Public Procurement World - Vietnam

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# 1. The Laws

## a. What is the applicable legislation?

Key legal documents forming the legal framework for bidding activities in Vietnam include:

Law No. **43/2013/QH13** on Bidding, adopted by the National Assembly on 26 November 2015, which took effect 1 July 2014, as amended and supplemented by Law No. 03/2016/QH14 on amendment and supplement to Article 6 and Annex 4 on the list of conditional business lines stipulated in the Law on Investment which took effect on 1 January 2017 (the "**Bidding Law**");

Decree No. **63/2014/ND-CP** detailing the implementation of several provisions of the Bidding Law on the selection of contractor issued by the Government on 26 June 2014, which took effect on 15 August 2014 ("**Decree No. 63**");

Decree No. **30/2015/ND-CP** detailing the implementation of several provisions of the Bidding Law on the selection of investors issued by the Government on 17 March 2015, which took effect on 5 May 2015 ("**Decree No. 30**");

Decree No. **15/2015/ND-CP** on the public-private partnerships investment issued by the Government on 14 February 2015, which took effect on 10 April 2015 ("**Decree No. 15**");

Circular No. **01/2015/TT-BKHDT** of the Ministry of Planning and Investment dated 14 February 2015 detailing the preparation of dossiers of invitation for expression of interest, bid invitation dossiers, dossiers of request for consultancy services;

Circular No. **03/2015/TT-BKHDT** of the Ministry of Planning and Investment dated 06 May 2015 detailing the preparation of bidding dossier for construction and installation;

Circular No. **05/2015/TT-BKHDT** of the Ministry of Planning and Investment dated 16 June 2015 detailing the preparation of bid invitation dossiers for the procurement of goods;

[Joint Circular No. **07/2015/TTLT-BKHDT-BTC** of the Ministry of Planning and Investment and Ministry of Finance dated 8 September 2015, guiding the provision, posting of procurement information and online contractor selection](https://thuvienphapluat.vn/van-ban/Dau-tu/Joint-circular-No-07-2015-TTLT-BKHDT-BTC-online-supply-posting-of-procurement-information-online-contractor-selection-290810.aspx?tab=1);

Circular No. [**10/2015/TT-BKHDT** of the Ministry of Planning and Investment dated 26 October 2015](http://luatvietnam.net/vbpl/72180/dau-thau/bieu-mau-moi-ve-trinh-duyet-tham-dinh-phe-duyet-ke-hoach-lua-chon-nha-thau-.html) detailing the contractor selection plan;

Circular No. **11/2015/TT-BKHDT** of the Ministry of Planning and Investment dated 27 October 2015 detailing the dossier of requirements for direct appointment of contractors, competitive offer;

Circular No. [**19/2015/TT-BKHDT** of the Ministry of Planning and Investment dated 27 November 2015 detailing the preparation of appraisal report during the contractor selection period;](http://luatvietnam.net/vbpl/73000/dau-thau/thay-moi-cac-mau-bao-cao-tham-dinh-trong-lua-chon-nha-thau-.html)

Circular No. [**23/2015/TT-BKHDT** of the Ministry of Planning and Investment dated 21 December 2015 detailing the preparation of evaluation report of bid dossier;](http://luatvietnam.net/vbpl/73636/dau-thau/thay-moi-bieu-mau-bao-cao-danh-gia-ho-so-du-thau.html)

Circular No. **02/2016/TT-BKHDT** of the Ministry of Planning and Investment dated 01 March 2016 guiding the preliminary selection of the project, preparation, appraisal, approval of the project proposal and feasibility report in the form of PPP investment;

Circular No. [**03/2016/TT-BKHDT**](http://vbqppl.mpi.gov.vn/Pages/default.aspx?itemId=d40bce4a-82b4-490a-a945-b9001930a5e7&amp;list=documentDetail) of the Ministry of Planning and Investment dated 05 May 2016 detailing the training and re-training in bidding activities;

Circular No. [**07/2016/TT-BKHDT** of the Ministry of Planning and Investment dated 29 June 2016 detailing the preparation of bidding dossier, dossier of requirement for good procurement regarding online bidding;](http://vbqppl.mpi.gov.vn/Pages/default.aspx?itemId=87ec2ac0-8bcc-43e0-94db-40904b234df9&amp;list=documentDetail)

[Circular No. **10/2016/TT-BKHDT** of the Ministry of Planning and Investment dated 22 July 2016 detailing the supervision, monitoring and inspection of bidding activities;](http://vbqppl.mpi.gov.vn/Pages/default.aspx?itemId=e2e0713e-bc49-4f5f-a3c2-c549ec69b9e1&amp;list=documentDetail)

Circular No. **11/2016/TT-BKHDT** of the Ministry of Planning and Investment dated 26 July 2016 guiding the preparation of [engineering-procurement goods-construction (EPC)](https://thuvienphapluat.vn/van-ban/Dau-tu/Circular-11-2016-TT-BKHDT-guidance-bidding-documents-engineering-procurement-goods-construction-321899.aspx?tab=1) bidding dossier;

Circular No. [**14/2016/TT-BKHDT** of the Ministry of Planning and Investment dated 29 September 2016 detailing the preparation of non-consultancy bidding dossier;](http://vbqppl.mpi.gov.vn/Pages/default.aspx?itemId=018fd008-3e53-4879-be51-3d7695584307&amp;list=documentDetail)

Circular No. [**15/2016/TT-BKHDT** of the Ministry of Planning and Investment dated 29 September 2016 guiding the preparation of pre-qualification dossier,  bidding dossier for the selection of investors carrying PPP projects;](http://vbqppl.mpi.gov.vn/Pages/default.aspx?itemId=84e5958a-7000-4d85-b293-5706a14c4b06&amp;list=documentDetail) and

Circular No. **16/2016/TT-BKHDT** of the Ministry of Planning and Investment dated guiding the preparation of pre-qualification dossier, bidding dossier for the investor carrying land use projects.

## b. Does the legislation relate to or interact with any applicable trade agreement, such as the European Union procurement rules, WTO Government Procurement Agreement (GPA) or the procurement requirements of the North American Free Trade Agreement (“NAFTA”)?

Although Vietnam has become a member of several international organizations, including the World Trade Organization ("WTO") and the Association of Southeast Asian Nations ("ASEAN"), Vietnam has not made any commitments to any agreement on government procurement under such organization (for example, the WTO Government Procurement Agreement ("WTO GPA")). However, on 5 December 2012, Vietnam had submitted a written request to the Government Procurement Committee to participate in the Committee as an observer.

Vietnam and EU had officially concluded negotiation of the European Union - Vietnam Free Trade Agreement ("EVFTA") on 1 December 2015. The text of the agreement was announced on 1 February 2016. At present, both Vietnam and the European Union are reviewing the agreement and plan to sign the agreement in 2017. The EVFTA is expected to come into effect in 2018.

Most EVFTA's commitments on government procurement are compatible with Vietnamese legislations on bidding. These commitments are essential obligations of general international tendering practices (such as definitions, basic principles relating to tender documentation, etc), or general obligations on transparency and competition in tendering process and procedure (such as issues relating to notice of intended procurement and post-award information, etc). The Bidding Law is considered as compatible with major commitments in EVFTA regarding Government Procurement.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) For example the principle of using electronic means under the Bidding law is compatible with the commitments under the EVFTA on government procurement.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) VCCI Report on the review and assessment of Vietnamese Law with regard to EVFTA.

## c. What are the basic underlying principles of the legal framework?

Basic principles underlying Vietnam's bidding legal framework are fairness, transparency and economic efficiency.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) These principles, which can be found in provisions on bidding information (which requires certain kinds of information to be published in a bidding newsletter and on the bidding website of the State bidding administrative body), include: assurance of competitiveness in bidding process; prohibited acts in bidding; and provision on currency to be used in bidding (in Vietnam, the currency to be used in bidding should be stipulated in the bidding invitation documents on the principle of one currency for one specific volume).

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Articles 2.2, 3.2 Bidding Law.

## d. Is aerospace and defense procurement treated differently from other types of procurement?

The Bidding Law's scope covers projects financed by the State for procurement of assets for the purpose of maintaining regular activities of state bodies, political organizations, socio-political organizations, socio-political-occupational organizations, social organizations, socio-occupational organizations and units of the armed forces.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) However, as of the date hereof, there have been no specific regulations issued by the relevant ministries or agencies regarding aerospace and defense procurement due to the sensitivity of this matter and for national security purpose. Therefore aerospace and defense procurements information are not easily accessed through public information, i.e. newspaper, online.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 1.1(d), Bidding Law.

# 2. Application of the Statutory Procurement Laws

## a. Which public agencies are covered by the laws?

The Bidding Law does not categorize its subjects into public or private agencies. Subjects of the Bidding Law are:[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

organizations and individuals participating in or related to bidding activities for bidding packages belonging to the projects governed by the Bidding Law;[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2) and

organizations and individuals with projects not within the governing scope of the Bidding Law but choose to apply the Bidding Law.

Projects governed the Bidding Law are:[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

Selection of consultancy or non-consultancy service providers and goods or construction and installation contractors for:

development investment projects funded by state capital of state bodies, political organizations, socio-political organizations, socio-politico-professional organizations, socio-professional organizations, social organizations, people's armed forces units or public non-business units;

development investment projects of state owned enterprises;

development investment projects with state capital or state owned enterprises capital accounting for 30% or more of the total investment capital, or less than 30% but exceeding VND 500 billion (approximate USD 23 million);

procurement funded by state capital to maintain routine operations of state bodies, political organizations, socio-political organizations, socio-politico-professional organizations, socio-professional organizations, social organizations, people's armed forces units or public non-business units;

procurement funded by state capital to supply public products or services;

purchase of national reserve goods with state capital;

purchase of medicines and medical supplies by state capital; health insurance fund, revenues from medical examination and treatment services, and other lawful revenue sources of public health entities;

Selection of consultancy or non-consultancy services or goods in Vietnamese territory for the implementation of offshore direct investment projects of Vietnamese enterprises with state capital accounting for 30% or more of the total investment capital, or less than 30% but exceeding VND 500 billion (approximate USD 23 million);

Selection of investors to implement investment projects in the form of Public Private Partnership (PPP) or land-using investment projects;

Selection of contractors in the field of petroleum, except for the selection of contractors to provide petroleum services directly related to petroleum exploration, field development and exploitation in pursuant to the Petroleum Law.

Public agencies are for examples Governmental ministries, Provincial authorities, State-owned enterprises are all subject to comply with the Bidding Law and regulations.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 2, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 1, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 1, Bidding Law.

## b. Which private entities are covered by the laws?

Private entities invest in the projects where state capital or state owned enterprises capital accounting for 30% or more of the total investment capital, or less than 30% but exceeding VND 500 billion (approximate USD 23 million) shall be subject to the Bidding Law.

State capital means: "*state budget capital; national debentures, government bonds, municipal bonds; ODA, concessional loan of donors; capital from the fund for development of non-business activities; development investment credit capital of the State; credit capital guaranteed by the Government; loan secured with state property; development investment capital of state enterprises; value of land use rights*".[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

For example, a private entity invests in a construction project with the total investment capital of VND 400 billion, and 30% or more of such total investment capital comes from loan with Government's guarantee, or from ODA fund, then such private entity must apply the Bidding Law in order to select contractors for its project.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 4.44, Bidding Law.

## c. Are co-operations between contracting authorities exempted from public procurement law? If so, what are the conditions for the exemption?

No, public bodies using state capital to fund development or investment projects are subject to the Bidding Law.

Please refer to Section 2(a) above to determine the threshold of state capital which will determine whether the project will be subject to the Bidding Law.

## d. Which types of contracts are covered?

The Bidding Law covers the following types of contracts:

for private projects or public projects: contract with contractors including lump-sum contracts, fixed unit price contracts, time-based contracts and percentage-based contracts;[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) and

for PPP projects between State authorised authority and private parties: Build-Operate-Transfer, Build-Transfer-Operate, Build-Own-Operate, Build-Transfer contracts and other types of contracts prescribed by regulations on investment.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 62, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 68, Bidding Law.

## e. How are changes to an existing contract dealt with? Do changes require a new procurement procedure?

Any changes to the existing contract must be specified in the contract, or other agreements regarding the conditions of the existing contract (if any)[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) and such changes may only apply during the validity duration of the existing contract.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

Changes to contract price is only applicable for fixed unit price contracts, time-based contracts and percentage-based contracts, but **not** the lump-sum contracts.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3) After adjustment, contract prices must not exceed approved bidding package prices or cost estimates. For a project or cost estimate consisting of many bidding packages, the total contract price after being adjusted must not exceed the approved total investment or procurement cost estimate.[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4) For contracts with adjustable unit prices, the adjustment of unit price may be made upon the occurrence of price changing elements and apply only to work volume implemented according to the schedule stated in the contracts or the adjusted schedule under the Bidding Law.[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5)

The contract performance schedule is adjusted only where (i) there is force majeure event which is not related to any violation or mistake of contracting parties; (ii) the scope of work, design and construction measures are changed as a result of objective element, which affect the contract's performance schedule; and (iii) the hand over of site is not in accordance with the contract, which affect the contract's performance schedule but not die to the contractor's fault.[[6]](https://resourcehub.bakermckenzie.com/en#_ftn6) Where the adjustment prolongs the project completion schedule, it must be reported to a competent person for consideration and decision. Competent person is defined as the person who approves a project or decides on procurement in accordance with law and for investor selection, the competent person is the head of the competent state agency as defined by law.[[7]](https://resourcehub.bakermckenzie.com/en#_ftn7) If the adjustment does not prolong the project completion schedule, no report is required provided that parties must reach an agreement regarding the adjustment.[[8]](https://resourcehub.bakermckenzie.com/en#_ftn8)

In addition, a transfer of contract to new contractors is prohibited where: (i) part of works under a bidding package is valued at either 10% or more or less than 10% of the contract price but over VND 50 billion (approximate USD 2.3 million) after subtracting the value of works to be performed by subcontractors;[[9]](https://resourcehub.bakermckenzie.com/en#_ftn9) project owners or supervision consultants allowing contractors to transfer works to be executed by contractors to others, except those to be performed by subcontractors as specified in the contract.[[10]](https://resourcehub.bakermckenzie.com/en#_ftn10)

If the investment purpose and scope stated in the bidding dossier or dossier of requirements are changed, it may cause the bid to be cancelled.[[11]](https://resourcehub.bakermckenzie.com/en#_ftn11)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 67.1, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 67.2, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 67.3, Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 67.4, Bidding Law.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 67.5, Bidding Law.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Article 67.6, Bidding Law.

[[7]](https://resourcehub.bakermckenzie.com/en#_ftnref7) Article 4.34, Bidding Law.

[[8]](https://resourcehub.bakermckenzie.com/en#_ftnref8) Article 67.7, Bidding Law.

[[9]](https://resourcehub.bakermckenzie.com/en#_ftnref9) Article 89.8(a), Bidding Law.

[[10]](https://resourcehub.bakermckenzie.com/en#_ftnref10) Article 89.8(b), Bidding Law.

[[11]](https://resourcehub.bakermckenzie.com/en#_ftnref11) Article 17.2, Bidding Law.

## f. What is the applicable regime for framework agreements?

Framework agreements apply for centralised procurement (please see section 7(a) for the discussion of centralised procurement).

Under the Bidding Law, a framework agreement in centralised procurement is a long-term agreement between a centralised procurement unit and one or more than one selected contractor, including criteria and conditions which serve as a ground for procurement under each specific contract. The validity duration of a framework agreement shall be specified in the contractor selection plan and must not exceed 3 years.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

Base on the size and characteristics of a bidding package, a centralised procurement unit shall specify detailed contents of the framework agreement in the bidding dossier which must have the following contents:

Scope of supply of goods or services, statement of quantity of goods or services;

Tentative time and place of goods delivery or service provision;

Conditions for goods or service delivery; advance, payment and contract liquidation;

Price cap applicable to each type of goods or service;

Warranty and maintenance conditions; training and instructions for use of goods or service;

Responsibilities of the goods or service supplier;

Responsibilities of the unit directly signing the contract on procurement and use of goods or services;

Responsibilities of the centralised procurement unit;

Effective time of the framework agreement;

Sanctions for contractual breaches;

Other related contents.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 45, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 72, Decree No. 63.

## g. What is the applicable regime for public-private partnerships (PPPs)?

The key regulations of the PPPs are provided by Decree No. 15 and Decree No. 30.

Decree No. 15 governs (i) sectors and requirements, execution procedures of the investment projects under the PPP's form; (ii) management mechanism and use of state budget for the execution of investment projects; (iii) government's investment incentive and assurance policies; and (iv) government agencies' responsibilities for the management of investment projects developed in the form of public-private partnership.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

Decree No. 30 provides guidelines regarding the selection of investor to implement investment projects in the form of PPP or land using investment projects, including: (i) PPP projects as prescribed by the Government and (ii) investment project using land with high commercial value that require the selection of investor on the list of approved projects to develop constructions in urban areas, new urban areas; commercial housing, commercial and service works; multi-purpose complexes which are not PPP projects.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 1, Decree No. 15.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 1.1, Decree No. 30.

## h. How are concessions dealt with?

Concessions are principally governed by Decree No. 15, i.e. the PPP project agreements.

Conditions for concessions' award are:

the investors must be selected through open bidding or direct appointment;[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

regulatory agencies shall organize preliminary negotiation with the investor that is selected regarding the project contract's contents;[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2) and

conditions, investors selection procedures and concession granted to the investor in the bidding process are subject to Bidding Law and relevant guiding regulations.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 29.1, Decree No. 15.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 30.1, Decree No. 15.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 29.3, Decree No. 15.

## i. Are there anti-avoidance rules (including laws on bid rigging)?

Yes, it is prohibited to (i) give, receive or acting as a go-between for bribes; (ii) abuse positions and powers to illegally intervene bidding activities; (iii) collude in bidding; (iv) commit fraud; (v) provide obstacle to the bidding process; (vi) fail to ensure fairness and transparency; (vii) disclose or receive certain documents and/or information during the process of contractor or investor selection; (viii) transfer contracts to new contractors illegally (please refer to Section 2(e)) and (ix) organise the selection of contractors when capital sources for bidding package have not been identified, leading to debt owing by contractors.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 89, Bidding Law.

# 3. Procurement Procedures

## a. What procurement procedures can be followed?

Depending on the specific forms and methods of bidding and specific contents of a bidding package, the process may vary. Under the bidding regulations, the bidding process may be generalized as follows:

Approval of contractor selection plan. The plan will itemize the names of the bidding packages in a certain project, and information about price, financing source, bidding method, schedule, form of contract and schedule for contract performance of each bidding package. Such a bidding plan must be approved by the competent person. The plan submitted by the project owner and approved by the competent person within 05 days, from the date of receipt of an appraisal report.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

Issuance of dossier for expression of interest (EOI), dossier of invitation to pre-qualification, bidding dossier or dossier of requirement. Such dossiers must be issued within 03 working days by the project owner after the first date of publication of notice of invitation expression of interest, notice of pre-qualification invitation, notice of bid invitation, notice of invitation for offers, or sending of letters inviting submission of bidding before time of bid closing.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

Preparation of (i) dossier for EOI is at least 10 days (for domestic bidding) or 20 days (for international bidding) by the contractor from the first date of issuance of invitation for EOI dossier prior to the date of bid closing. The contractor must submit the dossier before the date of bid closing;[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3) (ii) dossier for participation in pre-qualification is at least 10 days (for domestic bidding) or 20 days (for international bidding) by the contractor from the first date of issuance of invitation for pre-qualification dossier prior to the date of bid closing. The contractor must submit dossier before the date of bid closing;[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4) (iii) dossier of proposal is at least 5 days by the contractor from the first date of issuance of dossier of requirement prior to the date of bid closing. The contractor must submit dossier before the date of bid closing;[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5) and (iv) bidding dossier is at least 20 days (for domestic bidding) or 40 days (for international bidding) by the contractor from the first date of issuance of inviting bidding dossier to the date of bid closing. The contractor must submit dossier before the date of bid closing.[[6]](https://resourcehub.bakermckenzie.com/en#_ftn6)

Bid security. Bid security applies for (i) open bidding, limited bidding, competitive offer for bidding packages to provide non-consultancy services, procure goods or for construction and installation and mixed bidding packages, and (ii) open bidding and contractor appointment for selection of investors.

Contractors or investors shall provide bid security before the time of bid closing for bid dossiers or dossiers of proposals. If the method of two-stage bidding is applied, contractors shall provide bid security in the second stage.

The value of bid security are 1% to 3% of the bidding package price for the selection of contractors and 0.5% to 1.5% of the total investment for the selection of investors. The validity duration of bid security prescribed in bidding dossiers or dossiers of requirements is equivalent to the validity duration of bid dossiers or dossiers of proposals plus 30 days.[[7]](https://resourcehub.bakermckenzie.com/en#_ftn7)

Bid opening. The submitted bids must be opened immediately after the bid closing time, on the date and at the location stated in the bid invitation documents. In this step, the main information about each of the bids will be disclosed.

Bid evaluation. The party calling for bids will review and evaluate the opened bids on the basis of the requirements of the bid invitation documents and evaluation criteria.

The methods of evaluation of bid dossiers for bidding packages to provide non-consultancy services, procure goods, or for construction and installation, or mixed bidding include (i) lowest bid method or (ii) evaluation bid method or (iii) method of combined techniques and bid.[[8]](https://resourcehub.bakermckenzie.com/en#_ftn8)

Methods of evaluation for bidding packages to provide consultancy services include (i) lowest bid methods or (ii) fixed bid method or (iii) method of combined techniques and bid or (iv) technique-based method.[[9]](https://resourcehub.bakermckenzie.com/en#_ftn9)

The maximum time limit for evaluation of EOI dossiers and dossiers for participation in prequalification is 20 days (for domestic bidding) or 30 days (for international bidding), for dossiers of proposals is 30 days (for domestic bidding) or 40 days (for international bidding), for bid dossiers is 45 days (for domestic bidding) or 60 days (for international bidding) from the date of bid closing to the date of submission of contractor selection results by the bid solicitor to the project owner for approval. If necessary, the time limit for the evaluation of bid dossiers or dossiers of proposals might be extended for another 20 days (maximum).[[10]](https://resourcehub.bakermckenzie.com/en#_ftn10)

Bid appraisal. The time limit for appraisal is 20 days from the date of receipt of a complete dossier for each content subject to appraisal including: contractor selection plan, dossier of invitation for EOI, dossiers of invitation to prequalification, dossiers of requirements or contractor selection results.[[11]](https://resourcehub.bakermckenzie.com/en#_ftn11)

Bid approval. The maximum time limit for approval of dossiers of invitation for EOI, dossiers of invitation to prequalification, dossiers of requirements or bidding dossiers is 10 days from the date of receipt of the written request of the bid solicitor for approval of such dossiers, or of the appraisal report where appraisal is requested.[[12]](https://resourcehub.bakermckenzie.com/en#_ftn12) The time limit for approval or giving opinions on handling of contractor selection results is 10 days from the date of receipt of the written request of the bid solicitor for approval of contractor selection results, or of the appraisal report in cases of appraisal of proposals is 180 days from the date of bid closing.[[13]](https://resourcehub.bakermckenzie.com/en#_ftn13)

Bid results. The bid result must be approved and then announced by the project owner.[[14]](https://resourcehub.bakermckenzie.com/en#_ftn14) The time limit to send the notices of contractor selection results to contractors who have participated in the bidding is 5 working days after the results have been approved.[[15]](https://resourcehub.bakermckenzie.com/en#_ftn15)

For the selection of investors for PPP projects, while the general procedures are identical to Bidding Law, the timeline procedures of PPP investors are longer.[[16]](https://resourcehub.bakermckenzie.com/en#_ftn16)

Contract negotiation. Having successfully won the bid, the contractors/investors shall be called for contract negotiation. Before the contract takes effect, contractors/investors may be required to provide contract performance security ranging from 2% - 10% of the winning bid.[[17]](https://resourcehub.bakermckenzie.com/en#_ftn17)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Articles 12.1(a), 37, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 12.1(b), Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 12.1(c), Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 12.1(d), Bidding Law.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 12.1(dd), Bidding Law.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Article 12.1(e), Bidding Law.

[[7]](https://resourcehub.bakermckenzie.com/en#_ftnref7) Article 11, Bidding Law.

[[8]](https://resourcehub.bakermckenzie.com/en#_ftnref8) Article 39, Bidding Law.

[[9]](https://resourcehub.bakermckenzie.com/en#_ftnref9) Article 40, Bidding Law.

[[10]](https://resourcehub.bakermckenzie.com/en#_ftnref10) Article 12.1(g), Bidding Law.

[[11]](https://resourcehub.bakermckenzie.com/en#_ftnref11) Article 12.1(h), Bidding Law.

[[12]](https://resourcehub.bakermckenzie.com/en#_ftnref12) Article 12.1(i), Bidding Law.

[[13]](https://resourcehub.bakermckenzie.com/en#_ftnref13) Article 12.1(k), Bidding Law.

[[14]](https://resourcehub.bakermckenzie.com/en#_ftnref14) Article 74.1(dd), Bidding Law.

[[15]](https://resourcehub.bakermckenzie.com/en#_ftnref15) Article 12.1(n), Bidding Law.

[[16]](https://resourcehub.bakermckenzie.com/en#_ftnref16) Article 6, Decree No. 30.

[[17]](https://resourcehub.bakermckenzie.com/en#_ftnref17) Article 66.2, 66.3, Bidding Law.

## b. What status do electronic means/procedures have?

Online bidding means bidding conducted via the national bidding network.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) Online selection of contractors shall apply to bidding packages for consultancy services, non-consultancy services, goods procurement, construction, installation, and mixed contracts that are awarded through open bidding, limited bidding, competitive offer, direct procurement, and direct appointment of contractor.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

The following information must be published on national bidding network and bidding newspaper:[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

contractor or investor selection plans;

notice of invitation for EOI and notices of invitation to prequalification;

notices of invitation for offers, notices of invitation for bids;

shortlists;

contractor or investor selection results;

bid opening results;

information on the handling of violations of the Bidding Law;

legal documents on bidding;

lists of investment projects in PPP's form and land-using projects;

database on contractors, investors, experts, lectures and bidding training institutions; and

other relevant information.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 4.13, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 84.1, Decree No. 63.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 8.1, Bidding Law.

## c. Where are contract notices, i.e. calls for bid, published?

The link can be accessed at:

<http://muasamcong.mpi.gov.vn/>

[http://thongtindauthau.com.vn](http://thongtindauthau.com.vn/)

<http://baodauthau.vn/>

Others website of respective governmental agencies, provinces (where applicable).

## c. Can certain prospective bidders be excluded from the competition?

Yes, certain prospective bidders can be excluded from the competition if they do not meet certain provisions on their eligibility as organizations or individuals as well as bidding conditions.

Specifically, bidding organizations can be excluded from the competition if they do not meet the following eligibility requirements:[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

possess an establishment and operation registration granted by competent agency of the country in which it is operating;

it is an independent financial accounting entity;

not in the course of dissolution or bankruptcy or insolvency as prescribed by the law;

having registered on the national bidding network;

follows competitiveness requirements under bidding regulations;

not banned from participating in bidding;

named in the short list if such list has been selected; and

for foreign contractors participating in international bidding in Vietnam, these foreign contractors must either enter into a partnership with a domestic contractors or use a domestic sub-contractor , unless there is no qualified domestic contractor for the bidding package's works.

Individual bidders can be excluded from the competition if they do not meet the eligibility requirements below:[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

have full capacity for civil acts pursuant to the law of the country of which such individual is a citizen;

have lawful registration for operation or an appropriate professional certificate issued by the competent authority;

the individual is not subject to investigation for a criminal offence; and

not banned from participating in bidding.

Moreover, bidders (whether organizations or individuals) may even be excluded from competition if they do not satisfy bidding conditions for one bidding package, which are:

in the case of a partnership, there must be a written agreement between the partners specifying the person heading the partnership and the general and specific responsibilities of each partner with respect to the bidding package works.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 5.1, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 5.2, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 5.3, Bidding Law.

# 4. Bidder Selection

## a. Are there any rules on the selection criteria?

The selection of bidder must comply with the forms and methods of selection.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) The selection forms include: open bidding,[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2) limited bidding,[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3) direct appointment,[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4) competitive offer,[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5) direct procurement,[[6]](https://resourcehub.bakermckenzie.com/en#_ftn6) self-implementation,[[7]](https://resourcehub.bakermckenzie.com/en#_ftn7) centralised procurements,[[8]](https://resourcehub.bakermckenzie.com/en#_ftn8) regular procurement[[9]](https://resourcehub.bakermckenzie.com/en#_ftn9) and purchase of medicine, and medical equipment.[[10]](https://resourcehub.bakermckenzie.com/en#_ftn10)

Methods of bidder selection including: single-stage single-envelope method,[[11]](https://resourcehub.bakermckenzie.com/en#_ftn11) single-stage two- envelopes method,[[12]](https://resourcehub.bakermckenzie.com/en#_ftn12) two-stages one-envelope method [[13]](https://resourcehub.bakermckenzie.com/en#_ftn13) and two-stages two-envelopes method.[[14]](https://resourcehub.bakermckenzie.com/en#_ftn14)

The methods of evaluation of bid dossiers for bidding packages to provide non-consultancy services, procure goods, or for construction and installation, or mixed bidding are (i) lowest bid method or (ii) evaluation bid method or (iii) method of combined techniques and bids.[[15]](https://resourcehub.bakermckenzie.com/en#_ftn15)

Lowest bid method applies to simple and small sized bidding packages in which technical, financial or commercial proposals are regarded to be on the same level if they satisfy requirements stated in bidding dossiers. The evaluation criteria of bid dossiers are criteria for evaluation of capacity and experience and other criteria of bidding packages. For bid dossiers which have been evaluated as satisfying the evaluation criteria, shall be compared and ranked after the error correction or deviation adjustment. Contractors shall be ranked based on their bids after error correction or deviation adjustment , minus the value of discounts (if any). The contractor with the lowest bid shall be ranked first.[[16]](https://resourcehub.bakermckenzie.com/en#_ftn16)

Evaluation bid method applies to bidding packages where costs can be converted to the same level in terms of technical, financial or commercial elements for the entire usage period of goods or works. Criteria for evaluation of bid dossiers include criteria for evaluation of capacity and experience where prequalification is not applied; criteria for technical evaluation; and criteria for determination of evaluation bid. For bid dossiers which have passed the technical evaluation, comparison and ranking shall be based on the evaluation bid. The contractor with the lowest evaluation bid shall be ranked first.[[17]](https://resourcehub.bakermckenzie.com/en#_ftn17)

Method of combined techniques and bid price applies to IT and telecommunications bidding packages or bidding packages for goods procurement or construction and installation, or mixed bidding packages when the lowest bid method and evaluation bid method cannot be applied. Criteria for evaluation of bid dossiers include criteria for evaluation of capacity and experience if prequalification is not applied; criteria for technical evaluation; and criteria for general evaluation. Criteria for general evaluation shall be developed on the basis of combination of techniques and bids.[[18]](https://resourcehub.bakermckenzie.com/en#_ftn18) For capacity and experience evaluation, the "pass" or "fail" criteria shall be used. For method of combined techniques and bids, the point-rating method shall be used applying the minimum point rate which is up to 70% of total technical points is required.[[19]](https://resourcehub.bakermckenzie.com/en#_ftn19)

The successful contractor who satisfies the following conditions shall be awarded: (i) have a valid bid dossier or dossier of proposals, (ii) have capacity and experience as required, (iii) have satisfied the requirements of technical proposals, (iv) have a deficient deviation not exceeding 10% of his/her bid, (v) have the lowest bid after error correction, deviation adjustment , minus the value of discounts (if any) for the lowest bid method; have the lowest evaluation bid, for the evaluation bid method; or have the highest general point for the method of combination of techniques and bids; (vi) have the proposed winning bid price not exceeding the approved bidding package price. If the cost estimate of the approved bidding package is lower or higher than the approved bidding package price, such cost estimation may replace the bidding package price as the ground for consideration and approval of the bid winner.[[20]](https://resourcehub.bakermckenzie.com/en#_ftn20)

Methods of evaluation for bidding packages to provide **consultancy services by institutions** are (i) lowest bid methods or (ii) fixed bid method or (iii) method of combined techniques and bid price or (iv) technique-based method.[[21]](https://resourcehub.bakermckenzie.com/en#_ftn21)

Lowest bid method applies to simple consultancy bidding packages. Criteria for evaluation of bid dossiers are technical evaluation criteria. For bid dossiers which have passed technical evaluation, comparison and ranking shall be based on bids after error correction or deviation adjustment, minus the value of discounts (if any). The contractor with the lowest bid shall be ranked first.[[22]](https://resourcehub.bakermckenzie.com/en#_ftn22)

Fixed bid method applies to simple consultancy bidding packages, execution costs of bidding packages determined in a specific and fixed manner in bidding dossiers. Criteria for evaluation of bid dossiers is technical evaluation. For bid dossiers which have passed the technical evaluation and with bid price after error correction or deviation adjustment, minus the value of discounts (if any) not exceeding execution costs of bidding packages, comparison and ranking shall base on technical points. The contractor with the highest technical point shall be ranked first.[[23]](https://resourcehub.bakermckenzie.com/en#_ftn23)

Method of combined techniques and bid price applies to consultancy bidding packages where quality and execution cost are critical. Criteria for evaluation of bidding packages are technical evaluation criteria and general evaluation criteria. General evaluation criteria shall be developed based on combination of techniques and bid price. The establishment of general evaluation criteria must adhere to the principle that technical points account between 70-80% and points for bid price are from 20-30% of the total points of the general point scale (100%). The contractor with the highest general point shall be ranked first.[[24]](https://resourcehub.bakermckenzie.com/en#_ftn24)

Technique-based method applies to consultancy bidding packages with advance and specific technical requirements. Criteria for evaluation of bid dossiers are technical evaluation criteria. Upon the establishment of technical evaluation criteria, the minimum technical point must be prescribed to be at least 80% of the total technical point. The contractor with the bid dossier satisfying the prescribed minimum technical point and the highest technical point shall be ranked first and be invited to open dossiers of financial proposals to serve as a ground for contract negotiation.[[25]](https://resourcehub.bakermckenzie.com/en#_ftn25)

For the technical evaluation criteria of the (i) lowest bid methods or (ii) fixed bid method or (iii) method of combined techniques and bid price or (iv) technique-based method, the point-rating method shall apply. Upon the establishment of technical evaluation criteria, the minimum technical point must be prescribed to be at least 70% of the total technical point, except for technique-based method.[[26]](https://resourcehub.bakermckenzie.com/en#_ftn26)

The successful consultancy contractor which satisfy the following conditions shall be the bid winner: (i) have a valid bid dossier or dossier of proposals, (ii) have technical proposals satisfying requirements, (iii) have the lowest bid price after error correction or deviation adjustment, minus the value of discounts (if any)for the lowest bid method; or have the highest technical point for the fixed bid method and technique-based method; or have the highest general point for the method of combination of techniques and bid price; (iv) have the proposed winning bid price not exceeding the approved bidding package price. Where the cost estimate of the approved bidding package is lower or higher than the approved bidding package price, such cost estimate may replace the bidding package price as the ground for consideration and approval of the successful contractor.[[27]](https://resourcehub.bakermckenzie.com/en#_ftn27)

For individual consultancy contractors, criteria for evaluation of bid dossiers are criteria for evaluation of resumes and technical proposals (if any). The contractor with the best resume and technical proposal which satisfies the requirements of the terms of reference shall be ranked first.[[28]](https://resourcehub.bakermckenzie.com/en#_ftn28) An individual consultancy contractor satisfying the following conditions shall be the bid winner: (i) have the best resume and technical proposals (if any) which satisfy requirements of the terms of reference; (ii) have the proposed winning bid not exceeding the approved bidding package price. Where the cost estimate of the approved bidding package is lower or higher than the approved bidding package price, such cost estimate may replace the bidding package price as the ground for consideration and approval of the successful contractor.[[29]](https://resourcehub.bakermckenzie.com/en#_ftn29)

For investors, methods of evaluation of bid dossiers include service charge method, method of capital contribution of the state, method of social benefits and state benefits and combination method. Criteria for evaluation of bid dossiers include criteria for evaluation of capacity and experience, criteria for technical evaluation and criteria for financial evaluation.[[30]](https://resourcehub.bakermckenzie.com/en#_ftn30)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Chapter II, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 20, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 21, Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 22, Bidding Law.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 23, Bidding Law.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Article 24, Bidding Law.

[[7]](https://resourcehub.bakermckenzie.com/en#_ftnref7) Article 25, Bidding Law.

[[8]](https://resourcehub.bakermckenzie.com/en#_ftnref8) Chapter V, Item 1, Bidding Law.

[[9]](https://resourcehub.bakermckenzie.com/en#_ftnref9) Chapter V, Item 2, Bidding Law.

[[10]](https://resourcehub.bakermckenzie.com/en#_ftnref10) Chapter V, Item 3, Bidding Law.

[[11]](https://resourcehub.bakermckenzie.com/en#_ftnref11) Article 28, Bidding Law.

[[12]](https://resourcehub.bakermckenzie.com/en#_ftnref12) Article 29, Bidding Law.

[[13]](https://resourcehub.bakermckenzie.com/en#_ftnref13) Article 30, Bidding Law.

[[14]](https://resourcehub.bakermckenzie.com/en#_ftnref14) Article 31, Bidding Law.

[[15]](https://resourcehub.bakermckenzie.com/en#_ftnref15) Article 39, Bidding Law.

[[16]](https://resourcehub.bakermckenzie.com/en#_ftnref16) Article 39.1, Bidding Law.

[[17]](https://resourcehub.bakermckenzie.com/en#_ftnref17) Article 39.2, Bidding Law.

[[18]](https://resourcehub.bakermckenzie.com/en#_ftnref18) Article 39.3, Bidding Law.

[[19]](https://resourcehub.bakermckenzie.com/en#_ftnref19) Article 39.4, Bidding Law.

[[20]](https://resourcehub.bakermckenzie.com/en#_ftnref20) Article 43.1, Bidding Law.

[[21]](https://resourcehub.bakermckenzie.com/en#_ftnref21) Article 40, Bidding Law.

[[22]](https://resourcehub.bakermckenzie.com/en#_ftnref22) Article 40.1(a), Bidding Law.

[[23]](https://resourcehub.bakermckenzie.com/en#_ftnref23) Article 40.1(b), Bidding Law.

[[24]](https://resourcehub.bakermckenzie.com/en#_ftnref24) Article 40.1(c), Bidding Law.

[[25]](https://resourcehub.bakermckenzie.com/en#_ftnref25) Article 40.1(d), Bidding Law.

[[26]](https://resourcehub.bakermckenzie.com/en#_ftnref26) Article 40.2, Bidding Law.

[[27]](https://resourcehub.bakermckenzie.com/en#_ftnref27) Article 42.1, Bidding Law.

[[28]](https://resourcehub.bakermckenzie.com/en#_ftnref28) Article 40.3, Bidding Law.

[[29]](https://resourcehub.bakermckenzie.com/en#_ftnref29) Article 42.2, Bidding Law.

[[30]](https://resourcehub.bakermckenzie.com/en#_ftnref30) Article 58, Bidding Law.

## b. Is prequalification an option? If so, what are the requirements? What is the procedure?

Yes, prequalification is an option. The Bidding Law provides that depending on the size and characteristics of a bidding package, a prequalification round can be conducted to serve as a basis for the bid solicitor to make a short list of contractor.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) Dossier of invitation to prequalification includes documents specifying requirements on capacity and experience of contractors or investors which are necessary to serve as the basis for the bid solicitor to select a short list of contractors or investors.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

The prequalification requirements are prepared by a bid solicitor.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3) Contents of prequalification requirements are approved by the project owner,[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4) while the prequalification requirements, prequalification results must be approved by the competent person.[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 4.7, Bidding Law..

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 4.27, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 75.1(a), Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 74.1(b), Bidding Law.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 73.8(b), Bidding Law.

## d. Do “blacklists” for bidders exist? If so, what are the conditions for unlisting?

Yes**.** The blacklist of bidder once published shall remain for period of time ranging from 6 months to 5 years depends on the severity of violations of the prohibited acts in bidding.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 122, Decree No. 63.

## e. Does the involvement of a company in the set-up of a procurement procedure exclude the company from said procedure due to conflict of interest?

Yes.

Contractors that submit dossier of EOI or dossiers for participation in prequalification must be legally and financially independent from consultancy contractors that prepare dossiers of invitation for EOI or dossiers of invitation to prequalification; evaluate dossiers of invitation for EOI or dossiers of invitation to prequalification; and appraise the results of invitation for EOI or prequalification.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

When participating in a bid, the contractors must be legally and financially independent from (i) the project owners, bid solicitor; (ii) consultancy contractors that prepare, examine and appraise engineering and cost estimation dossiers; prepare, appraise bidding dossiers and dossiers of requirements; evaluate bid dossiers and dossiers of proposals; appraise results of selection of contractors for the respective bidding package; (iii) other contractors participating in bidding in a bidding package with regarding to limited bidding.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

Consultancy contractors that supervise the contracts performance must be legally and financially independent from contractors that perform such contracts and consultancy contractors that inspect such bidding packages.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

Contractors shall be considered legally and financially independent from other contractors, consultancy contractors, investors or bid solicitor in accordance with the Bidding Law when they meet the following requirements: (i) they must come from different agencies or are not directly managed by the same organization if they are public service providers; (ii) contractors, investors and bid solicitor do not hold more than 30% of shares or contributed capital of each other; (iii) contractors do not hold more than 20% shares or contributed capital of the total shares or capital of the bidder who participates in the limited bidding for a contract; and (iv) bidders and contractors who provide consultancy for that contract are not allowed to hold mutual shares and contributed capital; and either bidder or the consulting contractor must not have more than 20% of its shares and contributed capital held by other organizations and individuals.[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4)

When participating in bidding, investors must be legally and financially independent from the following parties: (i) consultancy contractors for the investment projects in the form of PPP or land-using investment projects by the date of signing project contracts; (ii) consultancy contractors that appraise investment projects in the form of PPP or land-using investment projects by the date of signing project contracts; and (iii) competent state agencies, bid solicitor.[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5)

An investor shall be considered legally and financially independent from other consultancy contractors that prepare and appraise the feasibility study report (for PPP projects of group C, the investor must be independent from the contractors that prepare and appraise the project proposal); from the consultancy contractors that prepare, appraise the pre-qualification dossiers, bidding dossiers, evaluate the pre-qualification dossiers, bid dossiers, appraise pre-qualification results, investor selection results; from competent authorities, and from the bid solicitor prescribed in the Bidding Law [[6]](https://resourcehub.bakermckenzie.com/en#_ftn6) when they meet the following requirements: (i) they must come from different agencies or are not directly managed by the same organization if they are public service providers; (ii) contractors, the competent state agencies and the bid solicitor do not hold more than 30% shares or contributed capital of each other's organizations; (iii) the investors and contractors that prepare, appraise the feasibility study report (for PPP projects of group C, the investor must be independent from the contractors that prepare and appraise the project proposal), consultancy contractors that prepare, appraise the pre-qualification dossiers, bidding dossiers, evaluate the pre-qualification dossiers, bid dossiers, appraise pre-qualification results, investor selection results do not hold shares or contributed capital of each other, do not hold more than 20% shares or contributed capital of the same organisation or individual.[[7]](https://resourcehub.bakermckenzie.com/en#_ftn7)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 6.1, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 6.2, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 6.3, Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 2.4, Decree No. 63.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 6.4, Bidding Law.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Article 6.4, Bidding Law.

[[7]](https://resourcehub.bakermckenzie.com/en#_ftnref7) Article 2.1, Decree No. 30.

## f. Can bidders combine to submit a bid (bidder consortia)? What limitations apply?

Yes, in the case of a partnership, there must be a written agreement between the partners specifying the person heading the partnership and the general and specific responsibilities of each partner with respect to the bidding package works.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

There is no specific limitations under Competition Law.

However, based on Competition Law, where there is a collusion between participating bidders in order for one or more parties to win a bid for supply of goods and services, such act is classified as agreement in restraint competition.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2) The collusion between participating bidders mean: (i) where one or more parties to the agreement withdraw from participating in the bidding or retract their submitted bids so that one or more parties to the agreement will win the bid; (ii) where one or more parties to an agreement cause difficulties to non-parties to the agreement who participate in the bidding, by refusing to supply raw materials or sign subcontracts or otherwise; (iii) all parties to an agreement agree to offer non-competitive bids or competitive bids accompanied with conditions which are unacceptable to the bid solicitor so as to pre-determine the parties or party who will win the bid; (iv) all parties to an agreement pre-determine the number of times each party will win the bid for a given period of time; and (v) other acts prohibited by law.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

Consequently, the violators of the goods and/or services provisions agreement shall be subject to (i) a monetary fine equivalent to 10% of their turnover of the financial year before the year where the violation is committed;[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4) (ii) confiscation of the profit from the violation (where applicable),[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5) and (iii) removal of illegal clauses from the agreement (where applicable).[[6]](https://resourcehub.bakermckenzie.com/en#_ftn6)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 5.3, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 8.8, Competition Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 21, Decree No. 116/2005.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 15.1, Decree No. 71/2014.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 8.2(a), Decree No. 71/2014.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Article 8.2(b), Decree No. 71/2014.

## g. Can members of a bidder consortium be changed during a procurement procedure?

There is no express provision dealing with the change of consortium bidders during a procurement procedure. However, any documents sent by contractors to bid solicitors after the time of bid closing to modify or supplement the submitted bid dossiers shall be regard as invalid, except documents sent by contractors to clarify bid dossier at the request of bid solicitors or documents to prove contractors' eligibility, capacity and experience.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

In addition, regarding the validity of the bid dossiers, the evaluation shall base on evaluation criteria and other requirements stated in bidding dossiers, submitted bid dossiers and contractors' documents explaining and clarifying their bid dossier in order to select fully capable and experienced contractors that have feasible solutions to perform the bidding packages.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2) At the time of signing, selected contractor must satisfy requirements on technical and financial capacity for execution of bidding packages.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

Therefore, if the change in consortium bidders is made after the time of bid closing, the bid can be rejected as a result of the bid failing to satisfy requirements for the bidding dossier.[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 14.3(b), Decree No. 63

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 15.1, Decree No. 63.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 64.2, Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 17.1, Bidding Law.

## h. Do limitations apply for participation of related bidders in the same procurement procedure with competitive bids?

Yes, because under the Bidding law, contractors must be legally and financially independent from (i) the project owners, bid solicitor; (ii) consultancy contractors that prepare, examine and appraise engineering and cost estimation dossiers; consultancy contractors who prepare, appraise bidding dossiers and dossiers of requirements; consultancy contractors who evaluate bid dossiers and dossiers of proposals; and consultancy contractors who appraise results of selection of contractors for the respective bidding package; (iii) other contractors participating in bidding in a bidding package with regarding to limited bidding.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 6.2, Bidding Law.

## i. Is there a special regulation or a special requirement for a foreign company to participate in a procurement procedure?

A foreign company that wishes to participate in a procurement procedure must satisfy eligibility requirements stated in Section 4(c).

# 5. Specifications

## a. Are there any rules on the specifications?

Yes. Specifications are subject to the following requirements:

Specifications shall not state any conditions to restrict the participation of bidders, or to favour certain bidders which will result in unfair competitions.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

Specifications on trademarks and/or origins of the goods are prohibited. Nevertheless, the bid solicitor may describe bid requirements using trademarks, where it is not feasible to describe the goods only by its technical characteristics, technological designs or standards; in this case, the bid solicitor must include the phase "or the equivalent" beside the specified trademark.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

The contractors shall be required to submit producers' licenses or written authorisation for goods sale or papers of proving partnership relations only for specialised and complicated goods that require specification of producers' responsibility in providing after sell services such as warranty, maintenance, repair and supply of accessories and spare parts.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 12.2, Decree No. 63.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 89.6(i), Bidding Law; Article 12.7, Decree No. 63.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 12.7, Decree No. 63.

## b. Are bidders allowed to change the specifications or submit their own standard terms of business?

Bidders are allowed to change the specifications if there is an error in the specifications (e.g. numerical mistakes in calculating the bid price). In this case, the contractor could highlight such errors and propose alternative solutions in their bids.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) In addition, bidders may suggest construction methods other than those stated in bidding dossiers.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 19.4(b), Decree No. 63.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 12.4(b), Decree No. 63.

## c. Is the protection of Small and Medium Enterprises addressed in procurement legislation? If so, how?

Yes.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) Small-sized enterprises are entitled to preferential treatment in contractor selection when participating in domestic bidding. The preferences are calculated in the course of evaluation of bid dossiers or dossiers of proposals by the following method:

Add points to the evaluation scores of contractors that are not entitled to preferences; or

Add amount of money to the bids or evaluation bids of contractors that are not entitled to preferences.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

For construction and installation bidding packages worth not exceeding VND 5 billion (approximate USD 2.3 million), only small enterprise contractors as prescribed by the law are eligible to participate in domestic bidding.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 14.3(c), Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 14.4, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 6.3, Decree No. 63.

# 6. Contract Award

## a. Are there any rules on the award of contracts?

Yes. Award criteria for consultancy services bidding packages:[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

An institutional consultancy contractor may be considered to be awarded a contract if the contractor possesses:

A valid bid dossier or dossier of proposals;

Technical proposals satisfying requirements of the bid solicitor;

The lowest bid, subsequent to correction, adjustment of deviation, and minus of discounts (if any), for the lowest bid method; or the highest technical point, for the fixed bid method and technique-based method; or the highest general point, for the method of combination of techniques and bids; and

The proposed winning bid that does not exceed the approved bidding package price. In case the cost estimate of the approved bidding package is lower or higher than the approved bidding package price, such cost estimate may replace the bidding package price as the ground for consideration and approval of the bid winner.

An individual consultancy contractor may be considered to be awarded contract if the contractor possesses:

The best resume and technical proposal (if any) and satisfies requirements of the term of reference;

The proposed winning bid that does not exceed the approved bidding package price. In case the cost estimate of the approved bidding package is lower or higher than the approved bidding package price, such cost estimate may replace the bidding package price as the ground for consideration and approval of the bid winner.

Award criteria for non-consultancy services, good procurement or construction and installation bids include:[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

A valid bid dossier or dossier of proposals;

The capacity and experience as required;

Deficient deviation that does not exceed 10% of the contractor's bid;

The lowest bid, subsequent to correction, adjustment of deviation, and minus of discounts (if any), for the lowest bid method; the lowest evaluation bid, for the evaluation bid method; or the highest general point, for the method of combination of techniques and bids; and

The proposed winning bid that does not exceed the approved bidding package price. In case the cost estimate of the approved bidding package is lower or higher than the approved bidding package price, such cost estimate may replace the bidding package price as the ground for consideration and approval of the bid winner.

Award of contracts is the consequence of contract negotiation step and must comply with the negotiations' basis, principles and contents. The first ranked contractor shall be invited to negotiate contract.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3) The invited contractors who refuse to negotiate contracts will not be reimbursed with their bid security.

Contract negotiation must be based on:[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4)

the bid evaluation report of the bid dossier;

the bid dossier and any contractors' documents clarifying the bid dossier; and

the bid invitation document.

The contract negotiation principle are as follows:[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5)

the contents that have already proposed by contractors and matching the requirements of bidding shall not be negotiated;

the negotiation of a contract must not change the unit price offered by the contractor after error correction and deviation adjustment minus the value of discounts (if any). During the evaluation of the bid dossier and contract negotiation, if there is a disparity of the bidding volume stated in the bill of quantities which smaller than stated in the design dossier, the bid solicitor shall request the contractor to supplement the deficient volume based on the offered unit price; if there is no unit price in the bid dossier, the bid solicitor shall report to the project owner for consideration and decision to apply the unit price stated in the approved cost estimate for the deficient volume or the unit price of another contractor that has passed the technical evaluation if this unit price is lower than that approved in the bidding package's cost estimate; and

the negotiation on deficient deviation shall base on the lowest offered unit price among those in other bid dossiers which have passed the technical evaluation.[[6]](https://resourcehub.bakermckenzie.com/en#_ftn6)

Contents subject to negotiation include:[[7]](https://resourcehub.bakermckenzie.com/en#_ftn7)

contents that are unclear, unspecified or differed between the bidding dossier and bid dossier and, that may lead to potential disputes;

errors in the bid dossier detected and proposed by the contractor, including changes or alternative plans proposed by the contractor if the bidding dossier allows the contractor to offer alternative plans;

human resources;

new matters arising from the bidder selection process; and

other matters that may deem necessary.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 42, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 43, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 19.1, Decree No. 63.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 19.2, Decree No. 63.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 19.3, Decree No. 63.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Article 19.3, Decree No. 63.

[[7]](https://resourcehub.bakermckenzie.com/en#_ftnref7) Article 19.4, Decree No. 63.

## b. Are there any limitations regarding the offered bid price?

Under the Bidding Law, when a bid dossier or dossier of proposals contains abnormal low unit prices, affecting the bidding package quality, the bid solicitor may request contractors to give written explanations and clarifications about the feasibility of these abnormal unit prices. If the contractor's explanations are unclear and unpersuasive, these offered unit prices shall not be accepted and concurrently be considered deviation that shall be adjusted under regulations like deficient offers of bid dossiers or dossiers of proposals compared with the requirement stated in the Law.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

In addition, when the proposed winning bid is below 50% of the approved bidding package price, an inter-branch appraisal team may be formed to request the contractor to clarify elements constituting the bid offering costs and considers relevant evidence such as: (i) economic elements related to construction methods, manufacturing or service provision process; (ii) applied economic solutions or the contractor's special advantages that create price advantages; and (iii) the origin of goods, services and personnel that are supplied for the bidding package, which must ensure the compliance with regulations. If the above conditions are satisfied, the bid dossier or dossier of proposal of the contractor shall still be approved to win the bid.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 117.6, Decree No. 63.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 117.9, Decree No. 63.

## c. Are there any rules on alternative bids?

Yes. If the bidding dossier allows the contractor to offer alternative plans when there is deviation detected and proposed by the contractor in the bid dossiers, then the contractor are allowed to offer an alternative bids. During the contract negotiation process, such deviations will be further negotiated between the bid solicitor and the selected contractor.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 19.4(b), Decree No. 63.

# 7. Exemptions to Competitive Bidding

## a. Are there any exemptions to competitive bidding, i.e. under what conditions is a direct award/single sourcing permissible?

Yes. Under the Bidding Law, all project processes discussed in Section 2(a) above are subject to open bidding by default. The open bidding process does not limit the number of bidders nor does it contain conditions restricting the participation of bidders or favouring one or more bidders. It is prohibited to use a bidder selection process other than open bidding when the conditions are not suitable.

When certain conditions are met, the selection of a contractor can also be done in the following forms:

Limited bidding. This process applies to a bid package which has high technical requirements or which involve special techniques that can only be satisfied by some bidders;[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

Direct appointment. The direct appointment of a contractor applies to:[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

(i) bidding packages which need to be executed to immediately remedy or promptly handle consequences of *force majure* events; or (ii) bidding packages which need to be executed to protect state secrets; or (iii) bidding packages which need to be executed immediately to prevent direct harm to the life, health and property of local communities or advert serious impacts on adjacent works; or (iv) bidding packages to purchase medicine, chemicals, medical supplies and equipment for epidemic and disease prevention and combat in emergency cases;

emergency bidding packages which need to be executed to defend national sovereignty, national boundaries and islands;

(i) bidding packages to provide consultancy or non-consultancy services, procurement of goods which must be purchased from contractors that have previously executed packages in order to ensure technological compatibility and copyright which cannot be purchased from other contractors; or (ii) bidding packages for research or testing purposes; or (iii) for the purchase of intellectual property rights;

bidding packages (i) to provide consultancy on elaboration of feasibility study reports or construction engineering which are designated to the authors of work architecture designs that win the bidding or are selected when they satisfy the prescribed capacity conditions; or (ii) to construct monuments, relief, grant murals and artistic works subject to copyright from the stage of creation to be stage of construction;

bidding packages (i) to remove technical infrastructure facilities directly managed by a specialized unit to serve the ground clearance; or (ii) to sweep bombs, land mines, and explosive objects to prepare for construction sites;

bidding packages to provide public products or services, and bidding packages with prices within the limit eligible for contractor appointment according to the Government's regulations and suitable to socio-economic conditions in each period.

Direct procurement.

Direct procurement applies to bidding packages to procure similar goods under the same project or under another project or cost estimate.

Conditions for application of this process include (i) the selected contractor has been previously awarded a contract; (ii) the current package possess similar features and a smaller scale than 130% of the previous packages; (iii) the bid price does not exceed the price of respective works under the previous bid package and (iv) contract of the previous bid was signed no longer than 12 months prior to the approval of the current direct procurement.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

Competitive quotation in the procurement of goods. Competitive quotation applies to bid packages within the limited price as regulated by the Government, for (i) ordinary and simple, non-consultancy service bidding packages; or (ii) bidding packages to procure ordinary goods, which are available on the market with standardized technical properties and of equivalent quality; or (iii) simple construction bidding packages with approved construction drawing designs.[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4)

Self-implementation. The form will apply where the investor is also a contractor with sufficient capability and experience to implement the bid package belonging to the project which such an investor manages and uses.

Special case. In the case of a bid package with particular requirements for which the abovementioned forms of contractor selection cannot be applied, the investor will prepare a plan for selection of contractors which ensures competitiveness and economic effectiveness and will submit it to the Prime Minister for consideration and decision.

Centralised procurement is a method where contractors are selected through open bidding. Centralised procurement applies to cases in which goods or services need to be procured in large quantities or of similar types in one or more than one agency, organisation, enterprises or project owner. The entities shall (i) gather the procurement demands, select contractors and directly sign contracts with contractors selected to provide goods or services or (ii) gather the procurement demands, select contractors, sign a written framework agreement with one or more than one selected contractor to serve as a ground for units with procurement demand to directly sign contracts with contractors selected to provide goods or services.[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5) The validity of duration of a framework agreement shall be specified in the contractor selection plan and shall not exceed 3 years.[[6]](https://resourcehub.bakermckenzie.com/en#_ftn6)

Regular procurement is a method where contractors are selected in accordance with the forms and methods of selection of contractors, investors and professional bidding organisations.[[7]](https://resourcehub.bakermckenzie.com/en#_ftn7) Regular procurement applies to state bodies, political organizations, socio-political organizations, socio-politico-professional organizations, socio-professional organizations, social organizations, people's armed forces units or public non-business units regarding the procurement of goods or services when they satisfy the following conditions:

using the funding source for regular procurement and

goods or services are on the list of goods and services subject to procurement to maintain routine operations of the respective entities[[8]](https://resourcehub.bakermckenzie.com/en#_ftn8) **except** for the procurement for national defense and security purposes.[[9]](https://resourcehub.bakermckenzie.com/en#_ftn9)

For the purchase of medicine, and medical equipment, please refer to Section 10(c).

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 21, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 22, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 24, Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 23.1, Bidding Law.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 44.3, Bidding Law.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Article 45.2, Bidding Law; Article 72, Decree No. 63.

[[7]](https://resourcehub.bakermckenzie.com/en#_ftnref7) Chapters II, III Bidding Law.

[[8]](https://resourcehub.bakermckenzie.com/en#_ftnref8) Article 46, Bidding Law.

[[9]](https://resourcehub.bakermckenzie.com/en#_ftnref9) Article 73, Decree No. 63.

## b. What are the consequences for violation of the competitive bidding requirement?

The violator are subject to remedies/enforcement mechanisms discussed in Section 8(a) below.

# 8. Remedies and Enforcement

## a. Are there any remedies and enforcement mechanisms in the procurement legislation?

Yes, types of enforcement mechanism includes:[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

Discipline, administrative sanction, civil damages, criminal prosecution, depending on the types of violation; and

Prohibition from participating in bidding activities and inclusion in the List of violating bidders on the National bidding portal.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 90, Bidding Law.

## b. Are remedies available outside the scope of procurement legislation, e.g. civil law damage claims?

Yes. Violators of procurement legislation are also subject to remedies under the criminal, administrative and civil laws. For example, violators causing damages to other organizations/individuals as the result of their violation to procurement legislation are liable to pay civil damages.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

In addition, the Law on Construction and the Law on Commerce offer remedies in terms of penalties, provided that the parties have already agreed on such penalties under the contract.

For construction works using state capital, the contractually agreed penalties shall not exceed 12% of the total value of the violated obligation.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

For any contract involving a merchant as a party and/ or relating to commercial activities,[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3) the contractually agreed penalties shall not exceed 8% of the total value of the violated obligation.[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 90.1, Bidding Law; Article 124, Decree No. 63.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 146, Law on Construction.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 1, 2, Law on Commerce.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 301, Law on Commerce.

## c. Is there a specific forum before which procurement disputes are heard?

There is no specific forum where procurement disputes/appeal are heard.

However, under the Bidding Law, parties has the right to either initiate the case to the Court,[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) or submit the case to the Consultancy Council.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2) The Consultancy Council shall hear the appeal only if the appeal is not submitted to the Court.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

The central Consultancy Council shall be set up by the Minister of Planning and Investment. At ministries or ministerial-level agencies the Consultancy Councils shall be set up by ministers or heads of ministerial-level agencies and in localities this Council is set up by heads of local state management agencies in charge of bidding activities.[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4)

The costs for settlement must be paid by the appealing contractors where the appeal relates to contractor selection results is 0.02% of the bid of such contractor but must be between VND 1 million (approximate USD 47) and VND 5 million (USD 230).[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 91.1(b), Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Articles 92.2, 92.4, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 118.4, Bidding Law.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 92.2(c), Bidding Law; Article 119.1, Decree No. 63.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Articles 9.8, 118.5, Bidding Law.

## d. Are there any timing requirements for the review?

Under the law, the prescribed timeline of appeal's review by the Consultancy Council on matters arising from contractors/investors selection procedures, selection result, is between from 20 days to 60 days depends on the seriousness of the matter.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

However, in practice, timeline for this review normally extends beyond the period provided by law.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Articles 92.3,92.4 Bidding Law.

## e. What are the main preconditions for review?

Pre-conditions for a review are as follows:

The contractor shall send a written appeal to the project owner at any time after the matter arises but before the contractor selection result is announced;

The appeal is submitted to the competent person. Specifically,

for appeals regarding the selection procedures, the appeal is filed to the party calling for biddings. If the parties cannot resolve the matter, the contactor may file a written appeal to the competent person

for protests regarding the selection results, the appeal is filed to the party calling for biddings. If the parties cannot resolve the matter, the contactor may file a written appeal to the competent person and the appeal settlement consultancy council (the "Consultancy Council" ) to resolve the matter. The central Consultancy Council shall be set up by the Minister of Planning and Investment. At ministries or ministerial-level agencies the Consultancy Councils shall be set up by ministers or heads of ministerial-level agencies and in localities this Council is set up by heads of local state management agencies in charge of bidding activities.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

The content of the appeal has not been filed to court;[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

The contractor who is appealing has paid the deposit for the appeal (applicable when the appeal is resolved by the competent person or the Consulting Council for resolution of the appeal).[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 92.2(c), Bidding Law; Article 119, Decree No. 63.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 118.4, Decree No. 63.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 118.5, Decree No. 63.

## f. What are admissible grounds for starting a review proceeding?

Under the current procurement legislation, bidder may initiate a review proceeding if their legitimate rights/interest provided under the procurement legislation is violated.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 91.1(a), Bidding Law.

## g. Does a review proceeding affect an ongoing procurement procedure or an awarded contract respectively?

For an on-going bidding procedure: Yes. If the appeal is successfully filed to the competent person/Consulting Council for resolution, the competent person may suspend the on-going bidding procedure on a temporary basis, if it is deemed necessary. The suspension duration will last from the date the party calls for bidding receives the notification on suspension until the date the competent person issues a document to resolve the appeal.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

For an awarded contract: There is no specific provision dealing with the awarded contract in this case. However, in general, a contract might be declared invalid by court upon the request of a party if the contract is entered into with objectives and contents that breach legal prohibitions. An invalid transaction shall not give rise to, change or terminate any civil rights and obligations of the parties as from the time the transaction is entered into. The parties shall restore everything to its original state and shall return to each other what they have received. If the restitution is not able to made in kind, it may be paid in money. The party at fault which cause the damage must pay the compensation.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Articles 92.2(dd), 92.4(dd) Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 131.4, Civil Code 2015.

## h. What are the consequences of a successful review proceeding for the affected procurement procedure or awarded contract respectively?

The Bidding Law allows the application of cancellation or termination of bidding and rejection of contractor selection results.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) However, there is no clear differentiation of legal consequences among those measures.

For the affected bidding procedure: a successful review proceeding may lead to the cancellation of the bid, if the following instances are discovered as the result of the review:[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

All bid dossiers or dossiers of proposals fail to satisfy requirements of the bidding dossier or dossier of requirements;

The investment purpose and scope stated in the bidding dossier or dossier of requirements are changed;

The bidding dossier or dossier of requirements is incompliant with the bidding law and other relevant laws, leading to the failure of selected contractors or investors to satisfy requirements for execution of bidding packages or implementation of projects; and

There is evidence of the giving, receipt or brokering of bribes, collusion in contractor selection, fraud, abuse of position and power to illegally intervene in bidding activities, leading to false results of selection of contractors or investors.

In addition, termination of bidding or rejection of contractor selection results applies where there is evidence that there is a violation of the Bidding Law or other relevant laws, which make the bidding uncompetitive, partial and economically ineffective or falsifies the bidding result.[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3)

In addition, the competent person shall suspend the bid, deny the selection results or declare decisions of project owner, bid solicitor are invalid if detected that there is violation of the Bidding Law or other relevant regulations.[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4)

In such instances, the violator shall reimburse expenses for related parties and be liable for fines under relevant provisions of the laws (please refer to Section 8(a) and 8(b) above).[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5)

For an awarded contract: Please see Section 8(g) above.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Article 123, Decree No. 63.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 17, Bidding Law.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Article 123.2(a), Decree No. 63.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Article 73.5, Bidding Law.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Article 18, Bidding Law.

## i. How long does a judicial proceeding for review take?

Depending on the complexity of the case, judicial proceeding for review can take months to several years.

## j. Must unsuccessful bidders be notified before the award? If so, when?

No.

## k. Are review proceedings common?

Review proceedings record is not publically available. However, from what we see in practice, review is not common.

## l. Are damage claims in relation with procurement procedures common?

Damage claim record is not publically available. However, from what we see in practice, review is not common.

## m. What are the leading court decisions involving procurement disputes?

In Vietnam, court decisions are generally not published. Therefore, it is impossible to access procurement related court decisions.

# 9. Other Relevant Rules of Law

## a. Are there any related bodies of law of relevance to procurement by public agencies?

See Section 2(a) above.

## b. Does a specific contract law apply for public contracts?

Public contracts are generally governed by Civil Code, Decree No. 15 for PPPs projects and other relevant regulations of respective industry sectors., e.g. medicine procurements.

# 10. Industry sectors of special importance or with a specific procurement regime

## a. Are there any specific laws or practices that apply in the technology sector?

No. As of the date hereof, there have been no specific laws issued by any ministries or agencies in technology procurement nor are there any practices relating to this issue in Vietnam.

## b. Are there any specific laws or practices that apply in the defense sector?

No. Further, procurement of defense sector is principally considered as state's confidential information.

## c. Are there any specific laws or practices that apply in the health care sector?

There are no specific law that apply to health care sector but medicine procurement is generally governed by the Bidding Law regarding the types, forms, plan and procedures of medicine procurement and bid dossier evaluations.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1) The Ministry of Health is responsible to decide the list of medicine which is subject to the negotiation method.[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Chapter V, Bidding Law.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Article 51, Bidding Law.

## d. Are there any specific laws or practices that apply to any other particular industry sector?

Recently, Vietnamese has opened the door for betting on horse, dog racing and international football. Accordingly, the Government will grant one investor the rights to operate the betting business as a pilot scheme and the selection of investor shall be subject to bidding regulations of Vietnam.[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1)

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Decree No. 06/2017/ND-CP.

# 11. Looking Ahead

## a. Are there any proposals to change the law in the future?

As of the date hereof, there is no proposal to change the law.

©Copyright © 2024 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.