers have sufficient time to complete their tenders.

2. The period of validity of tenders shall not exceed one hundred and eighty (180) days from the deadline for tender closing. In cases where the period of validity of a tender is extended, the party calling for tenders must so notify the tenderers after obtaining permission of the authorized person or the competent authority. Where a tenderer refuses to agree to such extension, the tender guarantee of such tenderer shall be refunded.

Article 13 *Tender opening, tender consideration, submission for approval and announcement of tendering results*¹³

1. Tender opening:

After receipt of all tenders (sealed and submitted correctly as required by the tender invitation documents and retained in accordance with the regulations on archiving of confidential documents), the tenders shall be opened publicly and 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.

13 *Clauses 1 and 2(b) are as amended by article 1.9 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

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 preserve their status quo prior to conducting the assessment and shall retain them in accordance with the regulations on archiving of confidential documents.

2. Tender consideration:

The party calling for tenders shall study, assess in detail and classify the opened tenders on the basis of the requirements of the tender invitation documents and the criteria for assessment approved by the authorized person or the competent authority prior to tender opening. The assessment of tenders shall be conducted on the basis of the following principles:

- (a) The marking method shall be used for assessment of tenders for tender packages for consultancy services and tender packages for selection of partners, assessment of prequalification tenders and assessment of the technical aspects of tender packages for procurement of goods or for construction and installation;
- (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 seventy (70%) per cent of total technical points, and for tender packages with high technical requirements not less than ninety (90) per cent of the total points for technical items (in the case of the points marking 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 for the purpose of classification.
- (c) The price of the tender package referred to in the approved tendering plan, not the tender consideration price or floor price, shall be used.
3. Approval and announcement of tendering results:

The tendering results must be approved by the authorized person or the competent authority. The party calling for tenders may only announce the tendering results after approval by the authorized person or the competent authority.

Article 14 *Currency, taxes and language used in tendering*

1. The tendering currency is the currency stipulated by the party calling for tenders in the tender invitation documents on the principle of one currency for a volume of goods offered.

During assessment and comparison of tenders, the applicable rates of exchange between Vietnamese dong and foreign currencies shall be the exchange rates published by the State Bank of Vietnam at the time of the tender opening.

2. Tender invitation documents must clearly provide for taxes in accordance with law for tenderers to use as a basis for calculation of their tender price.
3. The language used in tendering shall be Vietnamese (for domestic tendering) and Vietnamese and English (for international tendering).

Article 15 *Responsibilities of the authorized person, of the investor, and of the party calling for tenders*¹⁴

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 tenderer for all tender packages belonging to projects on the basis of the

14 As amended by article 1.10 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

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 result of selection of a tenderer 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, it may itself act as the party calling for tenders in order to conduct 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 for signing a contract directly with the successful 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 participating in limited tendering;
 - Lists of tenderers participating in a tender for the selection of consultants;
 - Lists of tenderers which 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 which 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 tenderer and responsibility for the contents of appointment of tenderer;
 - Making decisions on appointment of a tenderer for the tender packages prescribed in articles 4.3(c) and (e) of this Decree;

- 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 of 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 this Decree;
 - (c) Organizing the implementation of approved tendering plans following the order for conducting tendering stipulated in articles 20, 22, 33, 45 and 47 of this Decree, comprising:
 - Establishing an expert group or employing consultants to assist in tendering on the basis of the decision of the investor;
 - 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, negotiating and finalizing the contract;
 - Submitting to the investor the decision on the contents of the contract in order that the investor may sign the contract.

Article 16 *Composition, standards, responsibilities and powers of expert groups*¹⁵

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

¹⁵ *Clauses 1 and 2 are as amended by article 1.11 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

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.
3. An expert group shall have the following responsibilities and powers:
 - (a) To prepare legal documents and draft tender invitation documents;
 - (b) To receive and retain tenders;
 - (c) To analyse, assess, compare and classify tenders in accordance with the criteria for assessment referred to in the tender invitation documents and the criteria for detailed assessment approved prior to the tender opening;
 - (d) To compile documents relating to the assessment, consideration and selection of tenderers and prepare a report on the tender consideration;
 - (dd) To be responsible for expressing honestly and objectively their opinions in writing to the party calling for tenders during the analysis, assessment and classification of tenders and be liable before the law for their opinions. To be entitled to reserve their opinions for consideration by the superior authority;
 - (e) To be responsible for keeping information confidential and not to cooperate with any tenderer in any form;
 - (g) Not to take part in the evaluation of tendering results.

CHAPTER II

Tendering for Selection of Consultants

Article 17 *Content of consultancy*

1. Consultancy in respect of project preparation:
 - (a) Preparation of planning and master plans for development;
 - (b) Preparation of prefeasibility study reports;
 - (c) Preparation of feasibility study reports;
 - (d) Assessment of reports on planning, master plans for development, prefeasibility study reports and feasibility study reports.
2. Consultancy in respect of project implementation:
 - (a) Survey;
 - (b) Preparation of designs, total estimated budgets and estimated budgets;
 - (c) Assessment and verification of designs and total estimated budgets and estimated budgets (if any);
 - (d) Preparation of tender invitation documents;
 - (dd) Analysis and assessment of tenders;
 - (e) Supervision of construction and equipment installation.
3. Other consultancy services:
 - (a) Project management and financial arrangements;
 - (b) Administration of project implementation;
 - (c) Training, technology transfer and other services.

Consultants are not permitted to take part in the assessment of the results of services provided by themselves and are not permitted to participate in tendering for tender packages for procurement of goods or for construction and installation in respect of which they provide consultancy services (except for tender packages under turn-key contracts).

Article 18 *Forms of consultancy*

Forms of consultancy shall include:

1. Governmental or non-governmental consultancy organizations operating in accordance with law;
2. Independent experts or experts of an organization operating in accordance with law.

Article 19 *Requirements in respect of consultants*

1. A consultant must have sufficient professional qualifications as required by the tender invitation documents. An expert consultant must have certification of relevant professional qualifications.
2. A consultant shall be responsible to the party calling for tenders for the correctness, accuracy and objectivity in relation to his expertise and for completing the work in accordance with the signed contract.

Article 20 *Tendering procedures*

The organization of tendering for selection of consultants shall be carried out in accordance with the following procedures:

1. Formulation of the tender invitation documents which shall consist of:
 - (a) Tender invitation letter;
 - (b) Terms of reference (in relation to objectives, scope of work, time schedule, duties and responsibilities of consultants, responsibilities of the party calling for tenders and other relevant contents);
 - (c) Relevant basic information;
 - (d) Assessment standards;
 - (dd) Preferential conditions (if any);
 - (e) Any attached detailed appendices.
2. Announcement of registration of participation in tendering:

The announcement of registration of participation in tendering shall be made by appropriate means of communication or directly sent to tenderers recommended by relevant bodies or organizations which provide information thereon.

3. Determination of shortlist:

- (a) A shortlist shall be determined on the basis of the selection criteria approved by the authorized person or the competent authority;
- (b) This shortlist must be approved by the authorized person or the competent authority.

4. Tender invitations:

The party calling for tenders shall provide the tender invitation documents to tenderers listed in the shortlist.

5. Receiving and retaining tenders:

The party calling for tenders shall only receive tenders submitted within the time-limit stipulated in the tender invitation documents and retain such tenders in accordance with the regulations on archiving of confidential documents.

6. Opening technical proposal envelopes:

This shall be carried out in accordance with the provisions stipulated in article 13.1 of these Regulations.

7. Assessment of technical proposals:

This shall be carried out on the basis of the assessment criteria set out in the tender invitation documents and the criteria for detailed assessment approved by the authorized person or the competent authority prior to the time of opening of technical proposal envelopes.

8. Opening financial proposal envelopes:

Financial proposal envelopes of tenderers achieving seventy (70) per cent or more of the total technical scores in accordance with the provisions stipulated in article 13.1 of these Regulations shall be opened at the same time.

9. General assessment:

Marking for classification must be based on the proportion of technical score to price score on the same ground referred to in the tender invitation documents; the percentage of price scores shall not exceed thirty (30) per cent of the total scores.

10. Submission of the list of classified tenderers for approval.

11. Contract negotiations:

The first ranking tenderer shall be invited by the party calling for tenders for contract negotiations. Where negotiations fail, the party calling for tenders shall invite the next ranking tenderer for contract negotiations, subject to approval of the authorized person or the competent authority.

The party calling for tenders shall carry out by itself, or employ experts to carry out, the tendering works stipulated in clauses 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of this article.

12. Submission of tendering results for approval.

13. Announcement of the successful tenderer and negotiation for finalization of the contract.

The investor shall notify tenderers participating in tendering of the approved tendering results and shall conduct negotiations with the successful tenderer for finalization of the contract.

14. Submission of the contents of the contract (in accordance with the provisions stipulated in article 6.1(b) of these Regulations) for approval and signing of the contract.

Article 21 *Consultancy expenses*

1. Foreign consultancy expenses shall include:

- (a) Payments made to consultancy experts, including basic salary, social expenses, management expenses, corporate profits and other allowances paid to experts;
- (b) Expenses other than salary, including airfares, per diem allowances, stationery, communications, working facilities, training, and other expenses;
- (c) Taxes payable in accordance with law;
- (d) Contingencies:

Contingencies shall be determined in accordance with applicable regulations and shall only be used upon approval of the authorized person or the competent authority.

2. Domestic consultancy expenses shall be in accordance with applicable regulations.

CHAPTER III

Tendering for Procurement of Goods

Article 22 *Tendering procedures*

The tendering for procurement of goods shall be carried out in accordance with the following procedures:

1. Prequalification of tenderers (if any).
2. Formulation of tender invitation documents.
3. Issuance of tender invitation letters or tender invitation notices.
4. Receiving and retaining tenders.
5. Tender opening.
6. Assessment and classification of tenderers.

The party calling for tenders shall carry out by itself, or employ experts to carry out, the tendering works stipulated in clauses 1, 2, 3, 4, 5 and 6 of this article.

7. Submission of tendering results for approval.
8. Announcement of the successful tenderer and negotiation for finalization of the contract.
9. Submission of the contents of the contract for approval (in accordance with article 6.1(b) of these Regulations) and signing of the contract.

Article 23 *Prequalification of tenderers*

1. Prequalification of tenderers shall apply to tender packages having a value of three hundred (300) billion or more Vietnamese dong in order to select adequately capable and experienced tenderers for implementation and to satisfy the requirements set out in the tender invitation documents.
2. Prequalification shall be conducted in the following steps:
 - (a) Formulation of prequalification documents which include the following:
 - Prequalification invitation letters;
 - Instructions for prequalification;

- Criteria for assessment;
 - Attached appendices;
- (b) Issuance of prequalification invitation notice;
- (c) Receipt and retention of prequalification tenders;
- (d) Assessment of prequalification tenders;
- (dd) Submission of prequalification results for approval;
- (e) Announcement of prequalification results.

Article 24 *Tender invitation documents*

Tender invitation documents shall include the following:

1. Tender invitation letter;
2. Tender application form;
3. Instructions for tenderers;
4. Preferential conditions (if any);
5. Taxes payable in accordance with law;
6. Requirements in relation to technology, supplies, equipment, goods, technical specifications and origin;
7. Price schedules;
8. Criteria for assessment (including method and manner of conversion to the same basis for determining assessment prices);
9. General and specific conditions of the contract;
10. Tender guarantee form;
11. Contract form;
12. Performance guarantee form.

Article 25 *Tender invitation letter or notice*

A tender invitation letter or notice shall include the following:

1. Name and address of the party calling for tenders;
2. Outline of project, site and schedule of delivery of goods;
3. Instructions for understanding tender invitation documents;
4. Conditions for participation in tendering;
5. Time and place of receipt of tender invitation documents.

Article 26 *Instructions for tenderers*

The main contents of the instructions for tenderers shall include:

1. Brief description of the project;
2. Capital sources for the implementation of the project;
3. Requirements of capability, experience and legal status of tenderers, evidence and information relating to tenderers for a reasonable period prior to tendering;
4. Site visits (if any) and answers to queries of tenderers.

Article 27 *Tenders*

Tenders for supply of goods shall include the following:

1. Administrative and legal contents:
 - (a) Proper tender application (bearing the signature of the authorized person);
 - (b) Copy of the certificate of business registration. In the case of procurement of complex equipment referred to in the tender invitation documents, in addition to the certificate of business registration, a copy of the licence to sell goods subject to patent rights of the manufacturer shall be required;
 - (c) Documents introducing capabilities and experience of tenderers, including sub-contractors (if any);
 - (d) Tender guarantee.

2. Technical contents:
 - (a) Technical specifications of goods;
 - (b) Technical solutions and technology;
 - (c) Origin of goods and a certificate issued by manufacturer;
 - (d) Organization of construction, installation, training and technology transfer;
 - (dd) Time schedule for performance of the contract.
3. Commercial and financial contents:
 - (a) Tender prices accompanied by an explanatory statement and detailed price schedules;
 - (b) Conditions for delivery of goods;
 - (c) Financial conditions (if any);
 - (d) Conditions for payment.

Article 28 *Tender guarantees*

1. Tenderers must pay a tender guarantee when submitting their tenders. Where the method of two-phase tendering is applied, the tender guarantee shall be paid in the second phase.
2. The value of a tender guarantee shall be between one and three per cent of the tender price. The same tender guarantee amount may be fixed by the party calling for tenders for all tenderers in order to ensure the confidentiality of tender prices. The party calling for tenders shall determine the method and conditions for tender guarantees. Tender guarantees shall be refunded to losing tenderers no later than thirty (30) days after the date of announcement of the tendering results.
3. Tenderers shall not be refunded their tender guarantees in the following cases:
 - (a) Refusal to implement the contract after the contract has been awarded;
 - (b) Withdrawal of a tender after the tender closing;
 - (c) Breach of the *Regulations on Tendering* as referred to in article 60 of these Regulations.
4. Tender guarantees shall apply to open tendering and limited tendering only.

5. After payment of the performance guarantee has been made, the successful tenderer shall be refunded its tender guarantee.

Article 29 *Criteria for assessment of tenders*¹⁶

The criteria for assessment of tenders must be fully set out in the tender invitation documents, comprising:

1. Criteria on capability and experience of tenderers:
 - (a) Production and business capabilities, 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 stipulated 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 brand 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;

16 *As amended by article 1.12 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

- (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 stipulated 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 seventy (70) per cent of the total points for technical aspects (and for tender packages with high technical requirements, not less than ninety (90) per cent of the total points for technical aspects). If the assessment standards stipulate that the assessment will be on the basis of "pass" or "fail", 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. Criteria for conversion to a level basis in order to determine the assessment price shall comprise:
 - (a) Duration of use;
 - (b) Design output;
 - (c) Standards on product quality;
 - (d) 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 and 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.

Article 30 *Assessment of tenders*

Tenders shall be assessed in accordance with the following procedures:

1. Preliminary assessment:

Preliminary assessment is for the purpose of rejecting tenders failing to satisfy the requirements and shall be carried out as follows:

- (a) Verifying the legality of tenders;
- (b) Considering whether tenders basically satisfy the tender invitation documents;
- (c) Clarifying tenders (if so required).

2. Detailed assessment:

Detailed assessment shall be carried out in accordance with the method of assessment price and consist of the following two steps:

- (a)¹⁷ 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 items that are unclear or not yet reasonable in its tender, such as volumes and unit prices.

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

Assessment of financial and commercial aspects of tenders submitted by shortlisted tenderers shall be carried out on the same basis in accordance with the approved criteria for assessment.

The assessment of financial and commercial aspects for the purpose of determining the assessment price shall include the following:

- Error rectification;
- Discrepancy adjustment;

17 As amended by article 1.13 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

- Conversion of tender prices to the same currency;
 - Conversion to a comparable basis;
 - Determination of assessment prices of tenders.
3. Tenders shall be classified on the basis of assessment prices and a successful tenderer with the relevant assessment price shall be recommended.

Article 31 *Tendering results*

1. Any tenderer which has a proper tender, which satisfies the basic requirements set out in the tender invitation documents, which has the lowest assessment price and which has proposed a contract award price not exceeding the approved limit of the tender package shall be considered for the award of the contract.
2. The tendering results shall be considered and approved by the authorized person or the competent authority.
3. The party calling for tenders shall invite the successful tenderer for negotiation for finalization of the contract. Failing that, the party calling for tenders shall invite the next ranking tenderer for negotiation subject to approval of the authorized person or the competent authority.

Article 32 *Performance guarantees*

1. The successful tenderer shall provide a performance guarantee for its responsibility for performance of the signed contract to the party calling for tenders.
2. The value of the performance guarantee shall, depending on the form and size of the contract, not exceed ten (10) per cent of the value of the contract. In special cases, a higher value performance guarantee may be required subject to the approval of the authorized person or the competent authority. The performance guarantee shall be effective until commencement of performance of the obligation to provide warranty or maintenance.
3. The performance guarantee shall include the following details:
 - (a) Time-limit for provision: the successful tenderer must provide the performance guarantee prior to signing of the contract;
 - (b) The performance guarantee shall be provided in cash, cheque or bank guarantees or equivalent form;
 - (c) Period of validity of the guarantee;

- (d) Currency used in the guarantee.
- 4. The performance guarantee shall be applicable to all forms of selection of tenderers stipulated in article 4 of these Regulations, except for the form of self-management.

CHAPTER IV

Tendering for Construction and Installation

Article 33 *Tendering procedures*

Procedures for tendering for construction and installation shall be carried out in accordance with the following order:

1. Prequalification of tenderers (if any).
2. Formulation of tender invitation documents.
3. Issuance of tender invitation letters or tender invitation notices.
4. Receipt and retention of tenders.
5. Tender opening.
6. Evaluation and classification of tenderers.

The party calling for tenders shall carry out by itself, or employ experts to carry out, the tendering works stipulated in clauses 1, 2, 3, 4, 5 and 6 of this article.

7. Submission of tendering results for approval.
8. Announcement of the successful tenderer and negotiation for finalization of the contract.
9. Submission of the contents of the contract for approval (in accordance with article 6.1(b) of these Regulations) and signing of the contract.

Article 34 *Prequalification of tenderers*

1. The prequalification of tenderers shall apply to tender packages having a value of two hundred (200) billion or more Vietnamese dong in order to select adequately capable and experienced tenderers for implementation and to satisfy the requirements set out in the tender invitation documents.

2. Prequalification of tenderers shall be conducted in the following steps:
 - (a) Formulation of prequalification documents which shall include the following:
 - Prequalification invitation letters;
 - Instructions for prequalification;
 - Prequalification assessment criteria;
 - Attached appendices.
 - (b) Issuance of prequalification invitation notice.
 - (c) Receipt and retention of prequalification tenders.
 - (d) Assessment of prequalification tenders.
 - (dd) Submission of prequalification results for approval.
 - (e) Announcement of prequalification results.

Article 35 *Tender invitation documents*

Tender invitation documents shall include the following:

1. Tender invitation letter;
2. Tender application form;
3. Instructions for tenderers;
4. Preferential conditions (if any);
5. Taxes payable in accordance with law;
- 6.¹⁸ 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

18 *As amended by article 1.14 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

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 shall be prohibited for tender invitation documents to provide requirements on brand names or specific origins of goods.

7. Construction and installation time schedule;
8. Criteria for assessment (including method and manner of conversion to the same basis for determining assessment prices);
9. General and specific conditions of the contract;
10. Tender guarantee form;
11. Contract form;
12. Performance guarantee form.

Article 36 *Tender invitation letter or notice*

A tender invitation letter or notice shall include the following:

1. Name and address of the party calling for tenders;
2. Outline of project, site, time of construction and other issues;
3. Instructions for understanding tender invitation documents;
4. Conditions for participation in the tendering;
5. Time and place for receipt of tender invitation documents.

Article 37 *Instructions for tenderers*

The instructions for tenderers shall include:

1. Brief description of the project;
2. Capital sources for the implementation of the project;
3. Applicable technical standards;
4. Requirements of capability, experience and legal status of tenderers, evidence and information relating to tenderers for a reasonable period prior to tendering;
5. Site visits (if any) and answers to queries of tenderers.

Article 38 *Tenders*

Tenders for construction and installation shall include the following:

1. Administrative and legal contents:
 - (a) Proper tender application form (bearing the signature of the authorized person);
 - (b) Copy of the business licence;
 - (c) Documents introducing the capabilities and experience of tenderers, including sub-contractors (if any);
 - (d) Partnership agreement (where a partnership participates in tendering);
 - (dd) Tender guarantee.
2. Technical contents:
 - (a) Solutions and organization of construction and installation in respect of the tender package;
 - (b) Time schedule for performance of the contract;
 - (c) Technical specifications, suppliers of building materials and supplies;
 - (d) Measures to ensure quality.
3. Commercial and financial contents:
 - (a) Tender price accompanied by an explanatory statement and detailed price schedules;
 - (b) Financial conditions (if any);
 - (c) Conditions for payment.

Article 39 *Tender guarantees*

A tender guarantee for construction and installation shall be subject to the same provisions as stipulated in article 28 of these Regulations for tender guarantees for procurement of goods.

Article 40 *Criteria for assessment of tenders*¹⁹

The criteria for assessment of tenders 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 stipulated 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);
- (g) Other issues on construction schedule, partnership or association percentages, and any other matters required by the tender invitation documents.

The items stipulated 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

19 *As amended by article 1.15 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

assessment must stipulate the minimum points required for technical aspects but it may not be less than seventy (70) per cent of the total points for technical aspects (and for tender packages with high technical requirements, not less than ninety (90) per cent 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", 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. Criteria for conversion to a level basis in order to determine 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 (in particular, 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.

Article 41 *Assessment of tenders*

Tenders shall be assessed in accordance with the following order:

1. Preliminary assessment:

Preliminary assessment shall be for the purpose of rejecting tenders failing to satisfy requirements and shall include:

- (a) Verifying the legality of tenders;
- (b) Considering whether tenders basically satisfy the tender invitation documents;

(c) Clarifying tenders (if so required);

2.²⁰ 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 items that are unclear or not yet reasonable, 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 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, these shall be deemed discrepancies and included in the assessment price of such tenderer.

3. Tenders shall be classified on the basis of assessment prices and a successful tenderer with the relevant contract award price shall be proposed.

20 *As amended by article 1.16 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

Article 42 *Tendering results*

1. Any tenderer which has a proper tender, which satisfies the basic requirements set out in the tender invitation documents, which has the lowest assessment price and which proposes a contract award price not exceeding the approved limit of the tender package, total estimated budget or estimated budget (where the estimated budget or total estimated budget is lower than the approved limit of the tender package) shall be considered for the award of the contract.
2. The tendering results shall be considered and approved by the authorized person or the competent authority.
3. The party calling for tenders shall invite the successful tenderer for negotiation for finalization of the contract. Failing that, the party calling for tenders shall invite the next ranking tenderer for negotiations, subject to approval of the authorized person or the competent authority.

Article 43 *Performance guarantees*

A performance guarantee for a construction and installation contract shall be subject to the same provisions as stipulated in article 32 of these Regulations for performance guarantees for contracts for procurement of goods.

CHAPTER V

Tendering in Respect of Small Scale Tender Packages

Article 44 *Principles for organization of tendering*

1. Applicable to the tender packages set out in article 3.12 of these Regulations on the basis of compliance with the objectives of tendering set out in article 1 and the detailed provisions in article 45 of these Regulations.
2. Tendering in respect of small scale tender packages shall be carried out on the basis of the following principles:
 - (a)²¹ Enterprises in all economic sectors with their principal office or branch office located within a province or city shall be permitted to participate in tendering for projects located in such locality. In the case of limited tendering, it is only necessary to invite a minimum number of three tenderers to participate. Where the number of participating tenderers is less than three, other tenderers outside the locality shall be invited to participate.

21 As amended by article 1.4 of Decree 14-2000-ND-CP of the Government dated 5 May 2000.

A local tenderer shall be given priority in the award of a contract if its tender is assessed as equal to the tenders of other tenderers.

- (b) The method of single envelope tendering shall apply to all tender packages.

Article 45 *Organization of tendering*

1. Tendering procedures:

- (a) Formulation of tender invitation documents.
- (b) Issuance of tender invitation letters or tender invitation notices.
- (c) Receipt of tenders, tender opening, assessment and classification of tenders.

The party calling for tenders shall carry out by itself, or employ experts to carry out, the tendering works stipulated in sub-clauses (a), (b) and (c) of this clause.

- (d) Submission of tendering results for approval and signing of the contract.

2. Tender invitation documents:

The tender invitation documents formulated by the party calling for tenders should be simple and clear, but ensure the sufficient requirements of tenderers, including the following matters:

- (a) Tender invitation letter and tender application form;
- (b) Requirements in respect of the tender package:
- With respect to procurement of goods: technical specifications, technical instructions and implementation schedule;
 - With respect to construction and installation: technical designs accompanied by the approved estimated amount of materials, technical instructions and implementation schedule;
- (c) Criteria for assessment (of satisfaction or non-satisfaction) of the technical requirements set out in clause 2(b) of this article;
- (d) Tender guarantee form and performance guarantee form.

3. Tenders:

Tenders prepared by tenderers must be truthful and feasible and shall include:

- (a) Tender application; copy of the certificate of business registration; tender guarantee;
- (b) Technical proposals and implementation schedules;
- (c) Tender price.

4. Assessment of tenders:

- (a) Only proper tenders in which the tender price does not exceed the approved limit of the tender package after error rectification shall be assessed;
- (b) Assessment shall be carried out on the basis of the criteria set out in the tender invitation documents in order to determine which tenders satisfy the requirements set out in the tender invitation documents. Any tenderer which satisfies the requirements set out in the tender invitation documents and technical requirements and which has the lowest tender price (after error rectification and discrepancy adjustment in accordance with the requirements set out in the tender invitation documents) shall be proposed for the award of the contract.

5. Tendering results:

- (a) Tendering results shall be approved by the authorized person or the competent authority;
- (b) The party calling for tenders shall invite the successful tenderer to finalize and to sign a contract.

6. Tender guarantees and performance guarantees:

Subject to the provisions stipulated in articles 28 and 32 of these Regulations, a tender guarantee equal to one per cent of the tender price and a performance guarantee equal to three per cent of the value of the contract shall apply.

CHAPTER VI

Tendering for Selection of Partners for Implementation of Projects**Article 46** *Applicable principles*

Based on the list of investments published annually by the Government or proposed by investors, where two or more partners are interested in the implementation of a project, tendering shall be carried out in order for the authorized person to consider and select a partner for implementation of the project in the following cases:

1. A project being in conception;
2. A project the pre-feasibility study or feasibility study of which has been approved;
3. Requirements in relation to a number of works.

Article 47 *Order of tendering for selection of partners for implementation of projects*

Where seven or more partners are interested in the implementation of the same project, prequalification shall be carried out. Prequalification shall be carried out in accordance with the provisions stipulated in articles 23.2 or 34.2 of these Regulations.

The tendering procedures for selection of partners for implementation of projects shall consist of the following steps:

1. Formulation of tender invitation documents:

Tender invitation documents shall be formulated on the basis of the requirements in relation to purposes, contents, scope of works and implementation schedule of the project. The tender invitation documents shall include:

- (a) Tender invitation letter;
- (b) Basic requirements in respect of the project;
- (c) Instructions for tenderers;
- (d) Relevant information;
- (dd) Criteria for assessment;

(e) Attached detailed appendices.

2. Tender invitation:

The party calling for tenders shall select a method of notification suitable to the form of selecting tenderers.

3. Receipt and retention of tenders:

The party calling for tender shall receive and retain tenders in accordance with law.

4. Tender opening.

5. Assessment of tenders:

Assessment shall be carried out in accordance with the marking method. Tenderers achieving seventy (70) per cent or more of the total scores shall be classified and submitted to the authorized person for consideration and decision on the award of the contract.

The assessment and classification of tenders shall be carried out in the following two steps:

(a) Preliminary assessment:

Tenders shall be considered with respect to administrative and legal aspects and satisfaction of the requirements set out in the tender invitation documents.

(b) Detailed assessment and classification:

Detailed assessment shall be carried out on the basis of the criteria for assessment set out in the tender invitation documents and the criteria for detailed assessment approved by the authorized person or the competent authority prior to the time of tender opening and shall include the following main items:

- Error rectification;
- Detailed assessment of technical, commercial and financial aspects and technology transfer (if any);
- Classification of tenderers.

6. Submission of tendering results for approval.

7. Announcement of the successful tenderer and negotiation for finalization of the contract:

Based on the approved tendering results, the party calling for tenders shall invite the successful tenderer for negotiation for finalization of the contract.

8. Submission of the contents of the contract for approval and signing of the contract.

Article 48 *Tender guarantees and performance guarantees*

Based on the nature of each project, the authorized person shall determine the application of a tender guarantee or performance guarantee in accordance with the provisions stipulated in articles 28 and 32 of these Regulations.

CHAPTER VII

State Administration of Tendering

Article 49 *Bodies assuming State administration of tendering*

1. The Government shall assume unified administration of tendering throughout the country.
2. The Ministry of Planning and Investment shall be the focal body to assist the Government in administration of tendering.
3. Ministers and heads of ministerial equivalent bodies and Government bodies shall assume State administration of tendering within the scope of their respective responsibilities and shall, at the same time, appoint a deputy minister or corresponding deputy (in ministerial equivalent bodies and Government bodies) to be directly in charge of tendering.
4. Chairmen of people's committees provinces and cities under central authority, districts, provincial cities, wards, communes and townships shall assume State administration of tendering in respect of tender packages under their authority and shall, at the same time, appoint a deputy to be directly in charge of tendering.

Article 50 *State administration of tendering*²²

State administration of tendering shall include:

1. Drafting, promulgating or submitting for promulgation legal instruments in relation to tendering;
2. Organizing and providing guidelines for implementation;
3. Organizing the evaluation of plans for project tendering and tendering results;
4. Approving plans for project tendering and tendering results;
5. Carrying out inspection of tendering;
6. Reviewing, assessing and reporting on the status of tendering and implementation of the *Regulations on Tendering*;
7. Dealing with problems and complaints relating to tendering;
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.

Article 51 *Information about tenders*²³

1. Methods of publishing information about tenders:

Methods of publishing information about tenders shall comprise:

- (a) The tendering information sheet and the web page on tenders of the State issued nationwide;
- (b) The tendering information sheet 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.

22 *Clauses 8 to 11 were inserted by article 1.17 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

23 *As amended by article 1.18 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

2. Items of information which must be published:

The following items must be published:

- (a) Tendering plans;
- (b) Announcement of invitations for prequalification tenders and result of prequalification of tenderers;
- (c) Announcement of tender invitations;
- (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, including 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 information sheets and web pages on tenders:

- (a) Administering bodies:
 - The Ministry of Planning and Investment shall be responsible for nationwide administration of the tendering information sheet and web page on tenders of the State.
 - Ministries, branches and localities shall be responsible for administration of tendering information sheets 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 body stipulated 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) Bodies 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 body administering tendering information sheets 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.

Article 52 *Delegation of responsibility for tendering*²⁴

1. The Prime Minister of the Government shall:
 - (a) Approve tendering plans for important national projects in respect of which the National Assembly makes the investment policy decision and the Prime Minister makes the investment decision (irrespective of funding source);
 - (b) Approve tendering results for tender packages with a tender package price of one hundred (100) billion Vietnamese dong or more in the case of procurement of goods or construction and installation, and of twenty (20) billion Vietnamese dong or more in the case of consultancy, for projects in respect of 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 tendering results;
 - (c) Approve proposals for appointment of a tenderer, direct procurement and self-management for tender packages prescribed in clauses 3, 5 and 6 of article 4 of this Decree, for projects in respect of which the Prime Minister makes the investment decision, except for tender packages valued at less than one billion Vietnamese dong in the case of procurement of goods or construction and installation, and tender packages valued at less than five hundred (500) million Vietnamese 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 bodies. 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 bodies;

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

24 As amended by article 1.19 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.

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 in respect of which the Prime Minister makes the investment decision;
 - Tendering results of tender packages within the authority of the Prime Minister to approve;
 - Proposals for appointment of a tenderer, direct procurement and self-management in respect of tender packages prescribed in clauses 3, 5 and 6 of article 4 of this Decree for projects within the authority of the Prime Minister to approve;
 - (b) Issuing and administering the tendering information sheet and web page on tenders of the State and administering the system of data-information on tenderers;
 - (c) Inspecting and checking 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 bodies of socio-political organizations (stipulated in the *Law on State Budget*) and chairmen of provinces and cities under central authority shall be responsible for:
 - (a) Providing 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 authority of the Prime Minister to approve;
 - (b) Approving tender invitation documents for tender packages within the authority of the Prime Minister to approve the tendering results and approving tender invitation documents and tendering results for tender packages where authority is delegated by the Prime Minister as stipulated in clause 1(b) of this article;
 - (c) Approving 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 investment decision-making authority. For projects in respect of which investment decision-making authority may be delegated to a lower level, the 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 shall remain responsible for such delegation;

- (d) Reaching agreement in writing with investors on plans for project tendering and the result of selection of a tenderer for tender packages valued at one billion Vietnamese dong or more in the case of consultancy and at five billion Vietnamese 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 this Decree, 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 for:
- (a) Approving tendering plans for projects using State Budget funds which are within their investment decision-making authority;
 - (b) Approving tender invitation documents and the result of selection of a tenderer for all tender packages for projects which are within their investment decision-making authority.
5. Boards of management (or the person authorized by such board) of joint venture enterprises and shareholding companies and legal representatives of parties to business co-operation contracts shall have the following responsibilities in respect of the projects prescribed in article 2.2(b) of these Regulations:
- (a) Approving 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) Approving tendering results of all tender packages for projects, in particular in the case of consultancy tender packages valued at one billion Vietnamese dong or more and in the case of procurement of goods or construction and installation at five billion Vietnamese 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) Approving tender invitation documents and making decisions on items of the tendering process in accordance with 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 or she makes the investment decision and, during the tendering process, shall also make decisions on items of the tendering process in accordance with regulations.

Article 53 *Delegation of authority for approval and evaluation of tender invitation documents and result of selection of tenderer*²⁵

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 this Decree, 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 authority of the Prime Minister 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 authority of the Prime Minister 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 body assisting the work concerned or of the Department of Planning and Investment if belonging 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 bodies 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 investment decision-making authority, on the basis of the evaluation of the body 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 investment decision-making authority, 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

25 *As amended by article 1.20 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

documents and the result of selection of a tenderer for all tender packages for projects within their investment decision-making authority, 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 investment decision-making authority of the enterprise, on the basis of the evaluation of the section assisting the work concerned.

Article 54 *Time-limits for assessment of tenders and evaluation of tendering results*

1. The time-limit for assessment of tenders calculated from the time of tender opening to the time of submission of the tendering results to the authorized person or the competent authority for approval shall not exceed sixty (60) days in the case of domestic tendering and ninety (90) days in the case of international tendering. Where the method of two-phase tendering is applied, the time-limit for assessment of tenders shall be calculated from the time of tender opening in the second phase.
2. The time-limit for evaluation of tendering results shall be stipulated as follows:
 - (a) With respect to tender packages under the authority of approval of the Prime Minister of the Government: no more than thirty (30) days from the date of receipt of complete and proper documentation;
 - (b) With respect to other tender packages: no more than twenty (20) days from the date of receipt of complete and proper documentation.

Article 55 *Dealing with problems during tendering*²⁶

1. Where there is a reason to make modifications to the price of a tender package or the contents of a tender package, the party calling for tenders shall perform the procedures for adjustment to the tendering plan in accordance with the applicable regulations prior to submission of tendering results for approval.
2. Where the number of tenderers submitting a tender is less than three, the party calling for tenders shall submit a report on preparation for the tendering to the authorized person or the competent authority for permission for extension of the deadline for tender closing in order to increase the number of tenders or permission for tender opening in order to assess the submitted tenders.

²⁶ *Clauses 5 and 7 are as amended by article 1.21 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

3. Where the tender prices of all tenders, the arithmetical errors in which have been rectified or which have been supplemented or adjusted in accordance with the requirements set out in the tender invitation documents, exceed the price of the tender package stated in the approved tendering plan, the party calling for tenders shall report the matter to the authorized person or the competent authority for consideration to permit tenderers having tenders which satisfy the basic requirements set out in the tender invitation documents to re-offer prices or, at the same time of price re-offering, to re-consider the price of the tender package stated in the approved tendering plan and contents of the tender invitation documents (where necessary).
4. Where the price proposed for signing of a contract exceeds the contract award price, the party calling for tenders shall report the matter to the authorized person (if the price proposed for signing of the contract exceeds the price of the tender package) or the competent authority (if the price proposed for signing of the contract is lower than the price of the tender package) for consideration and decision.
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 due to 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 basis of the principle of correct and complete calculation and in accordance with

fixed levels promulgated by the State, comprising the following items:

- Expenses for purchase of tender invitation documents;
 - Travelling expenses (to purchase the tender invitation documents, to submit a tender, to survey sites, and so forth);
 - Expenses for drawing up the tender;
 - Other expenses (stationery, depreciation of equipment, and so forth).
- If compensation costs for cancellation of tendering arise due to change of objectives or investment scope as decided by the authorized person, they shall be paid from project costs; if they arise due to 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.
6. Where the two tenders assessed as the best tenders are equal (in scores or assessment price), the tenderer having the lower tender price after arithmetical error rectification and addition or adjustment in accordance with the requirements set out in the tender invitation documents shall be considered for the award of the contract (except in the cases referred to in clauses 5, 6 and 7 of article 10 of these Regulations).
7. A tender shall be rejected in any 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 fifteen (15) per cent 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 ten (10) per cent of the tender price (only applicable to tender packages for procurement of goods or for construction and installation);
 - (dd) False information has been declared.

Article 56 *Confidentiality of tenders, documents and information*

All bodies, organizations and individuals taking part in a tendering process and tender consideration must keep confidential all tenders, documents and information in accordance with the following provisions:

1. The contents of tender invitation documents must not be disclosed to any party prior to the date of issue of tender invitation documents.
2. Tenders, notebooks, minutes of tender assessment meetings, comments from experts or consultants in respect of each tenderer and other relevant documents sealed or marked as "confidential", "highly confidential" or "top secret" must not be disclosed.
3. The tendering results must not be disclosed prior to announcement thereof by the party calling for tenders.
4. Any contact or purchase or sale of information on the assessment of tenders during the tendering process shall not be permitted.
5. During tender consideration, from the time of tender opening to the time of announcement of the tendering results, the information referred to in clause 2 of this article shall not be published by means of mass media.²⁷

Any disclosure of confidential information shall be dealt with in a timely manner in accordance with article 60 of these Regulations.

Article 57 *Expenses and fees for tendering*

1. The party calling for tenders may sell tender invitation documents at the selling price determined by the authorized person or the competent authority; in the case of domestic tendering, the price of a set of tender invitation documents shall not exceed five hundred thousand (500,000) Vietnamese dong; in the case of international tendering, it shall be determined in accordance with international practice; and no other fee shall be collected from tenderers. Utilization of revenue must comply with the law.
2. Expenses for the organization of tendering and tender consideration incurred by the party calling for tenders shall be included in general expenses of projects as stipulated by the Ministry of Finance in agreement with the Ministry of Construction and the Ministry of Planning and Investment.

27 *Clause 5 was inserted by article 1.7 of Decree 14-2000-ND-CP of the Government dated 5 May 2000*

3. The fee for evaluation of tendering results shall be included in the general expenses of the project and shall be equal to one hundredth of one (0.01) per cent of the total value of the tender package, but the maximum fee shall not exceed thirty (30) million Vietnamese dong. The Ministry of Finance shall be responsible for providing detailed guidelines for management and utilization of fees for evaluation of tendering results.

Article 57a *System of data-information on tenderers*²⁸

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

The system of data-information on tenderers shall include lists of tenderers participating 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. Body in charge of the system of data-information on tenderers:

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

3. Responsibility of tenderers to provide data-information:

Tenderers shall be responsible to provide the information prescribed 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 tendering information sheet and web page on tenderers of the State.

28 *Inserted by article 1.22 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

Article 57b *Management of foreign contractors in Vietnam*²⁹

1. Foreign contractors wishing to participate in tendering in Vietnam shall be responsible to provide data-information to the body in charge of the system of data-information on tenderers as stipulated in article 57a of this Decree.
2. The Ministry of Construction shall, in co-ordination with the Ministry of Police, the Ministry of Trade and the Ministry of Finance, 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.

CHAPTER VIII

Inspection and Dealing with Breaches**Article 58** *Inspection of tendering*

1. The Prime Minister of the Government shall decide on inspection and dealing with breaches in tendering, where necessary.
2. The Ministry of Planning and Investment shall, together with relevant ministries, branches and local authorities, conduct inspection of tendering throughout the country.
3. Relevant organizations under ministries, branches and localities which are delegated with responsibility to assume administration of tendering shall conduct inspection of tendering within their branches or localities.

Article 59 *Contents and powers of the bodies conducting inspection of tendering*

- 1.³⁰ 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.

29 *Inserted by article 1.23 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

30 *As amended by article 1.24 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

- 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 as stipulated in article 2.2(b) of this Decree.

(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, six 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, legal bases and reasons for implementing limited tendering, reasons for appointment of a tenderer, results of a successful tender, value of signed contracts, and 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 tenderer;
- Result of selection of the tenderer;
- Specific problems and any queries raised by the party calling for tenders (individual or organization) or by tenderers;
- Recommendations from the entity on how to deal with such problems.

- (d) Any problems discovered during the inspection process must be reported to the authorized person for consideration and resolution, and any breaches of the laws on tendering must 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 must be submitted to the authorized person and to the body administering the tendering information sheet and web page on tenders of the State for publication therein.
2. During inspection, bodies conducting inspection shall have the following powers:
 - (a) To request organizations and individuals concerned to provide full documents and to answer on relevant issues;
 - (b) To investigate, to collect evidence and documents relating to the contents and objects of inspection and to prepare and submit reports to the authorized person or the competent authority for consideration and decision;
 - (c) To propose to the authorized person to deal with breaches in tendering in accordance with article 60 of these Regulations.

Article 59a *Tendering inspectorate*³¹

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

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

The body which shall exercise the functions of the inspectorate of tendering throughout the whole country shall be the Ministry of Planning and Investment. Ministries, branches and localities shall conduct inspections of tendering work by entities which they manage and by entities with projects for which they issued the investment licence as stipulated in article 2.2(b) of this Decree.

2. Matters which shall be subject to inspection:

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

31 *Inserted by article 1.25 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

3. Conducting inspections:

An inspection may be held whenever signs of a breach of the laws on tendering are identified, upon request by the inspecting bodies prescribed in article 59.1 of this Decree, or upon request by the authorized person to inspect a specific case of tendering.

4. Contents of an inspection:

The contents of an inspection shall be determined 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:
 - Approved tendering plan, forms of selection of the tenderer and, in particular, grounds for application of limited tendering or selection of the tenderer;
 - Tender invitation documents and other legal instruments applicable to contents of the tendering process;
 - Decision approving the result of selection of the tenderer.
- (b) Process of conducting the selection of a tenderer and time landmarks during the tendering.
- (c) Concerns raised or views reserved by consultants, expert groups or any other individuals communicated to the inspecting body.

5. Dealing with breaches during an inspection:

Any breaches identified during an inspection shall, depending on their seriousness, be dealt with by the inspectorate or inspectors by imposing penalties within their functions prescribed by the laws on State inspectorates imposing administrative penalties, or by recommending that the competent body take disciplinary action against individuals (if they are State officials) under the *Ordinance on State Officials*, or by imposing a penalty under the *Ordinance on Anti-Corruption*, or by criminal prosecution of the offender in accordance with law.

6. Reports by the tendering inspectorate:

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

Article 60 *Dealing with breaches*³²

1. Any person breaching the *Regulations on Tendering* shall, depending on the seriousness of the breach, be subject to administrative penalty or prosecution for criminal liability in accordance with law.
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 or about its experience or in the curriculum vitae of its expert consultants, the party calling for tenders shall have the right to exclude the tender of such tenderer and not to refund the tender guarantee (if any). The tenderer in breach shall be published in the tendering information sheet and web page of the State.
 - (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, the tender of such tenderer shall not be considered, its tender guarantee shall not be refunded, its name shall be published in the tendering information sheet and web page of the State, and it shall be dealt with in accordance with the provisions of law.
 - (c) If tenderers collude with each other to affect the interests of the party calling for tenders, their tender guarantees shall not be refunded and their names shall be published in the tendering information sheet and web page of the State.
 - (d) If the design of a consultant 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, the consultant must compensate for the loss and its name shall be published in the tendering information sheet and web page of the State.
 - (dd) If a consultant supervising the execution of works is irresponsible or colludes with the construction contractor to confirm falsely the volumes and quality of works completed resulting in a quality reduction of the works, both the consultant and the construction and installation contractor must compensate for the loss and their names shall be published in the tendering information sheet and web page of the State; and individuals belonging to the contractor may, depending on the

32 *Clause 2 is as amended by, and clause 5 was inserted by, article 1.26 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.*

seriousness of the offence, be prosecuted for criminal liability in accordance with law.

- (e) If a construction contractor fails to implement correctly the scope of contractual work, or fails to implement correctly 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 assigns its work to another party not contemplated in the contract, it shall be compelled to carry out the work correctly under the contract and shall be liable for all costs arising from its conduct. The names of the construction contractor and of the consultant supervising the execution of works shall be published in the tendering information sheet and web page of the State; 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 terminated for contractual breach, the name of such contractor shall be published in the tendering information sheet and web page of the State.
- (h) With respect to a contractor which commits one or more of the offences listed in sub-clauses (a) to (g) inclusive of this clause and the name of which appears in the tendering information sheet and web page of the State: if its name is published three times, 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, it shall not be permitted to participate in tendering for two years; and if the contractor commits three breaches for a third time, 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 body administering the tendering information sheet and web page on tenders of the State 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.

- 3. Any person who takes advantage of his or her position and power to breach the *Regulations on Tendering*, such as disclosure of confidential files, documents and information, conspiracy, bribery, fraudulence and other breaches, shall, depending on the seriousness of the breach, be subject to administrative disciplinary action or prosecution for criminal liability in accordance with law.
- 4. Any person breaching the *Regulations on Tendering* and causing damage shall be liable to pay compensation in accordance with law.

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 stipulated in clauses 1, 3 and 4 of article 60 of this Decree, be dealt with as follows:
 - (a) Parties calling for tenders (whether individuals or groups, and including expert groups) which provide inaccurate reports on the tender process and tender consideration, or which collude with a tenderer, or which accept bribes shall, depending on the seriousness of the offence, be subject to disciplinary action or criminal prosecution.
 - (b) Parties calling for tenders (including expert groups) which fail to implement correctly the procedures for conducting tendering, or which conduct tendering without an approved tendering plan, or which fail to provide information on tendering as required by regulations, depending on the type and seriousness of the offence, the authorized person may issue a decision changing the personnel of the party calling for tenders or of the expert group, may take disciplinary action against the offending individual (in the case of State officials) 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.

CHAPTER IX

Implementing Provisions

Article 61 *Organization of implementation*

1. The Ministry of Planning and Investment shall, in co-ordination with the Ministry of Finance, the Ministry of Trade, the Ministry of Construction and other relevant ministries, branches and local authorities, provide detailed guidelines for the implementation of these Regulations.
- 2.³³ The Ministry of Finance shall, in co-ordination with relevant ministries and branches, be responsible for providing guidelines for and inspecting implementation of tendering for procurement of goods, supplies, equipment and working facilities by State bodies, the armed forces, mass organizations and State owned enterprises; procurement of normal goods, supplies and working facilities of the armed forces funded by capital from the State Budget.

33 *As amended by article 1.8 of Decree 14-2000-ND-CP of the Government dated 5 May 2000.*

3. The Ministry of Labour, War Invalids and Social Affairs shall, in co-ordination with the Ministry of Finance, the Ministry of Construction and relevant ministries and branches, provide guidelines on expenses of domestic consultancy services and salaries of domestic experts working on a contractual basis for successful foreign tenderers in Vietnam.
- 4.³⁴
- 5.³⁵
6. Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for the implementation of these Regulations and, in December every year, for submission of reports on implementation of tendering in the year to the Ministry of Planning and Investment for preparation of a general report which shall be submitted to the Prime Minister of the Government.
7. If any problems not covered by the *Regulations on Tendering* arise, bodies and entities should report to the authorized person or the competent authority for consideration and decision.

On behalf of the Government
The Prime Minister

PHAN VAN KHAI

34 Repealed by article 1.8 of Decree 14-2000-ND-CP of the Government dated 5 May 2000.

35 Repealed by article 1.27 of Decree 66-2003-ND-CP of the Government dated 12 June 2003.