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## Tendering Update

July 2003

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Vietnam's Tendering Regulations have been revised again by Decree 66-2003-ND-CP of the Government dated 12 June 2003 ("revised Tendering Regulations"), effective as of 16 July 2003.

The revised Tendering Regulations represent the 4th update of Vietnam's Tendering Regulations since 1996. The original Tendering Regulations issued under Decree 43-CP of the Government dated 16 July 1996 were amended by Decree 93-CP of the Government dated 23 August 1997. Then, new Tendering Regulations were issued with Decree 88-1999-ND-CP of the Government dated 4 September 1999 and subsequently amended by Decree 14-2000-ND-CP of the Government dated 5 May 2000 ("the 1999/2000 Regulations").

The revised Tendering Regulations introduce a range of amendments to the 1999/2000 Regulations, primarily aimed at eliminating corruption and modernizing State administration. Public discontent with the failure of Vietnam's Tendering Regulations to ensure a transparent and efficient tendering process have been mounting over recent years, with newspapers reporting a number of controversies in the tendering process for major construction projects in Vietnam, such as the Hanoi Sports Stadium project.

Importantly, with respect to foreign invested projects, the revised Tendering Regulations do not reduce the current obligations to conduct tendering, but do adjust the level of State intervention. The revised Tendering Regulations also now expressly provide for preferential treatment for prescribed foreign invested tenderers.

Following is a guide to how the revised Tendering Regulations affect foreign invested projects in Vietnam, with comparisons to the 1999/2000 Regulations.

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## A. Objectives of Vietnam's Tendering Regulations

The objective of the revised Tendering Regulations remains unchanged - to ensure fair competition in tendering for investment projects with respect to:

- selection of consultants;
- procurement of materials and equipment;
- construction and installation; and
- selection of partners for implementation of the whole or parts of projects within the territory of Vietnam.

## B. Defined terms

- *Tenderer*: The revised Tendering Regulations expand the definition to (underlined passages denote new provisions):

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

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

A tenderer may participate in an independent bid or join with other tenderers. 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."

- *Contract signing price*: The revised Tendering Regulations tighten the definition:

"Contract signing price means the price agreed by the party calling for tenders and the successful tenderer after negotiations for finalization of the contract, and must be consistent with the successful tender price, the tender invitation documents and the tender. The contract signing price together with the specific clauses on payment recorded in the contract shall be the basis for making capital payments for the tender package."

- *Project investor*: The revised Tendering Regulations add this new definition:  

*"Project investor* means the organization to which responsibility is assigned to directly manage and implement a project ... . In the case of investment projects, the project investor is the investor."
- *Party calling for tenders*: The definition remains unchanged under the revised Tendering Regulations. The party calling for tenders is the entity which actually carries out the tendering procedures. If an investor has sufficient capability, it may itself perform the role of the party calling for tenders; if not, an investor may employ a suitably qualified organization to act as the party calling for tenders<sup>1</sup>. The party calling for tenders may in turn engage an expert group or consultant to assist in the various stages of the tendering process.

### C. Contracts which must be put to tender

As under the 1999/2000 Regulations, the revised Tendering Regulations require tendering in respect of the following 3 types of contracts:

1. Consultancy contracts, defined as contracts for provision of any of the following services:
  - investment preparation (preparation and evaluation of pre-feasibility studies and feasibility study);
  - investment implementation (preparation of designs, preparation of tender invitations and evaluation of tenders, supervision of construction and installation); or
  - other consultancy services (project management and financial arrangements, provision of training programs and technology transfer).
2. Contracts for procurement of goods (including machinery, means of transportation, complete or incomplete sets of equipment, individual items of equipment, industrial property rights, technology ownership rights, raw materials, fuel, supplies, finished consumer goods or semi-finished products).
3. Contracts for construction and installation of a project or items of a project.

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<sup>1</sup> In this latter case, the investor remains responsible for compliance with Vietnam's Tendering Regulations and for directly signing a contract with the successful tenderer.

#### D. Approval of tendering process

As under the 1999/2000 Regulations, the revised Tendering Regulations require approval to be obtained from the "authorized person" at various stages in the tendering process (tender plans, tender invitation documents and tender results).

The definition of "authorized person" remains unchanged under the revised Tendering Regulations. The "authorized person" varies according to the type of project, as follows:

- (i) In the case of State investment projects: the authorized person is the investment decision-making authority as stipulated in the *Regulations on Management of Investment and Construction*,<sup>2</sup>
- (ii) In the case of procurement of tools, materials, equipment, working facilities of State bodies or organizations and State owned enterprises ("SOEs") or procurement of normal working tools and facilities of the armed forces: the authorized person is the person making the decision on procurement in accordance with law;
- (iii) In the case of projects funded by capital owned by companies or other forms of ownership (such as domestic investment projects and foreign invested projects), the authorized person is the board of management or the authorized head in accordance with law.

Notwithstanding (iii) above which provides for "internal" approval in the case of foreign invested projects subject to Vietnam's Tendering Regulations (discussed in E below), the tendering process of such foreign invested projects is in fact subject to "external" State intervention. Such State intervention takes the form of the requirement to obtain State "consent"<sup>3</sup> for tender plans and tender results of those foreign invested projects<sup>4</sup>.

Under the revised Tendering Regulations, the State body from which such State consent must be obtained has changed. Under the 1999/2000 Regulations, the foreign investment licensing body (whether the Ministry of Planning and Investment ("MPI") or a provincial level people's committee) provided such State consent. Under the revised Tendering Regulations, the foreign investment licensing body no longer undertakes this role. Now, the written consent of the legal representative of the SOE participating in the foreign invested project (such as a minister or the chairman of a provincial level people's committee) is required for tender plans and tender results of foreign invested projects subject to Vietnam's Tendering Regulations.

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2 Interestingly, in the detailed provisions relating to delegation of responsibility for tendering and delegation of authority for approval and evaluation of tender results, the revised Tendering Regulations abandon the classification of domestic projects according to the above *Regulations on Management of Investment and Construction* (namely, Group A, B and C projects).

3 The revised Tendering Regulations (like the 1999/2000 Regulations before) make a distinction between State "consent" required for tender packages of foreign invested projects and State "approval" in the case of tender packages of State investment projects. The significance of this distinction is likely to be minimal in practice.

4 State consent is not required for tender invitation documents and other items of the tendering process.

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## E. Foreign invested projects subject to Vietnam's Tendering Regulations

As under the 1999/2000 Regulations, the revised Tendering Regulations remain applicable to:

- Projects of joint venture enterprises ("JVEs"), business co-operation contracts ("BCCs") or foreign invested shareholding companies in which the Vietnamese party is a SOE having 30% or more of the legal capital, business capital or equity. Vietnam's Tendering Regulations do not apply to other types of JVEs and BCCs or to 100% foreign owned enterprises.<sup>5</sup>
- Selection of partners for foreign invested projects, where there are at least two investors wishing to participate in the same project or the Prime Minister requires tendering to select investment partners for implementation of projects.
- Projects funded by aid from international or foreign organizations. In this case, the revised Tendering Regulations now expressly provide that where there are provisions relating to rules on tendering in an already signed aid agreement which are inconsistent with Vietnam's Tendering Regulations, the provisions in such agreement will apply, however the procedures on submission for approval, evaluation and approval of tender plans, tender invitation documents and tender results must be implemented in accordance with Vietnam's Tendering Regulations.

However, exemptions from Vietnam's Tendering Regulations are available (for foreign invested, domestic and State investment projects alike). The revised Tendering Regulations retain the exemptions previously available under the 1999/2000 Regulations, with slight adjustments only. Exemptions are available in the following cases:

- Upon occurrence of events of *force majeure* due to natural disasters or wars.
- Tender packages of a research or experimental nature or of national confidentiality as decided by the authorized person (previously determined by the Prime Minister). There is no longer any express exemption in the case of tender packages of security confidentiality or national defence confidentiality.
- Tender packages having a value of less than VND1 billion in respect of procurement of goods or construction and installation; and of less than VND500 million in respect of consultancy. As previously, the arbitrary division of a project into a number of small tender packages to avoid the tendering requirements remains strictly prohibited.
- Special tender packages due to the requirements of a funding agency, due to technical or technological complexity, or due to one-off requirements of a project, as determined on the basis of the opinions of the relevant evaluating authority (previously prescribed as the MPI) and the funding agency and other relevant bodies.
- Tender packages for consultancy for preparation of a pre-feasibility study or a feasibility study (provided that the investor selects a consultant suitable to the requirements of the project).

In the above cases, investors may apply to the authorized person for special treatment in the form of appointment of tenderers. As previously, the following information must be provided:

- 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 is required).

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<sup>5</sup> However, if they decide to conduct a tender, other types of JVEs and BCCs as well as 100% foreign owned enterprises are "encouraged" to apply Vietnam's Tendering Regulations.

For the purposes of this review, "foreign invested projects subject to Vietnam's Tendering Regulations" refers to JVEs, BCCs or foreign invested shareholding companies in which a SOE owns 30% or more of capital, having contracts for procurement of goods or construction and installation valued at over VND1 billion or consultancy contracts valued at over VND500 million.

## F. Forms of selection of tenderers

As under the 1999/2000 Regulations, the forms of selection of tenderers under the revised Tendering remain:

### 1. Open tendering:

Open tendering is the main form of tendering whereby the number of participating tenderers is not limited. As previously, the conditions and time-limits for participation in the tendering must be publicly announced at least 10 days prior to issuing tender invitation documents. The revised Tendering Regulations now provide for such announcement to be made in the tendering information newsletters and web pages of the State and of ministries, branches and localities (discussed in M below), as well as via the mass media as previously.

### 2. Limited tendering:

Limited tendering is a form of tendering whereby at least 5 experienced and capable tenderers are invited to participate.

Limited tendering may only be applied upon satisfaction of one of the following conditions:

- only a limited number of tenderers are capable of satisfying the requirements of the tender package;
- the sources of capital used require limited tendering; or
- limited tendering has certain advantages due to the specific situation relating to the tender package.

Under the revised Tendering Regulations, the tenderers participating in a limited tender are no longer required to be approved by the authorized person. Now, the investor may decide on the list of participating tenderers.

The revised Tendering Regulations now provide for the case where there are less than 5 potential tenderers. In such case, an investor may make a submission to the authorized person for consideration and decision.

### 3. Appointment of tenderer: This form applies in the exemption cases discussed in E above.

### 4. Competitive offers: As previously, competitive offers are permitted in the case of tender packages for procurement of goods valued at less than VND2 billion. A minimum of 3 offers from 3 different tenderers on the basis of the order request in the tender invitation documents must be obtained.

Of note, foreign invested projects subject to Vietnam's Tendering Regulations having procurement contracts valued at less than VND2 billion (but over VND1 billion<sup>6</sup>) are entitled to conduct competitive offers but remain subject to the State consent requirements discussed in D above.

### 5. Special procurement: As previously, special procurement is permitted in extremely special industries where tendering is impossible without special requirements. In such case, the body in charge of the industry must prepare a process of implementation which satisfies the objectives of Vietnam's Tendering Regulations for agreement by the MPI and submission to the Prime Minister for decision.

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<sup>6</sup> Foreign invested projects having procurement contracts valued at less than VND1 billion are not subject to Vietnam's Tendering Regulations at all.

## G. Methods of performing contracts

As under the 1999/2000 Regulations, the revised Tendering Regulations provide for three methods of performing contracts:

- Package contracts: Performed for a package price; applicable to tender packages which are clearly defined in terms of quantity and requirements in relation to quality and time-limits.
- Turn-key contracts: For all works of design, supply of equipment, construction and installation of a tender package performed by a tenderer.

The revised Tendering Regulations now include specific provisions governing turn-key contracts, acknowledging the English abbreviation as EPC contracts. The selection of a tenderer to perform an EPC tender package via an EPC contract must be based on the tender plan approved by the authorized person. The tender invitation documents must include three sections, design (E), supply of equipment (P), and construction and installation (C). The standards for assessment of an EPC tender package must also include all these three items of work, with specified points for minimum technical requirements applicable to each of these items of work. The tenderer having the tender which satisfies the high technical requirements pursuant to the approved assessment standards (not less than 90% of the total points for technical items) and having the price assessed to be the lowest will be awarded the contract.

The revised Tendering Regulations provide for the MPI to issue guidelines on the process of holding tendering in order to select a contractor to perform an EPC tender package. The contents of an EPC contract must comply with the guidelines of the Ministry of Construction.

As previously, the investor is responsible for supervising the performance process and accepting and taking over the completed project from the contractor in accordance with the signed contract.

- Contracts having an adjustable price: Applicable to tender packages (i) the exact quantity and volume of which cannot be accurately determined at the time of signing of the contract or (ii) 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 12 months. The revised Tendering Regulations limit the previously broad category (i) to changes in quantity or volume arising due to a change in design.

## H. Conditions for tenderers

Under the revised Tendering Regulations, all participating tenderers must satisfy the following basic conditions:

- Be financially independent and have legal civil capacity; in the case of an individual also have legal capacity for civil acts in order to enter into and perform a contract (previously, "be technically and financially capable of satisfying the requirements of the tender package"). As previously, in the case of procurement of complex goods subject to patent rights, the tenderer must have a licence to sell goods from the manufacturer.
- As previously, 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. (The revised Tendering Regulations no longer stipulate that where a corporation participates in a tender in its own name, its affiliates are not permitted to participate as independent tenderers in the tendering for the same tender package.)
- Be named on the list of tenderers on the data-information system which is published in the State tendering information newsletter and web page on tenders (a new requirement, discussed in M below).

The previous requirement under the 1999/2000 Regulations to have a certificate of business registration has been omitted from the revised Tendering Regulations. Similarly, the prohibition on the party calling for tenders participating in the capacity of a tenderer in respect of tender packages the tendering for which is organized by that party calling for tenders has been omitted.

Specific restrictions apply to foreign tenderers (discussed in I below).

As previously under the 1999/2000 Regulations, the revised Tendering Regulations requires pre-qualification of tenderers in the following cases:

- contracts for construction and installation valued at VND200billion or more; and
- contracts for procurement of material and equipment valued at VND300billion or more.

The prescribed procedures for pre-qualification remain unchanged under the revised Tendering Regulations.

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## I. International tendering and restrictions on foreign tenderers

Under the revised Tendering Regulations, an international tender may still only be organized in the following cases:

- where there is no local tenderer meeting the project requirements; or
- where the project is financed by an international agency or by a foreign country and the funding agreement stipulates that the project is to be put to international tender.

Specific restrictions on the participation of foreign tenderers in tendering in Vietnam continue to apply, but have been extended under the revised Tendering Regulations. The restriction that a foreign tenderer must enter into a partnership with a Vietnamese contractor or undertake to use Vietnamese sub-contractors now also applies to international tenders for procurement of goods, not just as previously to international tenders for construction and installation<sup>7</sup>. As previously, the scope of work, volume and relevant unit price shared between the foreign and Vietnamese parties must be clearly specified. Where two tenders of different foreign tenderers are assessed as equal, the tender providing a higher proportion of work to Vietnamese sub-contractors must be accepted.

Like all tenderers participating in tendering in Vietnam, foreign tenderers must undertake to procure and use materials and equipment which are manufactured, processed or available in Vietnam where they are suitable in terms of quality and price.

The revised Tendering Regulations now provide for the Ministry of Construction to oversee co-ordination with the Ministry of Police, the Ministry of Trade and the Ministry of Finance to research and submit to the Prime Minister 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.

(The revised Tendering Regulations also now require that, where a foreign organization or expert participates in the process of selecting tenderers for tender packages for consultancy belonging to projects funded by the State Budget, funded by credit facilities guaranteed by the State or funded by credit facilities for investment and development of the State, such foreign organization or expert must enter into a partnership with a domestic consultant, unless the Prime Minister otherwise permits.)

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<sup>7</sup> Under the 1999 Regulations, this restriction applied to all foreign tenderers. It was limited to foreign tenderers participating in international tendering for construction and installation only by the 2000 amendments to the 1999 Regulations. The revised Tendering Regulations again broaden the circumstances in which foreign tenderers are subject to this restriction.

## J. Preferential treatment in international tendering

The 1999/2000 Regulations entitled domestic tenderers in international tendering to preferential treatment "in accordance with law". The revised Tendering Regulations now provide in detail for that preferential treatment and extend it to domestically manufactured goods.

Preferential treatment is now available to:

- domestic tenderers (of particular note, for the purpose of preferential treatment, "domestic tenderers" is now expressly stated to include JVEs to which the Vietnamese party contributes over 50% legal capital);
- tender packages for construction and installation or for consultancy in which the work that the domestic contractor undertakes is more than 50% of the value; and
- tender packages for procurement of goods where the ratio of domestic manufacturing costs exceeds 30% of ex-factory cost.

Preferential treatment consists of the following:

- In the case of a tender package for selection of a consultant, when assessing tenders, a domestic tenderer which has already achieved the minimum points or more for technical matters will be entitled to an extra 7.5% of the total points in the overall assessment.
- In the case of a tender package for construction and installation, when determining the assessment price, an extra 7.5% of the tender price (after rectifying arithmetical errors and after making the discrepancy adjustment) will be added to the assessment prices of tenderers not entitled to preferential treatment (ie non-domestic tenderers) in order to provide the basis for comparing and classifying tenders.
- In the case of a tender package for procurement of goods, when determining the assessment prices of tenders which include goods not entitled to preferential treatment (ie non-domestically manufactured goods), such prices will have added to them either (i) a sum equivalent to all types of taxes and import fees pursuant to State regulations which an importer who is not duty exempt must pay for the goods in the tender or (ii) 15% of the price of the goods including transport charges and fees and insurance to the sea-port or river-port of Vietnam (CIF price), or of the price of the goods including transport costs and insurance to a stipulated place (CIP price), if the above types of taxes and importing fees exceed 15% (excluding goods subject to import duty).
- In the case of a tender package for consultancy where the overall points are identical, or in the case of a tender package for construction and installation or for procurement of goods where assessment prices are identical, the domestic tenderer will be given priority over foreign tenderers.

## K. Tendering process

The tendering process may be generalized as follows:

### 1. Tender plan:

A tender plan for the whole project must be prepared, itemizing:

- division of the project into different tender packages;
- price of each tender package and financing sources;
- form of selection of tenderers and method of tendering to be applied to each tender package;
- time schedule for tendering in respect of each tender package;
- form of contract applicable to each tender package;
- time schedule for performance of the contract.

There is no prescribed form for tender plans.

Where it is not yet possible to prepare a tender plan for the whole project, the authorized person may permit the preparation of a tender plan for each part of the project as appropriate for each phase of implementation.

Tender plans must be approved by the authorized person. State consent is also required in the case of foreign invested projects (discussed in D above).

### 2. Three methods of tendering are permitted:

- Single envelope tendering: This method applies to tenders for procurement of goods and for construction and installation.
- Dual envelope tendering: This method only applies in respect of tenders for selection of consultants.
- Two-phase tendering: This method applies to:
  - (i) tender packages for procurement of goods and construction and installation valued at VND500 billion or more;
  - (ii) tender packages for procurement of goods which require selection of complete equipment technology, which are technologically and technically complex;
  - (iii) especially complex tender package for construction and installation;
  - (iv) turn-key projects.

### 3. As discussed in B above, experts or consultants may be engaged to assist in the tendering process. This is now at the discretion of the investor (under the 1999/2000 Regulations, the approval of the authorized person had been required). However, the investor remains responsible before the law for the process of selection of tenderers. Under the revised Tendering Regulations, the standards for experts have been slightly adjusted.

### 4. Tender invitation documents:

Tender invitation documents must be prepared in accordance with prescribed rules for each type of contract. Such rules remain unchanged under the revised Tendering Regulations, except in the case of contracts for construction and installation with respect to technical design requirements. Tender invitation documents must be approved by the authorized person.

### 5. Tender closing:

Depending on the scale and complexity of the tender package, the deadline for tender closing must be at least 15 days in the case of domestic tendering (or 7 days in the case of small scale tender packages) and 30 days in the case of international tendering, as from the date of issue of tender invitation documents.

6. Tender opening:

As previously, the revised Tendering Regulations require tenders to be publicly opened immediately after tender closing, on the date and at the location stated in the tender invitation documents. In addition, the revised Tendering Regulations now require that the main information set out in the tender of each tenderer must be publicly announced during the tender opening session as well as recorded in the minutes of the tender opening. However, the revised Tendering Regulations no longer stipulate the previous requirement that the opening of tenders must be started within 48 hours after the deadline for tender closing.

The revised Tendering Regulations still require a representative of the party calling for tenders to sign the minutes of the tender opening, however representatives of participating tenderers are now only required to sign if they are present. Previously, it was mandatory for the participating tenderers to sign.

7. Tender consideration:

As previously, the revised Tendering Regulations require the party calling for tenders to 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 prior to tender opening.

As previously, the marking method is used for assessment of tenders for tender packages for consultancy services and tender packages for selection of partners, assessment of pre-qualification tenders and assessment of the technical aspects of tender packages for procurement of goods or for construction and installation.

Under the revised Tendering Regulations, the method of assessment price is still used for tender packages for procurement of goods or for construction and installation in the 2 steps of (i) technical assessment for short-listing and (ii) price assessment of short-listed tenders. With respect to (i), the revised Tendering Regulations now provide for prescribed categories of tenders to be deemed to have satisfied the technical requirements.

Specific criteria for tender consideration apply in respect of each type of contract. With respect to contracts for procurement of goods and contracts for construction and installation, the criteria have been completely revised under the revised Tendering Regulations.

One of the principles of tender consideration remains evaluation on the basis of the approved tender package price, not the assessment price or floor price.

Under the revised Tendering Regulations, the time-limit for assessment of tenders (calculated from the time of tender opening to the time of submission of the tender results to the authorized person or the competent authority for approval) remains 60 days in the case of domestic tendering and 90 days in the case of international tendering. Where the method of two-phase tendering is applied, the time-limit for assessment of tenders is calculated from the time of tender opening in the second phase.

8. Tender results:

Under the revised Tendering Regulations, it remains mandatory for tender results to be approved by the authorized person. State consent is also required in the case of foreign invested projects (discussed in D above).

The time-limit for evaluation of tender results remains as follows:

- With respect to tender packages under the authority of approval of the Prime Minister: no more than 30 days from the date of receipt of complete and proper documentation of tender results;
- With respect to other tender packages: no more than twenty 20 days from the date of receipt of complete and proper documentation of tender results.

After the authorized person has issued its approval, the tender results must be announced and the contract negotiated and entered into with the successful tenderer. In the case of contracts to be signed with foreign tenderers, the contents must be approved by the authorized person.

#### L. Problems in tendering

The revised Tendering Regulations repeat the detailed provisions of the 1999/2000 Regulations on dealing with the following problems in tendering:

- where there is a need to make modifications to the price of a tender package or the contents of a tender package;
- where the number of tenderers submitting a tender is less than 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 tender plan;
- where the price proposed for signing of a contract exceeds or is lower than the contract award price;
- where the two tenders assessed as the best tenders are equal (in scores or assessment price).

The revised Tendering Regulations now provide for cancellation of tendering in any one of the following expanded range of circumstances:

- the objectives stated in the tender invitation documents are changed (no longer required to be changed due to objective reasons);
- there is evidence that the party calling for tenders has colluded with a tenderer to avoid competition in tendering (not previously included in the 1999/2000 Regulations);
- all tenders fail to satisfy the basic requirements set out in the tender invitation documents (as previously);
- there is evidence that tenderers have colluded to avoid competition in tendering, affecting the interests of the party calling for tenders (as previously).

Further, the revised Tendering Regulations now include detailed provisions on financial liability for cancellation of a tender. If cancellation was not the fault of the tenderers, the party calling for tenders is responsible for compensating the tenderers for their costs of participating in the tender. The amount of compensation will be calculated on the basis of fixed levels prescribed by the State and cover such items as expenses of purchase of tender invitation documents, travelling expenses (to purchase the tender invitation documents, to submit a tender, to survey sites, etc), expenses of drawing up the tender, and other expenses (stationery, depreciation of equipment, etc). If cancellation was due to change of objectives or investment scope as decided by the authorized person, compensation will be paid from project costs. If cancellation was due to the fault of the party calling for tenders, the relevant individuals belonging to the party calling for tenders will be liable for payment of compensation.

The revised Tendering Regulations now provide for rejection of a tender in any one of the following adjusted range of circumstances:

- the tender fails to satisfy the preconditions set out in the tender invitation documents (as previously);
- the tender fails to satisfy the basic requirements in terms of technical aspects (but no longer where fails to satisfy the basic requirements in terms of schedule of implementation and financial and commercial conditions);
- the tenderer does not accept arithmetical errors identified and requested to be rectified by the party calling for tenders, or has an arithmetical error causing a difference of more than 15% from the tender price (now expressly only applicable to tender packages for procurement of goods or for construction and installation);
- the total value of discrepancies exceeds 10% of the tender price (again, now expressly only applicable to tender packages for procurement of goods or for construction and installation);
- false information has been declared (not previously included in the 1999/2000 Regulations).

## **M. State administration**

Under the revised Tendering Regulations, the MPI remains the focal body for State administration of tendering through its roles of (i) evaluating tender plans, tender invitation documents and tender results for projects within the Prime Minister's authority; (ii) inspecting and checking tendering work nationwide; and (iii) now also administering the newly-introduced State tendering information newsletter, web page on tenders, and system of data-information on tenderers.

As noted in D above, the role of the MPI in the tendering process of foreign invested projects subject to Vietnam's Tendering Regulations no longer extends to providing State consent to tender plans and tender results.

The revised Tendering Regulations now include detailed provisions on the methods of publishing information about tenders and the items of information which must be published. In the case of foreign invested projects subject to Vietnam's Tendering Regulations, the following information must be provided by investors to the MPI for publication:

- tender plans;
- announcement of invitation for pre-qualification tenders and result of pre-qualification of tenderers;
- announcement of invitation for tenders;
- list of tenderers participating in limited tendering;
- list of consultants participating in tendering;
- tender results;
- list of tenderers in breach of Vietnam's Tendering Regulations as well as information on dealing with breaches.

Also, the revised Tendering Regulations now include detailed provisions on the information which tenderers must provide about themselves to the MPI for publication in the State tendering information newsletter and web page on tenders. The system of data-information on tenderers will include lists of tenderers who participate in tendering for projects in Vietnam with the following specific information on each tenderer:

- name of the tenderer;
- year of establishment;
- sector of participation in tendering (such as consultancy, supply of goods, or construction and installation);
- current total assets and working capital;
- other relevant matters.

Ministries, branches and localities are responsible for administration of tendering newsletters and web pages on tenders within their respective areas of management.

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